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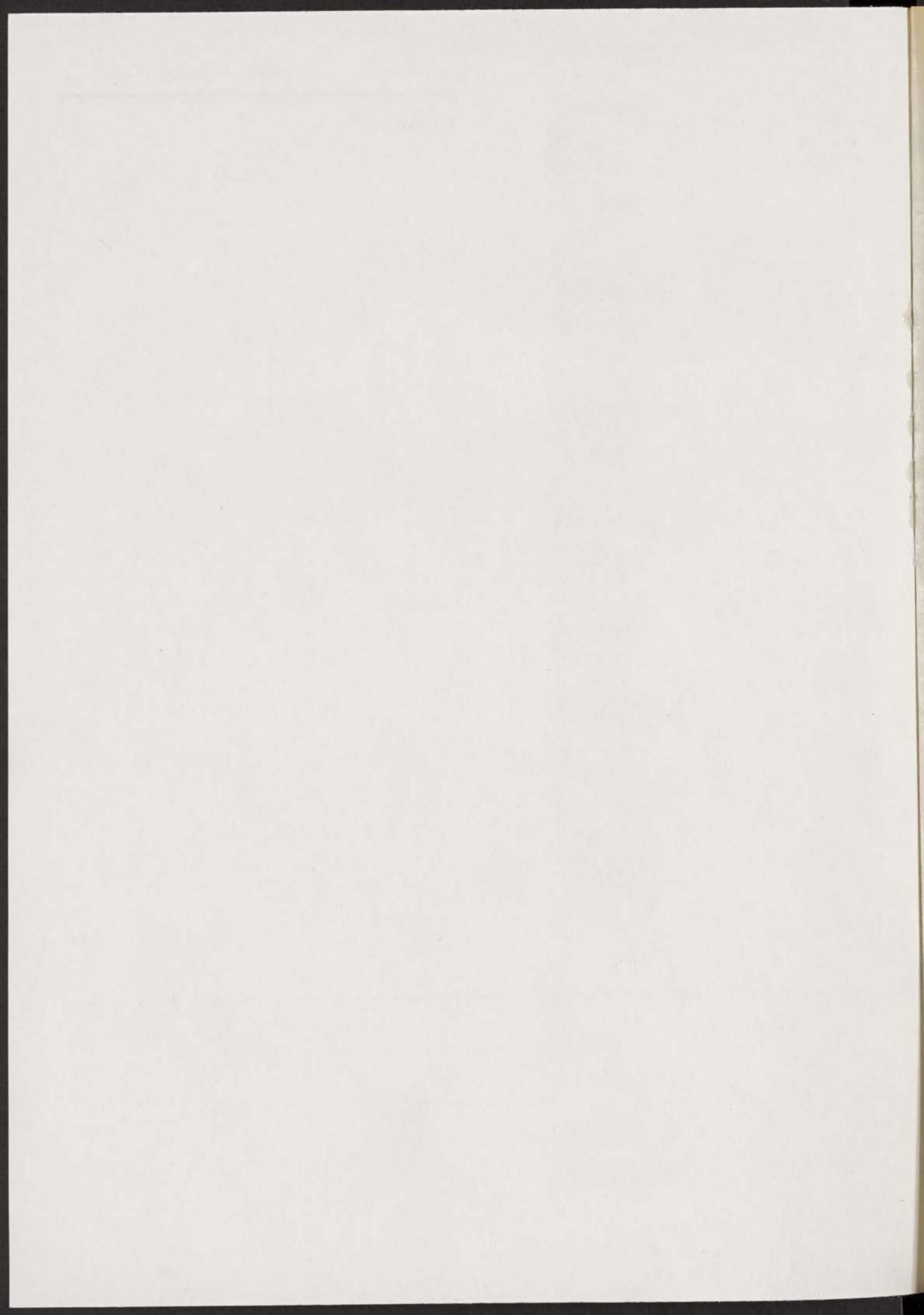
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Federal Register



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Title 3—

Proclamation 6051 of October 19, 1989

The President

National Forest Products Week, 1989

By the President of the United States of America

A Proclamation

Our Nation's forests have been prized not only for their great beauty, but also for the wealth of natural resources they provide. These forests supply us with fuel, a variety of useful paper products, and the wood with which we build our homes and furniture. They also provide a habitat for much of our Nation's wildlife, as well as a scenic environment for family outings and vacations. Throughout the history of the United States, America's dense forests have contributed to our shelter, warmth, convenience, and recreation.

Today, nearly 740 million acres of land in the United States are forested. A century ago, such continued abundance was in doubt. During the late 1800's, forests were being depleted at an alarming rate, and some Americans predicted an eventual timber shortage. Fortunately, however, early leaders in forest conservation—including President Theodore Roosevelt and Gifford Pinchot, the Nation's first trained forester—helped to reverse that trend. Their legacy is one for which we should be thankful.

The premise of their conservation legacy is that, while forests need protection, they can be used and renewed for the personal well-being of the American people and for the sake of the Nation's economy. Yet they must be used wisely. Like other agricultural crops, new trees must be planted for future harvests, if natural regeneration does not appear to be adequate.

Our adherence to this simple principle has been rewarded. Each year, we harvest large quantities of timber for building, paper products, fuel, and much more. Primary wood manufacturing provides jobs for more than 600,000 workers and millions of jobs in related industries.

Our Nation has been blessed by an abundance of natural resources. It is our obligation to future generations to use these resources responsibly. By caring for our forests and replenishing them in a timely way, we can help ensure that they—and the Nation itself—continue to prosper.

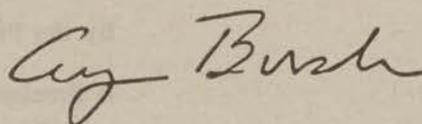
All Americans can participate in the vital process of reforestation. Last year, Federal efforts resulted in the planting of 340,000 acres of new trees. Private voluntary organizations, families, and businesses planted eight times that number.

Every tree sown helps to reduce soil erosion by wind and water; improve air quality by reducing carbon dioxide in the atmosphere; and provide fuel, shelter, and valuable food and paper products. Whether planted on public land or in a suburban backyard, every tree also represents a living compact between generations. Through reforestation, we can help give our children and grandchildren a greener, healthier environment. Each tree makes a difference—so, too, does each American who plants a new one.

In recognition of the value of our forests, the Congress, by Public Law 86-753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as "National Forest Products Week" and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning October 15, 1989, as National Forest Products Week and call upon all Americans to observe that week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-25183
Filed 10-20-89; 4:55 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6052 of October 19, 1989

United Nations Day, 1989

By the President of the United States of America

A Proclamation

Each year, United Nations Day provides us the opportunity to reaffirm the principles upon which the United Nations was founded in 1945. Those principles are eloquently expressed in the preamble to the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly on December 10, 1948. In that historic document, the peoples of the United Nations agreed that "recognition of the inherent dignity of the equal and unalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world." The ongoing efforts of the United States and other members of the United Nations are rooted in the conviction that human rights should be protected by the rule of law.

Today, mankind is filled with hope, for the prospects for peace have improved greatly in regions where it seemed impossible just a few years ago. Throughout the world, we are witnessing the triumph of freedom and democratic ideals over regimes maintained by intimidation and force. The United Nations and the Universal Declaration of Human Rights have contributed much to this progress, both symbolically and practically.

The effectiveness and credibility of the organization have been enhanced by a continuing series of internal reforms, and the United Nations plays an important role in promoting constructive dialogue and the peaceful resolution of differences between nations. It has helped advance or implement the settlement of a number of regional conflicts, and it has helped promote the economic and political development of countries beset by strife and poverty. The United Nations has also begun to offer leadership in the fight against drug trafficking, as well as in efforts to protect the global environment.

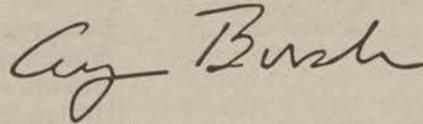
Much of the United Nations' work is carried out by its technical and specialized agencies, such as the International Civil Aviation Organization (ICAO). This year marks the 45th anniversary of the Convention on International Civil Aviation, which provided for the establishment of the ICAO. Since its inception, the ICAO has led efforts to promote safety in international air navigation and to ensure the orderly growth of international civil aviation throughout the world.

In recent years, the ICAO has devoted increasing attention to the threat of terrorism. Earlier this year, it adopted a plan of action to thwart terrorists attempting to place bombs on board passenger aircraft. The Organization is currently developing a regimen for the marking and detection of plastic explosives. The ICAO has long been a useful forum in which to address the problem of aircraft hijackings. In fact, the incidence of aircraft hijackings around the world has decreased markedly—in large part as a result of improved security measures recommended by the ICAO and implemented by its member states.

The International Civil Aviation Organization is one example of the positive role played by the technical and specialized agencies of the United Nations. Throughout the United Nations system, men and women from around the world are working together to help make the world a safer, healthier place in which to live. Their efforts reflect the vision of those who, in signing the United Nations Charter, "reaffirmed their faith in fundamental human rights, [and] in the dignity and worth of the human person."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 24, 1989, as United Nations Day. I urge all Americans to observe that day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-25184

Filed 10-20-89; 4:56 pm]

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Rules and Regulations

Federal Register

Vol. 54, No. 204

Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Animal Plant and Health Inspection Service

7 CFR Part 301

[Docket No. 89-166]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding to, and deleting from, the list of areas in counties in North Carolina and South Carolina.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective on June 7, 1989 (54 FR 24313-24318, Docket Number 89-047), we amended the witchweed quarantine and regulations contained in 7 CFR part 301 by adding areas in Cumberland, Greene, Harnett, Pender, Richmond, and Sampson Counties in North Carolina, and an area in Marlboro County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations. The list of suppressive areas was also amended by removing areas in Beaufort, Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Lenoir, Pender, Sampson, and Wayne Counties in North Carolina, and areas in Florence, Horry, and Marlboro Counties in South Carolina.

Comments on the interim rule were required to be received on or before August 7, 1989. We received one

comment from a State Department of Agriculture, favoring this regulation. The facts in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

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

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 261,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 477 of these entities by removing 472 entities from regulation and placing 5 new entities under regulation. We have determined that the 472 deregulated entities will realize combined annual savings of approximately \$10,936, or \$23.17 each, in regulatory and control costs. We estimate that the 5 newly regulated entities will need to invest approximately \$675 each, per year, in order to comply with our regulations.

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

Paperwork Reduction Act

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

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.80-2a that was published at 54 FR 24313-24318 on June 7, 1989.

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

Done in Washington, DC, this 19th day of October, 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-25042 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 21; Doc. No. 7434S]

General Crop Insurance Regulations; Grape Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.130, the Grape Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on grapes in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA

procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.130, the Grape Endorsement, effective for the 1990 and succeeding crop years in California (1991 and succeeding crop years in all other states), to provide the provisions for insuring grapes.

Upon publication of 7 CFR 401.130 as a final rule, the provisions for insuring grapes contained therein will supersede those provisions contained in 7 CFR part 411, the Grape Crop Insurance Regulations, effective in California only, with the beginning of the 1990 crop year. The present policy contained in 7 CFR part 411 for all states except California will be in effect for the 1990 crop year; terminated at the end of the 1990 crop

year; and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 411 by separate document so that the provisions therein are effective only as outlined above.

Minor editorial changes have been made to improve compatibility with the general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Grape Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring grapes as follows:

1. *Subsection 1.*—Change language to allow an insured to elect the varieties to be insured in California only. Add language regarding insurable by the age of the grafted vines.

2. *Subsection 2.*—Remove reference to direct Mediterranean Fruit Fly damage as an insured cause of loss. This insect is more easily controlled than many other grape pests and since we do not cover insect damage in general, this cause should not be included.

3. *Subsection 4.*—Add language to prevent adverse selection via coverage levels or price election levels for individual varieties.

4. *Subsection 7.*—Change insurance period dates for Idaho and Oregon to match the dates in Washington. These two states previously fell into the "all other states" category.

Add an end-of-insurance date of October 10 for new county programs in Mississippi.

Revise language to allow insurance coverage for acreage acquired after sales closing date in all states. Previous language allowed this only in certain states.

5. *Subsection 8.*—Revise unit division language to include provisions for California to establish as policy units each variety insured and to permit optional unit division only for noncontiguous land.

6. *Subsection 10.*—Add language to clarify that quality adjustment applies to both harvested and unharvested production. Change language to include quality adjustment for all high value special use grapes. Previously language included only grapes which were harvested before normal maturity.

7. *Subsection 11.*—Change cancellation and termination dates for Idaho and Oregon to match the dates in Washington.

8. *Subsection 13.*—Modify the definition of "harvest" to include both mechanical and manual means of removing grapes from the vines. Replace the definition of "contiguous land" with the definition of "noncontiguous land". The term noncontiguous land is used in Subsection 8.

On Tuesday, August 15, 1989, FCIC published a notice of proposed rulemaking in the *Federal Register* at 54 FR 33560, to provide the provisions of crop insurance protection on grapes in an endorsement to the general crop insurance policy. The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, the rule published at 54 FR 33560 is hereby adopted as a final rule.

Language previously contained in the unit division section of the proposed rule, which required additional premium for optional unit division, has been removed in the final rule. FCIC's Board of Directors has adopted a method which discounts premium for insureds who choose not to divide their acreage into optional units.

This discount is available only on selected crops in 1990 and will not be available for grapes since there will be no surcharge or discount for optional grape units, all language regarding premium changes for optional unit division has been removed from the endorsement.

Inasmuch as the earliest date by which changes in the contract must be filed in the service offices in California is October 31, 1989, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; Grape endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years in California, and for the 1991 and succeeding crop years for all other states, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.130, Grape Endorsement, effective for the 1990 and Succeeding Crop Years in California, and for the 1991 and succeeding crop years in all other states, to read as follows:

§ 401.130 Grape endorsement.

The provisions of the Grape Crop Insurance Endorsement for the 1990 (in

California) and subsequent crop years (in all other States) are as follows:

Federal Crop Insurance Corporation

Grape Endorsement

1. Insured Crop

a. The crop insured;

(1) For California only, will be any insurable variety of grapes you elect which are grown for wine, juice, raisins or canning.

(2) For all other states, will be all insurable varieties of grapes which are grown for wine, juice, raisins or canning.

b. In addition to the grapes not insurable under section 2 of the General Crop Insurance Policy, we do not insure any grapes:

(1) If the producing vines, after being set out or grafted, have not reached the number of growing seasons designated by the actuarial table;

(2) If the producing vines have not produced an average of two (2) tons of grapes per acre; or

(3) Produced by vines where there is less than a ninety percent (90%) stand of bearing vines based on the current planting pattern; unless inspected by us and we agree, in writing, to insure such grapes.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) If applicable, failure of the irrigation water supply; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the General Crop Insurance Policy.

b. In addition to the causes of loss not insured against under section 1 of the General Crop Insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or vine pruning debris has not been removed from the vineyard. We also specifically do not insure against the inability to market the grapes as a direct result of quarantine, boycott, or refusal of any entity to accept production, unless production has actual physical damage due to a cause specified in subsection 2.a. above

3. Report of Acreage, Share, Practice, and Type (Acreage Report)

In addition to the information required by section 3 of the General Crop Insurance Policy, you must report the crop type and variety

4. Coverage Levels and Price Elections

Only one coverage level (50%, 65%, or 75%) and only one price election set (high, medium, or low) will be applicable to all your insurable grapes

5. Production Reporting and Production Guarantees

In addition to the information required in section 4 of the General Crop Insurance Policy, you must report

a. The number of bearing vines; and
b. Any vine damage or change in farming practices which may reduce yields from previous levels.

6. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

7. Insurance Period

a. The calendar date on which insurance attaches is:

(1) November 21 in Idaho, Oregon, and Washington;

(2) February 1 in California; and

(3) December 11 in all other states.

b. The date harvest should have started on any acreage which is not harvested, is added to section 7 of the General Crop Insurance Policy as one of the items which ends the insurance period.

c. The calendar date for the end of the insurance period is:

(1) October 10 in Mississippi;

(2) November 10 in California, Idaho, Oregon, and Washington; and

(3) December 10 in all other states.

d. If you acquire an insurable share in any insurable acreage on or before the acreage reporting date of any crop year and if we inspect, consider acceptable, and agree in writing, to insure such acreage, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. If you relinquish your insurable interest on any acreage of grapes on or before the acreage reporting date of any crop year insurance will not be considered to have attached to such acreage for that crop year unless a transfer of right to an indemnity is entered into by all affected parties and the service office is notified in writing of such transfer prior to the acreage reporting date.

8. Unit Division

a. In California only, in addition to units as defined in section 17 of the General Crop Insurance Policy, each grape variety will be a separate unit. Grape acreage that would otherwise be one unit, as provided herein and in section 17 of the General Crop Insurance Policy, may be divided into more than one optional unit if, for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year, production reports based on those records are filed to obtain an insurance guarantee; and the insured grapes are located on land owned by you which is noncontiguous. Land rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop will be considered owned by you.

b. In all other states, grape acreage that would otherwise be one unit as defined in section 17 of the General Crop Insurance Policy may be divided into more than one optional unit if, for each proposed unit you maintain written, verifiable records of

planted acreage and harvested production for at least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and

(1) The insured grapes are designated in the actuarial table as separate group A or group B varieties;

(2) The insured grapes are located on noncontiguous land;

(3) The acreage of insured grapes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(a) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(b) The grapes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

(4) The acreage of insured grapes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(a) Grapes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(b) Farming practices are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

c. If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined.

9. Notice of Damage or Loss

In addition to the notices required in section 8 of the General Crop Insurance Policy, and if you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

a. After total destruction of the grapes on the unit;

b. After discontinuance of harvest on the unit; or

c. Before harvest would normally start if any acreage on the unit is not to be harvested.

If notice is given under this subsection, the notice requirement under subsection 8.a.(4) of the General Crop Insurance Policy is not applicable.

10. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see subsection 9.c.) by the price election; and

(4) Multiplying this result by your share.

b. If a unit contains acreage to which more than one price election applies, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for such acreage and then added together to determine the total amount for the unit

c. The total production (tons) to be counted for a unit will include all harvested and appraised production:

(1) Grapes which, due to insurable causes, have a value less than 75 percent of the average market price of undamaged grapes of the same variety will be eligible for quality adjustment. In California, the average market price will be the price shown by the Federal State Market News California Wine Report for the same week in which the damaged grapes were valued. In all other states, the average market price will be determined by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued. Damaged production will be adjusted by:

(a) Dividing the value per ton of the grapes by the highest price election available for such grapes; and

(b) Multiplying the result (not to exceed 1) by the number of tons of such grapes.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grape management practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(4) If any grapes are harvested before or after normal maturity or for a special use (such as champagne or Botrytis affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

11. Cancellation and Termination Dates

a. The cancellation date in:

(1) California is January 31 of the calendar year in which the crop normally blooms;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year prior to the year of normal bloom; and

(3) All other states is December 10 of the calendar year prior to the year of normal bloom.

b. The termination date in:

(1) California is January 31 of the calendar year following the year of normal bloom;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year in which the crop normally blooms; and

(3) All other states is December 10 of the calendar year in which the crop normally blooms.

12. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date for all states except California, and October 31 preceding the cancellation date for California.

13. Meaning of Terms

a. *Crop Year* means the period beginning with the date insurance attaches to the grape crop and extending through normal harvest time, and will be designated by the calendar year in which the grapes are normally harvested.

b. *Harvest* means the mechanical or manual removal of grapes from the vines.

c. *Noncontiguous Land* means any land whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

d. *Ton* means 2,000 pounds.

Done in Washington, DC on October 10, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24963 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 22; Doc. No. 7242S]

General Crop Insurance Regulations; High-Risk Land Exclusion Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.131, to be known as the High-Risk Land Exclusion Option. The intended effect of this rule is to provide the regulations containing the provisions of a High-Risk Land Exclusion Option on several endorsements to the general crop insurance policy.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) an annual effect on the economy of

\$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, July 6, 1989, FCIC published a notice of proposed rulemaking in the Federal Register at 54 FR 23428, to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.131, the High-Risk Land Exclusion Option, effective for the 1990 and succeeding crop years, to provide the provisions for allowing an insured to exclude from crop insurance coverage all high-risk land.

The basic crop insurance policy provides insurance coverage on all land planted to a crop by an insured. If the crop is planted on insurable high-risk land, the insured will be required to report, and pay premium on, such acreage. The premium rate for such crop land reflects the risk which exists. Insurance coverage on all cropland is uniformly available to all insureds with an accepted application.

FCIC herewith issues the High-Risk Land Exclusion Option to address FCIC's concerns with respect to providing uniformly available coverage.

For those insureds who do not wish to insure their high-risk land, the basic insurance policy may be amended by submitting the High-Risk Land Exclusion

Option for all crops involved, providing FCIC and the insured greater flexibility in reaching their insurance objectives.

Initially, the High-Risk Land Exclusion Option will be available on crops in those states and counties where the actuarial study on high-risk land classification has been completed. It is the intent of FCIC to expand to additional crops and counties as the actuarial classifications are completed. Beginning with the 1990 crop year, the High-Risk Land Exclusion Option will be available on the following crops:

Barley (7 CFR 401.104)
 *Corn (7 CFR 401.111)
 *Cotton (7 CFR 401.119)
 Cotton ELS (7 CFR 401.121)
 **Dry Beans (7 CFR 433)
 *Grain Sorghum (7 CFR 401.113)
 Oats (7 CFR 401.105)
 Popcorn (7 CFR 447)
 Rice (7 CFR 401.120)
 Rye (7 CFR 401.106)
 ***Safflowers (7 CFR 401.123)
 Soybeans (7 CFR 401.117)
 Sunflowers (7 CFR 401.124)
 Wheat (7 CFR 401.101)

Note: *Not available on these crops in Hidalgo County, Texas; **Not available on Dry Beans in Idaho, Oregon, Utah, and Washington; ***Not available on Safflowers in Idaho and Utah.

Following the publication of the notice of proposed rulemaking in the **Federal Register** at 54 FR 28428, the public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received, therefore, the rule published at 54 FR 28428 is hereby adopted as a final rule.

Since implementation of this rule will benefit insureds by allowing them to exclude from crop insurance coverage all high-risk land, thus reducing the producer's over-all farming costs by not requiring insurance on such land, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 401

Crop insurance; High-risk land exclusion option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a

new section to be known as 7 CFR 401.131, High-Risk Land Exclusion Option, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.131 High-risk land exclusion option.

The provisions of the High-Risk Land Exclusion Option for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

High-Risk Land Exclusion Option

This is a continuous Option. Refer to item 5 of this Option.

Insured's Name _____
 Contract No. _____
 Address _____
 Crop Year _____
 Crops _____
 County _____
 Identification No. _____
 SSN _____
 TAX _____

Upon our approval of this Option, we agree to amend your Federal Crop Insurance Policy to exclude from crop insurance coverage all high-risk land for the identified crops and county in which you have a share, subject to the following terms and conditions:

1. The Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to exclude high-risk land.

2. In the event of a loss on any insured unit, you must provide separate production records showing planted acreage and harvested production for any acreage which is excluded from crop insurance coverage under this Option.

3. By signing this Option, you are declining crop insurance coverage under the general crop insurance policy and the crop endorsement on your high-risk land.

4. As used in this Option, "high-risk" land is any land which is not classified as an "R" classification contained in the actuarial table.

5. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

6. You must report, on the acreage report for each crop year, the acreage of the crop planted on high-risk land.

7. All other provisions of the policy not in conflict with this Option are applicable.

Insured's Signature _____

Date _____

Corporation Representative's Signature and _____

Code Number _____

Date _____

Collection of Information and Data (Privacy Act)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act,

as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Furnishing the Tax Identification Number (Social Security Number) is voluntary and no adverse action will result from the failure to furnish that number. Furnishing the information required by this form, other than the Tax identification (Social Security) Number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due. (See below for information on the consequences of furnishing false or incomplete information).

The information furnished on this form will be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture; the Internal Revenue Service; the Department of Justice, or other federal or State law enforcement agencies; credit reporting agencies and collection agencies; and in response to judicial orders in the course of litigation.

A false claim made to the Corporation, or a false statement made on a matter within the jurisdiction of the Corporation, may subject the maker to criminal and civil penalties (18 U.S.C. 1001, 1006; 31 U.S.C. 3729, 3730).

Done in Washington, DC, on September 27, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24984 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 401

[Amdt. No. 40; Doc. No. 72155]

General Crop Insurance Regulations; Raisin Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations (7 CFR part 401), effective for the 1990 and succeeding crop years, by adding a new section, 7 CFR 401.142, the Raisin Endorsement. The intended effect of this rule is to provide the provisions of crop

insurance protection on raisins in an endorsement to the general crop insurance policy.

EFFECTIVE DATE: November 24, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as March 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC adds to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.142, the Raisin Endorsement, effective for the 1990 and succeeding crop years, to provide the provisions for insuring raisins.

Upon publication of 7 CFR 401.142 as a final rule, the provisions for insuring raisins contained therein will supersede those provisions contained in 7 CFR part 402, the Raisin Crop Insurance Regulations, effective with the beginning of the 1990 crop year. The present policy contained in 7 CFR part 402 will be terminated at the end of the 1989 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 402 by separate document so that the provisions therein are effective only through the 1989 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Raisin Endorsement to 7 CFR part 401, FCIC makes other changes in the provisions for insuring raisins as follows:

1. *Subsection 1.*—Add language regarding share in the event of a loss. For purposes of raisin insurance, in case of an indemnity, the share should not exceed the share when the raisins are removed from the vineyard rather than at the beginning of harvest. Remove language allowing raisin insurance on grapes that have been sized for table grapes. This change was made due to unfavorable loss experience when insuring raisins made from table grapes.

2. *Subsection 3.*—Change the tonnage to be reported from net tons to delivered tons. Raisin maturity standards have made the use of net tonnage (or net paid tonnage) inappropriate when determining premium amounts.

3. *Subsection 9.*—Include language to authorize us to obtain records from the Raisin Administrative Committee and other parties who may have such records. This authorization is needed to allow us to determine insured tonnage when a tonnage report is not submitted. Change language regarding the value of undamaged raisins. The new term used is the "insurance price." This change was made because the term "field price" has generally been used in the raisin industry to define only the free tonnage price. Add language to clarify that the number of tons of raisins on which we allow a reconditioning allowance will be the actual (unadjusted) tonnage to be reconditioned. This clarification was made to eliminate inconsistencies in loss adjustment procedure.

4. *Subsection 12.*—Add the definitions of "Delivered ton," "Noncontiguous Land," "Insurance price," and "Substandard."

On Monday, July 10, 1989, FCIC published a notice of proposed rulemaking in the *Federal Register* at 54 FR 28820, to add a new section, 7 CFR

401.142, the Raisin Endorsement, to provide the provisions of crop insurance protection on raisins in an endorsement to the general crop insurance policy.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule. One comment was received from the National Crop Insurance Service (NCIS) on behalf of its affiliated companies. The comments are addressed below in the order they appear in the rule, as follows:

1. Section 1.c. NCIS recommends that this section should be changed to reflect the time the insured's share is determined as being at the time insurance attaches. Currently, this section states: "In lieu of subsection 2.c.(2) of the general crop insurance policy, for the purpose of determining the amount of indemnity, your share will not exceed your share at the time the raisins are removed from the vineyard." NCIS' rationale is that the company is liable for the raisins when the insurance period begins and the share should be determined at this time. Section 2.c. of the general policy, while providing that the insured share is that share at the time insurance attaches, states in section 2.c.(2), that for the purpose of determining an indemnity, the insured's share will not exceed the share at the beginning of harvest.

Section 1.c. of the endorsement does not change the share percentage from what it is at the time insurance attaches unless there is an indemnity and the share is reduced from what it was at the time insurance attached. The provision only modifies the section 2.c.(2) of the general policy. For raisins, removing trays from the vineyard is the equivalent of the beginning of harvest.

2. NCIS stated that sections 1.d. (2) and (3) should be changed to read: "made from table grapes." Then by referencing the definition of table grapes in section 12.h., this would include what is not insurable.

Sections 1.d. (2) and (3) actually address two separate situations. First is the instance in which table grapes are removed from the vines and the strippings are made into raisins. The second includes situations when the entire production is utilized for raisins. For clarity and distinction of the two situations, FCIC has determined to retain the current language.

3. NCIS recommends changing the paragraph following section 3.b.(4) to provide a broader base from which companies can secure information to verify insured tonnage.

FCIC has no problem with expanding this language to be similar to that found

in section 9.b. The language in section 3 will therefore read as follows: "By execution of the application for insurance you authorize us to determine or verify the insured tonnage from records maintained by the raisin packer, raisin reconditioner, Raisin Administrative Committee established under the United States Department of Agriculture, or any other party who may have such records".

4. NCIS suggested section 4.a.(2) should be changed for clarity to read: "damaged by rain, by adding raisins delivered (delivered tons), if any, to any verifiable loss of production due to rain damage in the vineyard as determined by us. Tray weights will only be used to establish raisin tonnage on trays or in rolls not removed from the vineyard".

FCIC agrees to this change. Section 4.a.(2) of the Raisin policy has been changed in this final rule.

5. It was suggested by NCIS that section 5.a include a reference to any premium adjustment percentage that may apply to the computation of the annual premium amount.

FCIC agrees and has made the change in this section.

6. With the change suggested in Number 5 above, NCIS recommends deleting section 5.b. of the policy.

FCIC agrees and has made the change.

7. NCIS recommended that section 12.b. should be changed to reflect a more accurate definition of delivered tons which indicates the moisture adjustment percentage.

FCIC agrees and has made the change.

In addition, the notice of proposed rulemaking contained language in section 7 of the policy which required additional premium surcharge for optional unit division. This has been removed from the final rule because, on August 14, 1989, the Board of Directors of FCIC approved a method for discounting premium for those insureds who choose not to divide their acreage into optional units, and discontinued surcharges for optional unit division. Premium rates have been revised to reflect this change. This discount is only available on selected crops in the 1990 crop year and will not be available for raisins.

Since there will be no surcharge for optional raisin units, all language regarding premium charges for optional unit division have been removed from the policy.

Therefore, with the exception of the changes set out above, FCIC hereby adopts the rule published at 54 FR 28820 as a final rule.

List of Subjects in 7 CFR Part 401

Crop insurance; Raisin endorsement.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the General Crop Insurance Regulations (7 CFR part 401), to be effective for the 1990 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.142, Raisin Endorsement, effective for the 1990 and Succeeding Crop Years, to read as follows:

§ 401.142 Raisin endorsement.

The provisions of the Raisin Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Raisin Endorsement

1. Crop, Tonnage, and Share Insured

a. The crop insured will be raisins of grape varieties designated as insurable by the actuarial table.

b. The tonnage insured will be the tonnage in which you have a share (as reported by you or as determined by us, whichever we elect).

c. In lieu of subsection 2.c.(2) of the general crop insurance policy, for the purpose of determining the amount of indemnity, your share will not exceed your share at the time the raisins are removed from the vineyard.

d. In addition to the raisins not insurable under section 2 of the general crop insurance policy, we do not insure any raisins:

(1) Laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties or after September 20 in all other instances;

(2) Made from table grape strippings; or

(3) Made from vines that have had manual, mechanical, or chemical treatment to produce table grape sizing.

2. Causes of Loss

The insurance provided is against the unavoidable loss of production resulting from rain, occurring within the insurance period, while raisins are in the vineyard, on trays or in rolls, for drying unless limited by the actuarial table.

3. Report of Tray Count, Tonnage, and Share (Tonnage Report)

By execution of the application for insurance you authorize us to determine or verify the insured tonnage from records maintained by the raisin packer, raisin reconditioner, Raisin Administrative Committee established under the United States Department of Agriculture, or any other party who may have such records.

In lieu of section 3 of the general crop insurance policy, you must report on our form:

a. For all raisins which are not damaged, the delivered tons of insured raisins produced in the county in which you have a share and your share as soon as delivery records are available, but in any event no later than March 1 following the crop year;

b. For insured raisins which are damaged:

- (1) The variety;
- (2) The location of the vineyard;
- (3) The number of trays upon which the raisins have been placed for drying; and
- (4) Your share.

c. You must report separately any tonnage that is not insurable. You must report if you do not have a share in any insurable tonnage in the county. This report must be submitted annually on or before March 1 of the year following the crop year. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Amounts of Insurance and Production Reporting

a. The amount of insurance for the unit will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share. Insured tonnage is determined for raisins:

(1) Not damaged by rain, by the raisins delivered (delivered tons); or

(2) Damaged by rain, by adding raisins delivered (delivered tons), if any, to any verifiable loss of production due to rain damage in the vineyard. Tray weights will only be used to establish raisin tonnage on trays or in rolls not removed from the vineyard.

b. Subsection 4.d. of the general crop insurance policy is not applicable to this crop.

5. Annual Premium

The annual premium amount is computed by multiplying the amount of insurance per ton times the premium rate, times the insured tonnage, times your share on the date insurance attaches, times any applicable premium adjustment percentage shown on the actuarial table.

6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches at the time the raisins are placed on trays for drying and ends the earlier of:

- a. October 20;
- b. The date the raisins are boxed; or
- c. The date the raisins are removed from the vineyard.

7. Unit Division

a. Raisin acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into units by grape variety.

b. Raisin acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if, for each proposed (optional) unit:

(1) You maintain written, verifiable records of raisin production for at least the previous crop year; and

(2) The acreage of insured raisins is located on noncontiguous land.

If you have a loss on any unit, production records for all harvested units must be maintained and be made available to us at our request. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In lieu of section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, we must be given notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such damage is not reported within 72 hours.

9. Claim for Indemnity

a. In lieu of subsection 9.a. of the general crop insurance policy any claim for indemnity must be submitted to us on our form not later than March 31 after the calendar date for the end of the insurance period.

b. In addition to the requirements in subsection 9.b. of the general crop insurance policy, we will not pay any indemnity unless we are allowed in writing to examine and obtain any records pertaining to the production and marketing of any raisins in which you have a share from the raisin packer, raisin reconditioner, Raisin Administrative Committee established under order of the United States Department of Agriculture, or any other party who may have such records.

c. The indemnity will be determined on each unit by:

(1) multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) subtracting therefrom the total value of all insured damaged and undamaged raisins; and

(3) multiplying this result by your share.

d. Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the insurance price (see subsection 12.c.).

e. Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, adjusted for any reduction in value due to uninsured causes.

f. Raisins damaged by rain, but which are reconditioned and meet the Raisin Administrative Committee (RAC) standards for raisins, will be valued at the insurance price. An allowance for reconditioning will be deducted from the value only if you obtained our written consent prior to reconditioning. The allowance for reconditioning will be made only when the raisins have been inspected by the USDA and, due to rain damage while on the tray are found to contain mold, embedded sand, excessive moisture, or micro-organisms in excess of RAC tolerances.

The reconditioning allowance will be made based on the actual (unadjusted) weight of

raisins to be reconditioned. Additionally, when raisins contain excessive moisture due to rain, the reconditioning allowances will be made only when the moisture is determined to be in excess of 18.0 percent and the raisins are wash-and-dry reconditioned. The maximum allowance for reconditioning is contained in the actuarial table, but the total reconditioning allowance will not exceed the value of the raisins after reconditioning. We may require you to recondition a representative sample of not more than 10 tons of raisins to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at the insurance price. If the representative sample does not meet RAC standards for marketable raisins, the cost of reconditioning the sample will be deducted from the total value of the raisins for the unit.

g. The value to count for any raisins produced on the unit and not removed from the vineyard will be the larger of the appraised salvage value or \$35.00 per ton. You must box and deliver any raisins that can be removed from the vineyard.

h. We may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at "zero" in determining the amount of loss and we will have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

i. Raisins destroyed without USDA inspection or put to another use without our consent will be valued at the amount of insurance.

10. Cancellation and Termination Dates

The cancellation and termination dates are July 31.

11. Contract Changes

The date by which contract changes will be available in your service office is April 30 preceding the cancellation date.

12. Meaning of Terms

a. *Crop year* means the calendar year in which the raisins are placed on trays for drying.

b. *Delivered ton* means a ton of raisins or raisin material delivered to a packer, processor, buyer or a reconditioner, before any adjustment for B and better maturity standards, and after adjustment for moisture over 18 percent and adjusted for substandard raisins over 5 percent. Raisin tonnage will be reduced 0.12 percent for each 0.10 percent moisture in excess of 16.0 percent.

c. *Insurance price* means the value established by us for raisin tonnage for the purpose of determining indemnities. This value is shown in the actuarial table.

d. *Noncontiguous land* means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

e. *Raisins* mean specific varieties of grapes, designated insurable by the actuarial table, which have been laid on trays or are in rolls in the vineyard to dry.

f. *Raisin tonnage report* means a form prescribed by us for annually reporting all the

tonnage of raisins in the county in which you have a share.

g. *Substandard* means a quality of raisins that fail to meet the requirements of U.S. Grade C except that layer or cluster raisins with seeds or Zante Currant raisins will be considered substandard if they fail to meet the requirements of U.S. Grade B.

h. *Table grapes* mean grapes which are grown for commercial sales as fresh grapes on acreage where the cultural practices to produce fresh marketable grapes were carried out.

i. *Ton* means 2,000 pounds. Raisin tonnage may be computed on the basis of one ton of raisins insured for every four and one-half tons of fresh grapes when first placed on trays for drying.

j. *USDA inspection* means the actual determination by a USDA inspector of all defects. Limited inspections or inspections on submitted samples are not considered "USDA inspections."

Done in Washington, DC, on September 26, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24985 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-09-M

7 CFR Part 422

[Amdt. No. 4; Doc. No. 7227S]

General Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Potato Crop Insurance Regulations (7 CFR part 422), effective for the 1989 and succeeding crop years, to change the end of insurance period for potatoes in Delaware, Maryland, and New Jersey. The intended effect of this rule is to change the currently incorrect date to reflect the farming practices for potatoes in such states.

DATES: This rule is effective October 24, 1989. Comments should be received by December 26, 1989.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA

procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations remains as February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In reviewing the potato crop insurance policy, it was determined that the August 15 end of insurance period for Delaware, Maryland, and New Jersey, is incorrect. Potato insureds in these states would not, by this time, have harvested their crops. To leave the date as August 15 would have the effect of removing crop insurance coverage before harvest and leaving the insured without protection. John Marshall, Manager, FCIC, has determined that in order to provide continuing potato crop insurance protection until harvest, it is necessary to change the end of insurance period for Delaware, Maryland, and New Jersey to a date more closely corresponding with harvest. By deleting these states from that section of the potato crop insurance policy identifying the end of the

insurance period as August 15, such states would then fall into the "all other states" category, or October 15.

Since policies currently in effect list an incorrect end of insurance period for potato crop insurance policies in Delaware, Maryland, and New Jersey, and an immediate change of this reference would properly restore crop insurance protection to growers in such states, good cause is shown for making this rule effective upon publication in the Federal Register without provision for prior notice and comment. FCIC is soliciting public comment for 60 days after the publication of the rule, and will schedule a review of this rule as soon as possible after the 60-day period in order to consider any amendment which may be made necessary by the comments received.

Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 422

Crop insurance, Potatoes.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Potato Crop Insurance Regulations (7 CFR part 422), effective for the 1989 and subsequent crop years, in the following instances:

1. The authority citation for 7 CFR part 422 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. In § 422.7(d), the Potato Crop Insurance Policy is amended by revising subparagraph 7.b.(4)(c) to read as follows:

§ 422.7 The application and policy.

* * * * *

(d) * * *

7. * * *

b. * * *

(4) * * *

(c) Virginia, and Knox County, Texas—
August 15;

* * * * *

Done in Washington, DC, on September 27, 1989.

John Marshall,
Manager, Federal Crop Insurance
Corporation.

[FR Doc. 89-24986 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

15 Year Loans

AGENCY: National Credit Union
Administration.

ACTION: Final rule.

SUMMARY: This final rule amends § 701.21(f) by extending to 20 years the authority of Federal credit unions (FCUs) to make: (1) a loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home, (2) a second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and (3) a loan to finance the repair, alteration, or improvement, of a residential dwelling which is the residence of the member-borrower.

EFFECTIVE DATE: October 24, 1989.

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

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance or Timothy P. Hornbrook, Director, Department of Supervision, at the above address, or telephone: (202) 682-9640.

SUPPLEMENTARY INFORMATION:

Background

Federal credit unions are authorized to make loans to members at maturities in up to 12 years with certain exceptions. Lines of credit have no statutory or regulatory maturity limitations. First mortgage loans secured by a first lien on the principal residence of the member may be granted with maturities of up to 40 years. Section 701.21(f) of the NCUA Rules and Regulations currently implements an FCU's authority to make certain mobile home, second mortgage and home improvement loans with maturities of up to 15 years.

Section 702 of the Competitive Equality Banking Act of 1987 (CEBA)

amended section 107(5)(A)(ii) of the Federal Credit Union Act (12 U.S.C. 1757(5)(A)(ii)) to give the NCUA Board (Board) authority to set maturity limits for second mortgage loans, mobile home loans and home improvement loans at "up to 15 years or any longer term which the Board may allow." Until the CEBA, such loans were limited to 15 years. In October 1988, the Board requested public comment on whether it should exercise its regulatory authority to allow maturities in excess of 15 years. (See 53 FR 42953, October 25, 1988.) Based on public comments received, the Board, in May 1989 proposed to amend § 701.21(f) by extending the maturity to 20 years. (See FR 21967, May 22, 1989.)

Comments

A total of 18 comments were received in response to the proposed regulatory change. The comments came from 11 credit unions, 2 national credit union trade organizations, 2 credit union league associations, 2 national banking trade organizations and 1 credit union insurer. Of these comments, 16 supported extending the maturity limit for second mortgage loans, 15 supported extending the maturity limit for mobile home loans and 12 supported extending the maturity limit for home improvement loans. Only two commenters recommended that the limit be retained at 15 years for all three categories. Several commenters who support extending the maturity limit emphasized the need for credit unions to recognize the increased risk in making longer term loans and the corresponding need to develop appropriate underwriting standards addressing this risk.

Analysis

The Board has determined that extending to 20 years the maximum maturity for loans made under the provisions of § 701.21(f) is warranted. Extending the maximum maturity to 20 years should provide credit unions with the option and flexibility necessary to make a wide variety of competitive loan services available to their members. In granting this provision, the Board recognizes that increased maturity limits expose lenders to some additional liquidity and interest rate risk. Such risk can be addressed through adjustment of lending policies, underwriting standards and, in some cases, participation in the secondary market for such loans. Extending the maturity on loans imposes an additional burden on credit union officials to insure that the credit union is not exposed to undue risk as result of the extended terms. Lending policies and underwriting standards should be reviewed carefully and adjusted to

recognize this exposure. Accordingly, § 701.21(f) is amended, as proposed, by changing the maximum maturity limit from 15 to 20 years.

The effective date of this regulatory change is immediate since the change expands the lending options for Federal credit unions. It imposes no new restrictions, hence a 30-day delayed effective date is not required.

Regulatory Procedures

Regulatory Flexibility Act

The Board has determined and certified that the rule does not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This rule makes no changes to collection requirements, therefore, it need not be sent to the Office of Management and Budget for approval.

Executive Order 12612

This rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to Federal credit unions.

List of Subjects in 12 CFR Part 701

Credit unions, 20-year loans, Second mortgages, Mobile home loans, Home improvement loans.

By the National Credit Union Administration Board on October 17, 1989.
Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787 and 1789.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601-3610.

2. Section 701.21(f) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

(f) *20-year loans.* Notwithstanding the general 12-year maturity limit on loans to members, a Federal credit union may

make loans with maturities of up to 20 years in the case of:

(1) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home.

(2) A second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(3) A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

[FR Doc. 89-25036 Filed 10-24-89; 8:45 am]
BILLING CODE 7535-01-M

12 CFR Part 708

Mergers of Federally-Insured Credit Unions: Voluntary Termination or Conversion of Insured Status

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

ACTION: Final amendment.

SUMMARY: The NCUA Board is amending its regulation relating to mergers of federally-insured credit unions and changes in insured status. This amendment adds "approval" and "disapproval" boxes to the ballots used for membership voting on termination of Federal insurance or conversion from Federal insurance to non-Federal insurance. This amendment will not affect the day-to-day operations of Federal or federally-insured state credit unions.

EFFECTIVE DATE: October 24, 1989.

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

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

The NCUA Board previously adopted regulations that added new provisions regarding the termination or conversion of Federal share insurance and set forth forms to be used in obtaining membership approval of those actions. (See 52 FR 12370, April 16, 1987, effective May 18, 1987.) Three of those provisions, §§ 708.301(a)(2), 708.302(a)(2) and (b)(2), contain the language that is to appear on the ballot used to obtain

membership approval. A fourth provision, § 708.301(b)(2), references the language set forth in § 708.301(a)(2). Although the provisions provide a signature line for a member to use, they do not prescribe the method for indicating whether the member approved or disapproved of the proposed action.

On May 11, 1989, the NCUA Board proposed amendments to the above provisions of part 708 that would add "approval" and "disapproval" boxes to the ballots used for membership voting on termination of Federal share insurance or conversion of Federal share insurance to non-Federal share insurance (share or deposit insurance provided by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law). (See 54 FR 21968, May 22, 1989.) The comment period on the proposed changes ended August 21, 1989.

In the preamble to the proposed rule, the Board stated the following with respect to the issue of share insurance:

It should be kept in mind that share insurance, whether provided by NCUA through the National Credit Union Share Insurance Fund or by a private or cooperative insurance fund or guaranty corporation, is designed to protect the savings of the credit union members, not the institution itself or its management. Therefore, any decision regarding that insurance protection is to be made by the members, and the methods used to obtain their decision must be designed to clearly evidence each individual's position on the issue.

The Board believes that an understanding of this matter is crucial when addressing issues regarding changes of insurance.

In addition, the Board requested comments on two related matters: should there be a requirement that the reasons for termination or conversion be sent to the membership subject to prior review of an NCUA regional director; and should the regulation set forth a specified period of time for completion of a termination or conversion of insurance.

Public Comment

A total of 18 comments were submitted on this proposal from the following: one share insurance corporation trade association; two national credit union trade associations; one national savings and loan trade association; four state credit union leagues; eight Federal credit unions; one state credit union; and one individual. (Five of the Federal credit unions and the one individual submitted responses to a state league questionnaire)

Ballot Box Amendment

Sixteen of the commenters supported the addition of "approval" and "disapproval" boxes on the ballots used for obtaining the membership vote. Generally, where a reason for support was given, it was so that the ballot would clearly indicate the member's choice. One commenter, although favoring the ballot boxes amendment, questioned the membership vote requirement on the basis that the membership " * * * can not make an educated decision."

One of the commenters supporting the change suggested that if a ballot is not clearly and properly marked it should be considered void. The Board agrees but does not believe this needs to be stated in the regulation. Another commenter, a state league, suggested that the proposed boxes be revised to clearly show what the member is voting for or against. The suggested language has been added to the ballot in the final rule.

One of the commenters (a Federal credit union) opposed to the change did so on the basis that the "members do not understand such a vote" but "the directors do." Section 206 of the Federal Credit Union Act, however, requires a membership vote for both termination or conversion of Federal insurance. 12 U.S.C. 1786(a)(1) and (d)(2). The issue of share insurance directly affects the membership and not a credit union's board of directors.

The second commenter opposed to the change was the trade association for share insurance corporations. On behalf of itself and its member insuring corporations it opposes the amendment to the extent it applies to conversions of insurance on the basis that the NCUA Board is exceeding its jurisdiction or authority both under the Federal Credit Union Act and pursuant to the U.S. District Court's decision in *TWA Credit Union v. National Credit Union Administration*, No. 87-0056-CV-W-1, W.D. Mo., 1987. The court there determined that section 205(b)(1) of the Federal Credit Union Act, 12 U.S.C. 1785, does not provide the authority for the Board to approve or review insurance conversions. (On appeal the case was remanded to the district court and subsequently dismissed as moot.)

Notwithstanding the district court's initial decision, the Board retains its position that its approval is required for a credit union to convert from Federal insurance to insurance provided by a private or cooperative insurance fund or guaranty corporation organized under state law. Section 205(b)(1) provides that "[e]xcept with the prior written approval of the Board, no insured credit union

shall— * * * (D) convert into a noninsured credit union * * *." The terms "insured credit union" and "noninsured credit union" are defined in section 101(7) of the Act, 12 U.S.C. 1752. The Board interprets section 101(7) to mean that an "insured credit union" is one that is insured through the National Credit Union Share Insurance Fund, a "noninsured credit union" is one that is not so insured. In the Board's opinion, a reading of sections 101(7) and 205(b)(1) supports its position that it does have authority and jurisdiction over insurance conversions.

Reasons for Termination or Conversion; Prior Review

Seventeen comments were received on these issues. Five commenters supported requirements that reasons for a termination or conversion be given the membership; four of those also supported review by the regional director, one did not comment on the issue of review. Three commenters opposed both requirements.

Nine commenters agreed that the membership should be provided reasons for a termination or conversion. However, they generally felt that this was the responsibility of a credit union's board of directors and should not be a regulatory requirement. These commenters did not support review by the regional director.

The NCUA Board believes that the membership should be provided with the reasons for a termination or conversion of insurance but agrees it is the function of the board of directors to inform the membership. Presently, there is no specific requirement that the reasons for such action must be provided to the membership and the Board is not going to make this a requirement. However, § 708.303 currently provides that modifications or additions to the notices or ballots or additional communications concerning insurance coverage included with the notices or ballots require approval of the regional director and, where appropriate, the state authority. Approval of modifications or additions by the regional director will not be withheld unless it is determined that a credit union has materially misled or misinformed, by inclusion or omission, its membership. Language to this effect has been added to § 708.303(a).

Time for Completion of Termination or Conversion

Thirteen commenters addressed the issue of whether the regulation should establish a time period for completion of a merger or conversion. Five were

opposed; four of those recommending setting a target date or otherwise providing flexibility or a case-by-case approach in determining the time frame. Of the eight who supported such a requirement, one recommended one year with the regional director having authority to extend the time period, one did not suggest a time, and the remaining suggestions ranged from three to six months.

The Board has decided not to set a specified time frame in the regulation. The credit union involved and the regional director will establish a target date for completion of the action taking into consideration the needs of the credit union and its members and the interests of the NCUA.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this amendment will not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). Further, this proposed amendment does not affect the daily operations of credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This amendment does not impose any additional paperwork requirements and, thus, the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this amendment will not have a direct effect 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. While the amendment will affect some federally-insured state chartered credit unions, it will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 708

Credit Unions, Mergers of federally-insured credit unions, Voluntary termination or conversion of insured status.

By the National Credit Union Administration Board on October 17, 1989.
Becky Baker,
Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 708—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

1. The authority citation for part 708 continues to read as follows:

Authority: 12 U.S.C. 1786, 1785, 1786, and 1789.

2. Section 708.301 is amended by revising paragraph (a)(2) to read as follows:

§ 708.301 Termination of Insurance.

(a) * * *

(2) The ballot for obtaining membership approval to terminate Federal insurance shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if termination of Federal insurance is approved, any new deposits or additions to existing accounts made by me will not be insured by the National Credit Union Administration, an agency of the Federal Government. I also understand that my accounts in the Credit Union on the date of termination, up to a maximum of \$100,000, will continue to be insured for one (1) year after the date of termination, but that any withdrawals after the date of termination will reduce the insurance coverage by the amount of the withdrawal.

Approve termination of insurance.

Do not approve termination of insurance.

Signed _____

Member's Name

Date _____

* * * * *

3. Section 708.302 is amended by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 708.302 Conversion of Insurance.

(a) * * *

(2) The ballot to obtain membership approval of the conversion shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that, if the conversion of insurance is approved, the share (deposit) insurance that I now have (up to \$100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the conversion and my shares will be insured up to \$_____ by _____, a corporation chartered by the State of _____.

Approve conversion of insurance.

Do not approve conversion of insurance.

Signed _____

Member's Name

Date _____

* * * * *

(b) * * *

(2) The ballot to obtain membership approval shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if the merger of the (merging) Credit Union into the (continuing) Credit Union is approved, the share (deposit) insurance that I now have (up to \$100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the merger and my shares in the (continuing) Credit Union will be insured up to \$_____ by _____, a corporation chartered by the State of _____.

Approve merger and conversion of insurance.

Do not approve merger and conversion of insurance.

Signed _____

Member's Name

Date _____

* * * * *

4. Section 708.303(a) is amended by adding a sentence at the end of the paragraph as follows:

§ 708.303 Modifications to notice.

(a) * * * Approval of such modifications, additions or additional communications will not be withheld unless it is determined that the credit union, by inclusion or omission of information, would materially mislead or misinform its membership.

* * * * *

[FR Doc. 89-25037 Filed 10-23-89; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 747

Administrative Actions, Adjudicative Hearings and Rules of Practice and Procedure

AGENCY: National Credit Union Administration ("NCUA")

ACTION: Final rule.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") makes substantial changes in and clarifies NCUA's enforcement authority. The NCUA Board has determined that it is necessary to issue a final rule to conform 12 CFR 747 to FIRREA. Public comment is unnecessary because the final rule only adopts changes mandated by FIRREA.

EFFECTIVE DATE: This Final rule is effective October 24, 1989.

ADDRESS: NCUA Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General

Counsel at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

FIRREA makes substantial changes and clarifications in NCUA's enforcement authority, including changes and clarifications to NCUA's cease and desist, removal, suspension, prohibition, and civil money penalty authorities. FIRREA also extends the jurisdictional reach of NCUA's enforcement authority to cover "institution-affiliated parties." Institution-affiliated party is defined by FIRREA as: (1) Any committee member, director, officer, or employee of, or agent for, an insured credit union; (2) any consultant, joint venture partner, and any other person as determined by the Board, by regulation or on a case-by-case basis, who participates in the conduct of the affairs of an insured credit union; and (3) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union.

These changes are mandatory in nature. Part 747 is NCUA's regulation on administrative actions, adjudicative hearings, and rules of practice and procedure. It is therefore necessary to conform the current Part 747 to FIRREA by means of a final rule.

Analysis

Scope

Section 747.01 has been amended to include within the scope of part 747 civil money penalties assessed pursuant to paragraph 202(a)(3) of the Federal Credit Union Act. Paragraph 202(a)(3) is a provision added by FIRREA which authorizes the NCUA to assess civil money penalties against an insured credit union for submitting false, misleading or late reports or information, or for failing to submit reports or information as required.

Subpart A—Rules of Practice and Procedure

Section 747.101 has been amended to include institution-affiliated parties within the scope of the various administrative actions. The section has also been amended to indicate that civil money penalties pursuant to section 911 of FIRREA amending paragraph 202(a)(3) of the Federal Credit Union Act

may now be assessed utilizing the procedures set forth in subpart D.

A new § 747.122 entitled "Availability to Public of Final Orders" has been added in light of FIRREA's requirement that final enforcement orders and modifications or terminations of those orders be made available to the public unless the Board determines that such publication would seriously threaten the safety or soundness of an insured credit union.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

Institution-affiliated party has been substituted for director, officer, committee member, employee, agent, or other person participating in the conduct of the affairs of a credit union throughout this subpart to conform it to FIRREA. Section 747.304 has been amended to include the definition of "affirmative action" contained in FIRREA. Section 747.306, Temporary Cease-and-Desist Order, has been amended because FIRREA lessens the burden which must be met by the NCUA Board in order to issue a temporary cease-and-desist order.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

There are substantial revisions to this subpart to conform it to FIRREA. Institution-affiliated parties are included within its provisions and the grounds necessary for assessment of civil money penalties and amounts which may be assessed contained in § 747.402 have been revised in light of FIRREA's broad grant of civil money penalty authority to the Board.

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

FIRREA substantially rewrites the NCUA's removal, prohibition, and suspension provisions. Subpart E has been revised to note that an institution-affiliated party is subject to a section 206(g) action and to include the altered grounds for which a party may be removed, prohibited, or suspended.

Subpart F—Rules and Procedures Applicable to Suspensions Where Felony Charged

This subpart has been revised to conform to FIRREA's inclusion of institution-affiliated parties within the scope of this suspension action, and to indicate that a final removal or prohibition action may be taken not only

in the event of a conviction but also if the party agrees to enter a pretrial diversion or other similar program.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certified that this rule does not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). It does not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

Certain provisions of part 747 apply to federally-insured, state-chartered credit unions. The changes adopted by this final rule adopt the provisions of FIRREA. The NCUA Board, pursuant to Executive Order 12612, has determined that this rule will not have a substantial direct effect 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. The rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 747

Administrative actions, Adjudicative hearings, and Rules of practice and procedure.

By the National Credit Union Administration Board on October 17, 1989.

Becky Baker,
Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 747—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1787, 12 U.S.C. 1789, 12 U.S.C. 1995c.

2. The Table of Contents of part 747 is revised to read as follows:

747.01 Scope.

Subpart A—Rules of Practice and Procedure

747.101 Scope.

747.102 Appearance and practice before the Administration.

745.103 Notice of hearing.

747.104 Answer

747.105 Failure to appear.

- 747.106 Conduct of hearing.
- 747.107 Subpoenas.
- 747.108 Rules of evidence.
- 747.109 Motions.
- 747.110 Proposed findings and conclusions and recommended decision.
- 747.111 Exceptions.
- 747.112 Briefs.
- 747.113 Oral argument before the Board.
- 747.114 Notice of submission to the Board.
- 747.115 Decision of the Board.
- 747.116 Filing papers.
- 747.117 Service.
- 747.118 Copies.
- 747.119 Computing time.
- 747.120 Documents in proceedings confidential.
- 747.121 Formal requirements as to papers filed.
- 747.122 Availability to public of final orders.

Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

- 747.201 Scope.
- 747.202 Grounds for termination of insurance.
- 747.203 Notice of charges.
- 747.204 Notice of intention to terminate insured status.
- 747.205 Order terminating insured status.
- 747.206 Consent to termination of insured status.
- 747.207 Notice of termination of insured status.
- 747.208 Duties after termination.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

- 747.301 Scope.
- 747.302 Grounds for cease-and-desist orders.
- 747.303 Notice of charges and hearing.
- 747.304 Issuance of order.
- 747.305 Effective date.
- 747.306 Temporary cease-and-desist orders.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

- 747.401 Scope.
- 747.402 Grounds for assessment of civil money penalties.
- 747.403 Relevant considerations.
- 747.404 Notice of assessment.
- 747.405 Period within which penalty is payable.
- 747.406 Notice of opportunity for hearing.
- 747.407 Request for hearing.
- 747.408 Hearing and order.
- 747.409 Collection.

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

- 747.501 Scope.
- 747.502 Grounds for removal or prohibition.
- 747.503 Notice of intent to remove or prohibit; notice of hearing.
- 747.504 Issuance of removal order and effective date.
- 747.505 Suspension and immediate prohibition.

- 747.506 Effect of removal, prohibition, or suspension.
- 747.507 Remainder of the board of directors.

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

- 747.601 Scope.
- 747.602 Rules of practice.
- 747.603 Notice of suspension or prohibition.
- 747.604 Removal or permanent prohibition.
- 747.605 Effectiveness of suspension or removal until completion of hearing.
- 747.606 Notice of hearing.
- 747.607 Hearing.
- 747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
- 747.609 Decision of the Board.
- 747.610 Reconsideration by the Board.
- 747.611 Relevant considerations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

- 747.701 Scope.
- 747.702 Grounds for suspension or revocation of charter and for involuntary liquidation.
- 747.703 Notice of intent to suspend or revoke charter; notice of suspension.
- 747.704 Notice of hearing.
- 747.705 Issuance of order.
- 747.706 Cancellation of charter.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart I—Rules and Procedures Applicable to Recovery of Attorneys' Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications

- 747.901 Purpose and scope.
- 747.902 Eligibility of applicants.
- 747.903 Prevailing party.
- 747.904 Standards for awards.
- 747.905 Allowable fees and expenses.
- 747.906 Contents of application.
- 747.907 Statements of net worth.
- 747.908 Documentation of fees and expenses.
- 747.909 Filing and service of applications.
- 747.910 Answer to application.
- 747.911 Comments by other parties.
- 747.912 Settlement.
- 747.913 Further proceedings.
- 747.914 Recommended decision.
- 747.915 Decision of the Board.
- 747.916 Payment of award.

3. Section 747.01 is revised to read as follows:

§ 747.01 Scope.

(a) This part describes the various administrative adjudicative actions available to the National Credit Union Administration Board, the grounds for those actions and the procedures used in hearings related to each available action. The administrative actions described herein, as well as the grounds

and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3), 206, and 304(c)(3) of the Federal Credit Union Act. Should any provision of this Part be inconsistent with these, or any other provisions of said Act, as amended, the Act shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the Federal Credit Union Act (12 U.S.C. 1751 *et. seq.*) (hereinafter Act) and the Administrative Procedure Act (5 U.S.C. 500 *et. seq.*).

(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the Act unless the context indicates otherwise.

4. Section 747.101 is revised to read as follows:

§ 747.101 Scope.

(a) This subpart prescribes the rules of practice and procedures applicable to the following hearings:

(1) Those held pursuant to section 206(b) of the Act, pertaining to the involuntary termination of the insured status of an insured credit union (subpart B);

(2) Those held pursuant to sections 206 (e) and (f) of the Act, pertaining to the issuance of cease and desist orders against any insured credit union, or any institution-affiliated party (subpart C);

(3) Those held pursuant to section 206(k)(2) of the Act, pertaining to the assessment of civil penalties against any insured credit union, or any institution-affiliated party (subpart D);

(4) Those held pursuant to section 206(g) of the Act, pertaining to the issuance of orders removing or suspending from office and/or prohibiting from further participation in the credit union's affairs, any institution-affiliated party of an insured credit union (subpart E);

(5) Those held pursuant to section 120(b) of the Act, pertaining to the suspension or revocation of the charter of any solvent Federal credit union, and the placing of such a credit union into involuntary liquidation (subpart G);

(6) Those held pursuant to section 202(a)(3) pertaining to the assessment of civil money penalties against an insured credit union for submitting false, misleading or late reports or information, or failing to submit such reports or information as required. (subpart D); and

(7) Those held pursuant to section 304(e)(3) of the Act, pertaining to the termination of membership in the

Central Liquidity Facility, established under subchapter III of the Act (subchapter H).

(b) Except as provided in § 747.602 of this part, the provisions of this subpart do not apply to hearings held pursuant to section 206(i) of the Act, pertaining to suspension, removal or prohibition action against a person charged with the commission of a crime involving dishonesty or breach of trust as more fully described in subpart F.

(c) In connection with any proceeding involving an insured state-chartered credit union, or any institution-affiliated party, the Board will provide the appropriate state supervisory authority with timely notice of its intent to institute the proceeding and the grounds therefor. Unless within such time as the Board deems appropriate in the light of the circumstances of the case (which time will be specified in the notice) satisfactory corrective action is effectuated by action of the state supervisory authority, the Board will proceed as provided herein. No credit union or other party who is the subject of any notice or order issued by the Board under this part shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(d) For purposes of this part, the term "institution-affiliated party" shall have the meaning ascribed to it in section 206(r), 12 U.S.C. 1786(r), of the Federal Credit Union Act.

5. A new Section 747.122 is added to Subpart A to read as follows:

§ 747.122 Availability to public of final orders

(a) The Board will make available to the public all: (1) Final enforcement orders issued pursuant to this part; and (2) modifications to or terminations of such orders.

(b) Notwithstanding the foregoing, the Board may delay publication of an order if it makes a determination in writing that such publication would seriously threaten the safety and soundness of an insured credit union.

(c) All final orders published pursuant to this Part shall be made available in the library of the Office of General Counsel, NCUA, 1776 G Street, NW., Washington, DC 20456.

6. Subpart C of part 747 is revised to read as follows:

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to

proceedings by the Board with a view to ordering an insured credit union, or any institution-affiliated party, to cease and desist from practices and violations described in sections 206 (e) and (f) of the Federal Credit Union Act and enumerated in § 747.302. The procedures for issuing such orders prescribed in section 206 of the Act will be followed and the hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and subpart A of this part.

§ 747.302 Grounds for cease-and-desist orders.

(a) The Board may institute cease-and-desist proceedings against any insured credit union or any institution-affiliated party.

(b) Cease-and-desist action may be taken whenever the Board determines, or has reasonable cause to believe, that one or more of the parties described in 747.302(a) is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the affairs of an insured credit union, or (2) is violating, has violated, or is about to violate any law, rule, regulation, written condition imposed by the Board in response to any application or request of an insured credit union, or any written agreement entered into with the Board.

§ 747.303 Notice of charges and hearing.

Whenever the Board determines to institute cease-and-desist proceedings, it will do so by serving a notice of charges and hearing upon the concerned party. This notice will contain a statement of the facts constituting the alleged unsafe or unsound practices or violation[s] and will fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the credit union, or institution-affiliated party. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the Notice of Charges and Hearing, unless an earlier or later date is set by the Board at the request of any party so served. Unless the party or parties appear at the hearing personally or by a duly authorized representative, they will be deemed to have consented to the issuance of the cease-and-desist order.

§ 747.304 Issuance of order.

(a) In the event of such consent as referred to in § 747.303, or if upon the record made at any hearing referred to in § 747.303, the Board finds that any unsafe or unsound practice or any violation specified in the notice of charges has been established, the Board may issue and serve upon the credit

union or institution-affiliated party an order to cease and desist from any such practice or violation. The order may, by provisions which may be mandatory or otherwise, require the concerned party or parties to cease and desist from the same and, further, to take affirmative action to correct the conditions resulting from any such practice or violation. The order may place limitations upon the activities or functions of an insured credit union or any institution-affiliated party.

(b) The authority to require affirmative action to correct conditions resulting from any violation or practice includes but is not limited to the authority to require an insured credit union or institution-affiliated party to:

(1) Make restitution or provide reimbursement, indemnification, or guarantee against loss if the credit union or institution-affiliated party was unjustly enriched in connection with the violation or practice, or the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the Board;

(2) Restrict the growth of the institution;

(3) Rescind agreements or contracts;

(4) Dispose of any loan or asset involved; and

(5) Employ qualified officers or employees who may be subject to approval of the NCUA Board at the direction of the Board; and

(6) Such other affirmative action as the Board determines is appropriate.

§ 747.305 Effective date.

A cease-and-desist order will become effective at the expiration of 30 days after its service (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and will remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 747.306 Temporary cease-and-desist orders.

(a) *Issuance of order.* Under section 206(f) of the Act, whenever the Board determines that the unsafe or unsound practices or violations or threatened violations specified in the notice of charges referred to in § 747.302, or the continuation thereof are likely to cause insolvency or significant dissipation of assets or earnings of the credit union or are likely to weaken the condition of the credit union or otherwise to prejudice the interests of its insured members prior to the completion of the hearing described in § 747.303, the Board may

issue a temporary order requiring the concerned credit union or institution-affiliated party to cease and desist from any practice or violation. The order may immediately require the affirmative action described in § 747.304(b), or place immediate limitations on the activities or functions of the credit union or institution-affiliated party described in § 747.304(a).

(b) The Board may also issue a temporary cease-and-desist order when it specifies in a Notice of Charges and Hearing issued pursuant to § 747.303 that, on the basis of particular facts and circumstances, an insured credit union's books and records are so incomplete or inaccurate that the Board is unable, through the normal supervisory process, to determine the financial condition of that insured credit union or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the credit union. The temporary order may require the cessation of any activity or activities which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books and records, or it may require such affirmative action as is necessary to restore the books and records to a complete and accurate state, until the completion of the administrative hearing.

(c) *Effective date of temporary order.* A temporary order will become effective upon its service and, unless set aside, limited, or suspended by a court in proceedings authorized under section 206(f)(2) of the Federal Credit Union Act and § 747.306(c) of this part, shall remain effective and enforceable pending the completion of the administrative proceedings held pursuant to the notice of charges and until such time as the Board dismisses the charges specified in the notice, or if a cease-and-desist order is issued, until the effective date of any such order, or in the case of a temporary order based upon incomplete or inaccurate records, at such time as the Board, by examination or otherwise, determines that the credit union's books are accurate and reflect the financial condition of the credit union.

(d) *Injunctive procedure.* (1) Within 10 days after service of a temporary cease-and-desist order, the party or parties so served may apply to the U.S. District Court for the judicial district wherein the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of

the administrative proceedings pursuant to the notice of charges served under § 747.302 and such court shall have jurisdiction to issue such injunction.

(2) In the case of a violation or threatened violation of, or a failure to obey, a temporary cease-and-desist order, the Board may apply to the U.S. District Court, or the U.S. court of any territory, within the jurisdiction of which the principal office of the credit union is located for an injunction to enforce such order, and, as provided in section 206(f)(4) of the Act, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

7. Subpart D of part 747 is revised to read as follows:

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties

§ 747.401 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board which are held: (1) Pursuant to section 206(k)(2) of the Federal Credit Union Act to assess and collect civil money penalties of any insured credit union, or any institution-affiliated party; and (2) pursuant to section 202(a)(3) of the Federal Credit Union Act to collect and assess civil money penalties against an insured credit union.

§ 747.402 Grounds for assessment of civil money penalties.

(a) *First tier.* The Board may assess civil money penalties against any insured credit union, or any institution-affiliated party upon its finding that such party has: (1) Violated any law or regulation; (2) violated the terms of any final or temporary order issued pursuant to the provisions of subsections (e), (f), (i) and (g) of section 206 of the Federal Credit Union Act, 12 U.S.C. 1786; (3) violated any condition imposed in writing by the Board in connection with the grant of any application or other request by the credit union; or (4) violated any written agreement between the credit union and the Board. Civil money penalties for first tier violations may be no more than \$5,000 per day for each day during which such violation continues.

(b) *Second tier.* If the Board finds that an insured credit union or institution-affiliated party commits the violations described above in subsection (a), or recklessly engages in an unsafe or unsound practice in conducting the

affairs of the credit union, or breaches any fiduciary duty, and the Board further finds that the violation, practice, or breach is part of a pattern of misconduct, causes or is likely to cause more than a minimal loss to the credit union, or results in pecuniary gain or other benefit to such party, the Board may assess civil money penalties against such party or credit union of \$25,000 per day for each day during which the violation, practice or breach continues.

(c) *Third tier.* Any credit union or institution affiliated party who: (1) Knowingly commits any of the violations described in subsection (a) above, or engages in any unsafe or unsound practice in conducting the affairs of the credit union, or breaches any fiduciary duty; and (2) knowingly or recklessly causes a substantial loss to the credit union or a substantial pecuniary gain or other benefit to such party by reason of the violation, practice or breach, may be assessed by the Board a civil money penalty of not more than \$1,000,000 per day for each day the violation, practice or breach continues. However, in the case of a credit union, the maximum penalty which may be assessed per day is \$1,000,000 or 1% of assets, whichever is less.

(d) The Board may also assess civil money penalties pursuant to the provisions of section 202(a)(3) of the Federal Credit Union Act against an insured credit union for submitting false, misleading or late reports or information, or failing to submit such reports or information as required.

(e) The Board may, in its discretion, compromise, modify, or remit any civil money penalty that is subject to imposition or has been imposed.

§ 747.403 Relevant considerations.

In determining the appropriate amount of the penalty assessed pursuant to § 747.402, the Board will take into account the size of financial resources and good faith of the insured credit union or the person charged, the gravity of the violation, the history of previous violations, and such other matters as justice may require.

§ 747.404 Notice of assessment.

The Board will assess civil money penalties by written notice served upon the credit union, party or parties assessed. The notice will state the amount of the penalty, and will contain a statement of law and fact upon which the penalty is based.

§ 747.405 Period within which penalty is payable.

The notice of assessment made pursuant to § 747.404 will provide that the civil penalty will become payable, and is to be collected, within 90 days of such notice. If the Board finds that in the specific case the purposes of the penalty will be better served if this period is shortened or eliminated, the Board may shorten the period or make the civil penalty payable immediately upon receipt of notice thereof, as the case may be. In such case, the notice of assessment will indicate when the civil penalty will be payable.

Notwithstanding any other provision of this or any other section of this subpart, if a party has requested a hearing pursuant to § 747.407 in order to challenge a penalty or a finding antecedent to such a penalty, the party will not be required to make actual payment of the penalty until the Board issues a final order following such hearing.

§ 747.406 Notice of opportunity for hearing.

The notice of assessment made pursuant to § 747.404 will be accompanied by a further notice to the party that it will be afforded a hearing if within twenty days after service of the notice of assessment the party requests one in writing. The notice of opportunity for a hearing will be accompanied by a description of the hearing procedure.

§ 747.407 Request for hearing.

A request for a hearing shall be filed in writing with the Chairman, National Credit Union Administration Board, Washington, DC 20456. If a party does not request a hearing in writing within twenty days after service of the notice of assessment, it will be deemed to have waived its claim to a hearing, and the notice of assessment will constitute a final and unappealable order.

§ 747.408 Hearing and order.

After receiving a request for a hearing pursuant to § 747.407, the Board will order a hearing to commence within the next 30 days. The procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and Subpart A will apply to the hearing. If, on the record made at such hearing, the Board finds that the grounds for the civil money penalty have been established, the Board will issue and cause to be served its final order. Such final order will require the penalty to be paid at the time originally specified in the notice of assessment, or at the time of service of such final order upon the party, whichever is later. In issuing its order, the Board may, in its discretion,

reduce the amount specified in the notice.

§ 747.409 Collection

If the insured credit union or institution-affiliated party fails to pay an assessment after it has become final, the Board shall recover the amount in the appropriate United States District Court. In such action the appropriateness and validity of the penalty shall not be subject to review.

8. Subpart E of part 747 is revised to read as follows:

Subpart E—Rules and Procedures Applicable to Proceedings Relating to 206(g) Removal, Prohibition, and Suspension Actions**§ 747.501 Scope.**

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

§ 747.502 Grounds for removal or prohibition.

(a) The Board may remove any institution-affiliated party of an insured credit union upon its findings that such a party (1) has directly or indirectly violated any law, or regulation, or cease-and-desist order which has become final, or any condition imposed in writing by the Board in connection with the grant of any application by the credit union, or any written agreement between the Board and the credit union; or engaged or participated in any unsafe or unsound practice in connection with the credit union or business institution; or breached the party's fiduciary duty toward the institution; and the Board further finds that (2) by reason of the foregoing violation, practice, or breach the credit union or business institution has suffered, or will probably suffer, financial loss or other damage, or that the interests of the credit union's insured members have been or could be prejudiced, or that such party has received financial gain or others benefit by reason of such violation, practice, or breach; and the Board further finds that (3) such violation, practice or breach involves personal dishonesty or demonstrates such party's unfitness to serve as a director, or officer, or

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

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

Whenever the Board determines that grounds for a removal or prohibition action exist, it will serve upon the concerned institution-affiliated party a notice of intent to remove and/or prohibit and a notice of hearing. This notice will contain a statement of the facts constituting the grounds therefor and will fix a time and place at which a hearing will be held thereon. The hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of the notice unless an earlier or a later date is set by the Board at the request of the party concerned, for good cause shown, or at the request of the Attorney General of the United States. Any responding party not appearing at the hearing in person or by a duly authorized representative, shall be deemed to have consented to the issuance of an order of removal and/or prohibition.

§ 747.504 Issuance of removal order and effective date.

(a) In the event of such consent referred to in § 747.503 or if upon the record made at any such hearing the Board shall find that any of the grounds specified in the notice has been established, the Board may issue such orders of removal from office and/or prohibition from participation in the conduct of the affairs of the credit union as it may deem appropriate.

(b) Any such order shall become effective at the expiration of 30 days after service upon the party concerned (except in the case of an order issued upon consent which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 747.505 Suspension and immediate prohibition.

(a) *Grounds for suspension or immediate prohibition; Notice.* In respect to any institution-affiliated party the Board may, if it deems it necessary for the protection of the credit union or the interests of its members, by written

notice to that effect served upon such a party, suspend that person from office and/or prohibit that party from further participation in any manner in the conduct of the affairs of the credit union.

(b) *Effective date of suspension or immediate prohibition.* The suspension and/or prohibition will be effective upon service of the notice thereof and, unless stayed by a court in proceedings authorized by section 206(g)(6) of the Federal Credit Union Act and described in subsection (c) of this Section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under § 747.503 of this subpart and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the institution-affiliated party, until the effective date of any such order. Copies of any such order shall also be served upon the credit union with which the respondent party is affiliated at the time the order is issued.

(c) *Stay of suspension or immediate prohibition.* Within 10 days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured credit union under section 206(g)(3) of the Federal Credit Union Act and as set forth in this subpart, the concerned party may apply to the U.S. District Court for the judicial district in which the principal office of the credit union is located, or the U.S. District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings, and such court shall have jurisdiction to stay such suspension and/or prohibition.

§ 747.506 Effect of removal, prohibition, or suspension.

Any person who, pursuant to sections 206 (g) or (i) of the Federal Credit Union Act, is removed, suspended, or prohibited from participation in the conduct of the affairs of a credit union may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any insured depository institution, any insured credit union, any institution treated as an insured bank under paragraph (3) or (4) of section 8(b) of the Federal Deposit Insurance Act, or as a savings association under section 8(b)(8) of such Act, any institution chartered under the Farm Credit Act of 1971, any Federal depository institution regulatory agency, the Federal Housing Finance Board, any Federal home loan bank, or the

Resolution Trust Corporation, without the consent of the Board or other agency pursuant to section 206(g)(7).

§ 747.507 Remainder of the board of directors.

(a) If at any time, because of the suspension of one or more directors pursuant to this subpart, or pursuant to subpart F, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(b) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, or pursuant to subpart F, the Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(c) Directors appointed temporarily by the Board pursuant to paragraph (b) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30 day period (1) the regular annual meeting is convened, or (2) the suspensions giving rise to the appointment of temporary directors are terminated.

9. Subpart F of part 747 is revised to read as follows:

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.601 Scope.

The rules and procedures set forth in this subpart are applicable to proceedings by the Board pursuant to section 206(i) of the Federal Credit Union Act to suspend, remove, and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union when such a party is charged in, or convicted as a result of, or enters a pretrial diversion or other similar program as a result of, any state, Federal or territorial information or indictment or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law.

§ 747.602 Rules of practice.

Except as otherwise specifically provided in this subpart, the provisions of § 747.102 ("Appearance and Practice Before the Administration"), § 747.103 ("Notice of Hearing"), § 747.119 ("Computing Time") and § 747.120 ("Documents in Proceedings Confidential") of subpart A shall apply to proceedings conducted under this subpart. In addition, the provisions of § 747.506 ("Remainder of the Board of Directors") shall apply to this subpart as noted therein.

§ 747.603 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him from office, or prohibit him from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the Board.

§ 747.604 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge

will not preclude the Board from thereafter instituting proceedings to remove such director, committee member, officer, or other person from office or to prohibit further participation in affairs, pursuant to the provisions of section 206(g) of the Federal Credit Union Act and subpart E.

§ 747.605 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.603 and any order of removal or prohibition issued under § 747.604 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the Federal Credit Union Act and this subpart, unless such notice of suspension or order of removal is terminated by the Board.

§ 747.606 Notice of hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.603, and any order of removal or prohibition issued pursuant to § 747.604, shall be accompanied by a further notice to the concerned individual that he may within 30 days of service of such notice, request in writing a hearing at which he may present evidence and argument that his continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularity the relief desired, the grounds therefor, and shall include, when available, supporting evidence. Such petition and supporting evidence shall be filed in writing with the National Credit Union Administration Board, Washington, DC 20456.

§ 747.607 Hearing.

(a) After the receipt of a request for a hearing complying with § 747.606, the Board will order a hearing to commence within the next succeeding 30 days in Washington, DC, or at such other place as is designated by the Board, before a person designated by the Board to conduct such hearings. At the request of the concerned party, the Board may order the hearing to commence at a time more than thirty days after the receipt of the request for such hearing.

(b) The notice of the hearing shall be served by the Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the presiding officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the Board, oral testimony), and to present an oral argument before the presiding officer. A member of the staff of the Office of the General Counsel of the National Credit Union Administration may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) shall apply to the hearing. The proceedings shall be recorded and a transcript will be furnished to the individual upon request and after the payment of the cost thereof. The Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the presiding officer ten (10) days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or the presiding officer. The presiding officer may ask questions of any witness and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of the General Counsel, the record shall remain open for a period of five (5) business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the Board or the presiding officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the Board permits the presentation of witnesses, the Board or the presiding officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The Board or the presiding officer may

require the production of documents from any place in any such state, territory, or other place.

(e) The presiding officer will make his recommendations to the Board, where possible, within ten (10) business days following the close of the record.

§ 747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within thirty (30) days of service of the notice described in § 747.606 of this subpart, he will be deemed to have consented to the Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he will be deemed to have consented to the Board's action.

§ 747.609 Decision of the Board.

(a) Within sixty (60) days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.608, the Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.610 Reconsideration by the Board.

(a) The subject individual shall have ten (10) business days following receipt of the decision of the Board in which to petition the Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and

any exceptions the individual has to the Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.611 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bonding company is likely to revoke the bond, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he has been charged.

[FR Doc. 89-25034 Filed 10-23-89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 453

[Docket No. 89N-0389]

Antibiotic Drugs; Clindamycin Phosphate Injection

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a revised formulation of an antibiotic dosage form, clindamycin phosphate injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective November 24, 1989 comments, notice of participation, and request for hearing by November 24, 1989 data, information, and analyses to justify a hearing by December 26, 1989.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a revised formulation of an antibiotic dosage form, clindamycin phosphate injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR 453.222 by revising paragraphs (a)(1) and (b)(1) to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective November 24, 1989. However, interested persons may, on or before November 24, 1989, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 24, 1989, a written notice of participation and request for hearing, and (2) on or before December 26, 1989, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other

comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 453

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 453 is amended as follows:

PART 453—LINCOMYCIN ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 453 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 453.222 is amended by revising paragraph (a)(1) and (b)(1) to read as follows:

§ 453.222 Clindamycin phosphate injection.

(a) * * * (1) *Standards of identity, strength, quality, and purity.* Clindamycin phosphate injection is an aqueous solution of clindamycin phosphate with one or more suitable and harmless preservatives, sequestering agents, or tonicity agents. Its clindamycin phosphate content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of clindamycin that it is represented to contain. It is sterile. It is nonpyrogenic. It contains no depressor substances. Its pH is not less than 5.5 and not more than 7. The clindamycin phosphate used conforms to the standards prescribed by § 453.22a(a)(1).

(b) * * * (1) *Clindamycin content.*

Use any of the following methods. However, the results obtained from the high performance liquid chromatographic assay shall be conclusive.

(i) *Vapor phase chromatography.* Proceed as directed in § 436.304 of this chapter, except prepare the sample for assay as follows: Shake the sample and dilute a portion with pH 9.0 borate buffer to obtain a solution containing the equivalent of approximately 0.4 milligrams of clindamycin per milliliter. Place 25 milliliters of this solution into a 50-milliliter stoppered centrifuge tube. Add 10 milliliters of chloroform. Shake vigorously for 15 minutes and centrifuge. There should be no emulsion present

after centrifugation. Transfer 20 milliliters of the aqueous phase from the tube into a 35-milliliter stoppered centrifuge tube. Add to the tube a weighed amount of intestinal alkaline phosphatase equivalent to 50 units of activity¹ and allow to stand until the phosphatase has dissolved completely. Place the centrifuge tube into a water bath at 37 °C ± 2 °C for 2.5 hours. After the 2.5-hours hydrolysis, allow the solution to cool.

(ii) *High performance liquid chromatographic assay.* Proceed as directed in § 436.216 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 210 nanometers, a 25-centimeter long × 4.6 millimeter ID column packed with microparticulate (5 to 10 micrometers in diameter) reversed phase octylsilane hydrocarbon bonded silica packing material, a flow rate of about 1.0 milliliter per minute, and a known injection volume of between 10 and 20 microliters. The retention time of clindamycin phosphate, and clindamycin are approximately 6 and 9 minutes, respectively. Reagents, working standard and sample solutions, resolution test solution, system suitability requirements, and calculations are as follows:

(a) *Reagents—(1) 0.1M Potassium phosphate monobasic buffer.* Dissolve 13.61 grams of potassium phosphate monobasic in 775 milliliters of water. Adjust the pH to 2.5 with phosphoric acid. Further dilute with water to a volume of 1,000 milliliters.

(2) *Mobile phase.* Mix 225 milliliters of acetonitrile and 775 milliliters of 0.1M potassium phosphate, pH 2.5 buffer (225:775). Filter through a suitable filter capable of removing particulate matter greater than 0.5 micron in diameter. Degas the mobile phase just prior to its introduction into the chromatograph.

(b) *Preparation of working standard, sample, and resolution test solutions—(1) Working standard solution.* Dissolve an accurately weighed portion of the clindamycin phosphate working standard with sufficient mobile phase (prepared as directed in paragraph (b)(1)(ii)(a)(2) of this section) to obtain a solution containing 200 micrograms of clindamycin activity per milliliter.

(2) *Sample solution.* Using a suitable hypodermic needle and syringe, remove an accurately measured representative portion from each container and dilute with sufficient mobile phase (prepared as directed in paragraph (b)(1)(ii)(a)(2)

¹ Defined such that 50 units hydrolyzes at least 20 micromoles of a clindamycin phosphate authentic sample under the assay conditions described in § 436.304 of this chapter.

of this section) to obtain a solution containing 200 micrograms of clindamycin per milliliter (estimated).

(3) *Resolution test solution.* Place 15 milligrams each of clindamycin phosphate, and clindamycin hydrochloride in a 25-milliliter volumetric flask and dissolve and dilute with mobile phase and mix well. Use this solution to determine the resolution factor.

(c) *System suitability requirements—(1) Asymmetry factor.* Calculate the asymmetry factor (A_s), measured at a point 5 percent of the peak height from the baseline as follows:

$$A_s = \frac{a+b}{2a}$$

where:

a = Horizontal distance from point of ascent to point of maximum peak height; and

b = Horizontal distance from the point of maximum peak height to point of descent.

The asymmetry factor (A_s) is satisfactory if it is not more than 1.3.

(2) *Efficiency of the column.* From the number of theoretical plates (n) calculated as described in § 436.216(c)(2) of this chapter calculate the reduced plate height (h_r) as follows:

$$h_r = \frac{(L)(10,000)}{(n)(d_p)}$$

where:

L = Length of the column in centimeters;

n = Number of theoretical plates; and

d_p = Average diameter of the particles in the analytical column packing in micrometers.

The absolute efficiency (h_r) is satisfactory if it is not more than 15.

(3) *Resolution factor.* The resolution factor (R) between the peak for clindamycin phosphate and the peak for clindamycin hydrochloride in the chromatogram of the resolution test solution is satisfactory if it is not less than 6.0.

(4) *Coefficient of variation (relative standard deviation).* The coefficient of variation (S_R in percent) of 5 replicate injections of the working standard solution (prepared as directed in paragraph (b)(1)(ii)(b)(1) of this section) is satisfactory if it is not more than 2.5 percent.

If the system suitability parameters have been met, then proceed as described in § 436.216(b) of this chapter.

(d) *Calculations.* Calculate the clindamycin content as follows:

$$\text{Milligrams of clindamycin per milliliter} = \frac{A_s \times P_s \times d}{A_u \times 1,000}$$

where:

A_u = Area of the clindamycin phosphate peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);
 A_s = Area of the clindamycin phosphate peak in the chromatogram of the clindamycin phosphate working standard;
 P_s = Clindamycin activity in the clindamycin phosphate working standard solution in micrograms per milliliter; and
 d = Dilution factor of the sample.

Dated: October 13, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-24992 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Bioproducts, Inc. The sponsor informed FDA of the address change.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 29, 1989 (54 FR 27328), the agency published an amendment to 21 CFR 510.600(c) (1) and (2) to reflect a change of sponsor name from Nutrius, Inc., to Bioproducts, Inc. Subsequently, Bioproducts, Inc., requested that the agency revise the firm's address to 8221 Brecksville Rd., Cleveland OH 44141. Accordingly, the agency is amending 21 CFR 510.600(c) (1) and (2) to reflect the revised address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

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, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Bioproducts, Inc.," and in paragraph (c)(2) in the entry for "051359" by removing the sponsor address and inserting in its place "8221 Brecksville Rd., Cleveland, OH 44141".

Dated: October 17, 1989.

Robert C. Livingston,

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

[FR Doc. 89-24944 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

RIN 2125-AC45

Truck Size and Weight; National Network—Massachusetts

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule technically amends appendix A to 23 CFR part 658 which identifies Interstate and other Federal-aid primary routes designated as part of the National Network for trucks available to vehicles described in the Surface Transportation Assistance Act of 1982 (STAA). Specifically, this rule removes the footnotes related to time of day and other restrictions on Interstate highway segments in Massachusetts which are no longer valid. This amendment is in response to revisions to 23 CFR part 658 which established specific approval requirements for use restrictions on Interstate highways.

EFFECTIVE DATE: October 24, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin E. Heanue, Office of Planning, (202) 366-2951, Mr. John F. Grimm, Office of Motor Carrier Information

Management and Analysis, (202) 366-4039, 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: The Tandem Truck Safety Act of 1984 (TTSA) (Pub. L. 98-554, 98 Stat. 2829) amended the STAA (Pub. L. 97-424, 96 Stat. 2097) and defined the conditions under which exemptions from the basic requirement that Interstate highways must be available to vehicles described in the STAA could be granted. The FHWA issued a final rule (53 FR 12145) amending 23 CFR 658 on April 13, 1988, to implement the TTSA amendments.

Interstate Use Restrictions

The April 13, 1988, revisions require FHWA approval of use restrictions on Interstate segments, other than the routine types listed in 23 CFR 658.11(d)(4). The conditions and procedures for FHWA approval are outlined in 23 CFR 658.11(d).

The FHWA notified the State of Massachusetts on May 26, 1988, that the restrictions on portions of I-93 and I-95 in the Boston area and on I-391 in the Holyoke area are in violation of current law and provided the State the opportunity to apply for exemption under the aforementioned procedures. After careful consideration of the State's application and other available information, the FHWA determined that all the restricted Interstates can safely accommodate STAA vehicles and denied continuation of the restrictions in a May 17, 1989, letter to the State. This action to remove the footnotes from Appendix A of 23 CFR 658 provides clarification that there is no present Federal approval of the operating restrictions on a permanent basis. Another footnote noting the 1983 addition of I-395 to the Interstate System is also being deleted as no longer necessary.

Because of a 10-year major program to widen and depress the Central Artery portion of I-93 in Boston, it is anticipated that there will be temporary restrictions applied by the State to the affected portion of I-93 during actual construction in accordance with the provisions of 23 CFR 658.11(d)(4).

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of

the Department of Transportation. The technical amendment being issued merely conforms the Appendix appearing in the Code of Federal Regulations to the law and regulations as they presently exist. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information in view of the technical nature of this rulemaking.

A regulatory impact analysis was prepared for the June 5, 1984, rulemaking which initially designated the National Network and is available for inspection in the Headquarters Office of the FHWA, 400 7th Street, SW., Washington, DC 20590. Copies may be obtained by contacting Mr. Kevin E. Heanue or Mr. David C. Oliver at the address provided under the heading "FOR FURTHER INFORMATION CONTACT." Based on this analysis and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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.

In consideration of the foregoing, the FHWA is amending chapter 1 of title 23, Code of Federal Regulations, by amending part 658, appendix A, as set forth below.

(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 Part 658

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

Issued on: October 18, 1989.

T.D. Larson,
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 Massachusetts 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—[Amended]

2. Appendix A to part 658 is amended for the State of Massachusetts by removing all footnotes.

[FR Doc. 89-24966 Filed 10-23-89; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N-89-1966; FR-2632-C-03]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program, Final Notice; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice; correction.

SUMMARY: On September 28, 1989 (54 FR 39866), the Department published in the Federal Register, the final FY 1990 Fair Market Rents (FMRs) for the section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the section 8 Existing Housing Certificate Program (part 882, subpart F); the section 8 Moderate Rehabilitation Program (part

882, subparts D and E); section 8 existing housing assisted under part 886, subparts A and C (section 8 loan management and property disposition programs); and the payment standard schedules in the Housing Voucher Program. The purpose of this document is to correct the FMRs for the one-bedroom unit in Putnam County, Indiana.

FOR FURTHER INFORMATION CONTACT: Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 755-5577. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. On September 28, 1989 (54 FR 39866), the Department published the final FY 1990 Fair Market Rents (FMRs) for the section 8 Existing Housing Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the section 8 Existing Housing Certificate Program (part 882, subpart F); the section 8 Moderate Rehabilitation Program (part 882, subparts D and E); the section 8 existing housing assisted under part 886, subparts A and C (section 8 loan management and property disposition programs); and the payment standard schedules in the Housing Voucher Program. The FMRs for the one-bedroom unit for Putnam County, Indiana were incorrect.

Accordingly, the following correction is being made in FR Doc. 89-22890, in the Federal Register issue of Thursday, September 28, 1989 (54 FR 39866), to read as follows:

On page 39881, in Schedule B, in the tenth line down from the top of the page, under the heading "NONMETROPOLITAN COUNTIES" for the State of Indiana, in the County of Putnam, correct the FMRs for a one-bedroom unit from "317" to read "337."

Dated: October 17, 1989.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 89-24955 Filed 10-23-89; 8:45 am]

BILLING CODE 4210-27-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the *Federal Register* for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

State, city/town/county, source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD). Modified
ALABAMA	
Brewton (city), Escambia County (FEMA Docket No. 6962)	
<i>May Branch:</i>	
Just upstream of CSX railroad	*79
Just downstream of Forest Hill Drive Dam	*101
Just upstream of Forest Hill Drive Dam	*109
About 1,200 feet upstream of Forest Hill Drive Dam	*110
<i>Franklin Mill Creek:</i>	
About 100 feet downstream of CSX railroad	*69
About 3,400 feet upstream of Booth Boulevard	*91
<i>King Branch:</i>	
About 2,900 feet downstream of CSX railroad	*93
About 800 feet downstream of CSX railroad	*95
About 300 feet upstream of CSX railroad	*106
Maps available for inspection at the City Hall, Brewton, Alabama.	
ILLINOIS	
Fulton County (unincorporated areas) (FEMA Docket No. 6959)	
<i>Spoon River:</i>	
Just downstream of State Route 116	*538
Just upstream of Second Street	*537
<i>Tributary to Swegle Creek:</i>	
About .48 miles downstream of State Route 116	*536
About .78 miles upstream of State Route 116	*536
Maps available for inspection at the Zoning Office, 700 East Oak Street, Room 302, Canton, Illinois.	
IOWA	
Carroll (city), Carroll County (FEMA Docket No. 6959)	
<i>Middle Raccoon River:</i>	
About 2,550 feet downstream of Grant Road	*1222
About 1,000 feet upstream of Chicago and North Western Railroad	*1243
Maps available for inspection at the City Hall, 112 East 5th Street, Carroll, Iowa.	
KENTUCKY	
Allen City (city), Floyd County (FEMA Docket No. 6959)	
<i>Levisa Fork:</i>	
Just upstream of State Route 23	*651
About 1200 feet upstream of State Route 80	*652
<i>Beaver Creek:</i> Within community	*651
Maps available for inspection at the City Hall, Main Street, Allen City, Kentucky.	

State, city/town/county, source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD). Modified
Floyd (unincorporated areas) (FEMA Docket No. 6962)	
<i>Levisa Fork:</i>	
At downstream county boundary	*623
About 1.2 miles upstream of State Highway 979	*666
<i>Abbott Creek:</i>	
At mouth	*634
Just downstream of Little Abbott Creek Road	*635
<i>Beaver Creek:</i>	
At mouth	*651
About 1.96 miles upstream of mouth	*651
<i>Mud Creek:</i>	
At mouth	*664
About 4.66 miles upstream of mouth	*664
Maps available for inspection at the Courthouse Annex Building, West Minister Street, Suite 109, Prestonsburg, Kentucky.	
Pikeville (city), Pike County (FEMA Docket No. 6968)	
<i>Levisa Fork:</i>	
About 1,500 feet downstream of CSX railroad	*670
About 3,500 feet upstream of confluence of Marlon Branch	*683
<i>Fatlift Creek:</i>	
At mouth	*672
About 1,600 feet upstream of mouth	*672
Maps available for inspection at the City Hall, Building Inspector's Office, Pikeville, Kentucky.	
Prestonsburg (city), Floyd County (FEMA Docket No. 6968)	
<i>Levisa Fork:</i>	
About 0.85 mile downstream of University Drive	*632
About 0.7 mile upstream of abandoned suspension bridge	*645
<i>Middle Creek:</i>	
Within community	*636
Maps available for inspection at the City Hall, 31 North Lake Drive, Prestonsburg, Kentucky, Attention: Larry Adams, Building Inspector.	
MAINE	
Cherryfield (town), Washington County (FEMA Docket No. 6959)	
<i>Narraguagus River:</i>	
Approximately 1.5 miles upstream of confluence of West Branch Narraguagus River	*68
Upstream of corporate limits	*96
<i>West Branch Narraguagus River:</i>	
At confluence with Narraguagus River	*67
Upstream corporate limits	*89
Maps available for inspection at the Town Hall, Cherryfield, Maine.	
MISSOURI	
Manchester (city), St. Louis County (FEMA Docket No. 6959)	
<i>Fishpot Creek:</i>	
About 1,470 feet downstream of Lindy Drive	*525
About 850 feet downstream of Lindy Drive	*530
Just upstream of Lindy Drive	*533
Maps available for inspection at the City Hall, Engineering Department, 14318 Manchester Road, Manchester, Missouri	
TENNESSEE	
Collegedale (city), Hamilton County (FEMA Docket No. 6959)	
<i>Wolftever Creek:</i>	
About 0.6 mile downstream of Ooltewah-Ringgold Road	*760
Just upstream of Tucker Road	*791
About 1.82 miles upstream of Tallant Road	*805
<i>Wilkerson Branch:</i>	
At mouth	*791
Just upstream of College Drive East	*807
About 1,370 feet upstream of College Drive East	*819

State, city/town/county, source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD). Modified
<i>Chesnut Creek:</i>	
At mouth.....	*783
Just upstream of Norfolk Southern Railway.....	*787
Maps available for inspection at the City Hall, Collegedale, Tennessee	
TEXAS	
Bexar County (unincorporated areas), (FEMA Docket No. 6957)	
<i>Tributary A of Culebra Creek:</i>	
Approximately 200 feet downstream of Tazel Road Bridge.....	*838
Approximately 400 feet upstream of Timber Ranch Bridge.....	*846
Maps available for inspection at the Bexar County Public Works Department, County Courthouse, San Antonio, Texas.	
Send comments to The Honorable Tom Vickers, Bexar County Judge, Bexar County Courthouse, Commissioners Court, Suite 101, San Antonio, Texas 78205.	

Grand Prairie (city), Tarrant, Dallas, and Ellis Counties (FEMA Docket No. 6957)	
<i>West Fork of Trinity River:</i>	
Upstream side of Beltline Road.....	*441
Approximately 1,500 feet downstream of N.W. 19th Street.....	*453
<i>Mountain Creek:</i>	
Approximately 300 feet upstream of Singleton Boulevard.....	*427
Downstream side of Mountain Creek Dam.....	*440
<i>Stream 8C5:</i>	
At corporate limits.....	*472
Approximately 650 feet upstream of corporate limits.....	*474
<i>Stream 8C6:</i>	
At Camp Wisdom Road.....	*472
Approximately 250 feet upstream of Camp Wisdom Road.....	*475
Maps available for inspection at the City Hall, 317 W. College, Grand Prairie, Texas.	
VIRGINIA	
Albemarle County (unincorporated areas) (FEMA Docket No. 6955)	
<i>Mink Creek:</i>	
Ponding area behind levee, from corporate limit of Town of Scottsville approximately 500 feet upstream.....	*275
<i>James River:</i>	
At County boundary with Fluvanna County.....	*285
At County boundary with Nelson County, confluence of Rockfish River.....	*322
Maps available for inspection at the Department of Planning and Community Development, 401 McIntire Road, Charlottesville, Virginia.	

Scottsville (town), Albemarle and Fluvanna Counties (FEMA Docket No. 6955)	
<i>Mink Creek:</i>	
At A. Raymon Thacker levee.....	*275
At upstream corporate limits.....	*283
Maps available for inspection at the Municipal Building, Bird and Valley Streets, Scottsville, Virginia.	

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[General Docket 88-566, FCC 89-281]

Amendment of Parts 2 and 90 of the Commission's Rules To Provide for Stolen Vehicle Recovery Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC amends part 2 and part 90, subpart B, of its rules to provide for stolen vehicle recovery systems. Specifically § 2.106, Table of Frequency Allocations, is amended by adding footnote US312 to allocate the frequency 173.075 MHz for non-Government stolen vehicles recovery systems. Section 90.19 is amended to provide the necessary service rules for such systems. The objective of this action is to provide a nationwide allocation and service rules for stolen vehicle recovery systems.

EFFECTIVE DATE: January 10, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fred Thomas, Office of Engineering and Technology, Frequency Allocation Branch, Washington, DC 20554, (202) 653-8112.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Rule in General Docket 88-566, FCC 89-281, Adopted September 29, 1989, and Released October 16, 1989.

The full text of the Commission's proposal is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this final rule may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Public reporting burden for this collection of information (requirement in 47 CFR 90.19(f)(7) for analysis of potential interference) is estimated to average four hours per response, including the time for reviewing instruction, 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

the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Summary of Final Rule

1. By this action the Commission modifies § 2.106 of its rules, the Table of Frequency Allocations, by adding footnote US312. Footnote US312 allocates the frequency 173.075 MHz for stolen vehicle recovery systems. Further, the Commission is modifying § 90.19 of its rules to provide service rules for these systems.

2. The Commission believes the development of stolen vehicle recovery systems will be of great benefit to law enforcement agencies and to the public. Therefore, we believe that it is in the public interest to provide an allocation and appropriate service rules to accommodate such operations. We wish to make it clear however, that we are to allocating spectrum for a specific type of service and not for a particular manufacturer's system or technology.

Ordering Clauses

3. Accordingly, *it is ordered that*, pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. SS 4(i), 301, and 303(r), parts 2 and 90 of the Commission's Rules, 47 CFR parts 2 and 90, Are Amended as set forth below. *It is further ordered* that this Order will become effective January 10, 1990. It is further ordered that this proceeding is terminated.

List of Subjects

47 CFR Part 2

Table of frequency allocations.

47 CFR Part 90

Police radio service.

Rule Changes

Parts 2 and 90 of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read:

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

2. Section 2.106 is amended by adding

Issued: October 11, 1989.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

[FR Doc. 89-24949 Filed 10-23-89; 8:45 am]

BILLING CODE 6718-03-M

footnote designator US312 to columns 4 and 5 in the 162.0125-173.2 MHz band and by adding the following footnote to the list of footnotes following the Table to read as follows:

* * * * *

US312 The frequency 173.075 MHz may also be authorized on a primary basis to non-Government stations in the Police Radio Service (with a maximum authorized bandwidth of 20 kHz) for stolen vehicle recovery systems.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read:

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

4. Section 90.19 is amended by adding the frequency 173.075 MHz to the Table of Frequencies in paragraph (d) in its appropriate location, adding paragraph (e)(31) and paragraph (f)(7) to read as follows:

§ 90.19 Police radio service.

* * * * *

(d) *Frequencies available.* * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station (s)	Limitations
173.075	Base or mobile.....	31

(e) * * *
 (31) This frequency is subject to the provisions of § 90.19(f)(5)(7).

(f) * * *
 * * * * *

(7) The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with the Federal Government. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Mobile transmitters operating on this frequency are limited to 2.5 watts power output and base transmitters are limited to 300 watts ERP. F1D and F2D emissions may be used within a maximum authorized 20 kHz bandwidth. Transmissions from mobiles shall be limited to 200 milliseconds every 10 seconds, except that when a vehicle is being tracked actively, transmissions may be increased to 200 milliseconds every second. Transmissions from base

stations will be limited to a total time of 1 second every minute. Applications for base stations operating on this frequency shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 105 miles of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Such stations will be authorized if the applicant has limited the interference contour to fewer than 100 residences or if the applicant: (i) Shows that the proposed site is the only suitable location; (ii) develops a plan to control any interference caused to TV reception from the operations; and (iii) agrees to make such adjustments in the TV receivers affected as may be necessary to eliminate interference caused by its operations. The licensee must eliminate any interference caused by its operation to TV channel 7 reception within 30 days of the time it is notified in writing by the commission. If this interference is not removed within the 30 day period, operation of the base station must be discontinued. The licensee is expected to help resolve all complaints of interference.

* * * * *
 Federal Communications Commission.
 Donna R. Searcy,
 Secretary.
 [FR Doc. 89-24805 Filed 10-23-89; 8:45 am]
 BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 54, No. 204

Tuesday, October 24, 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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 25; Doc. No. 6962S]

General Crop Insurance Regulations; Sugarcane Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR part 401), effective for the 1991 and succeeding crop years, by adding a new section, 7 CFR 401.133, the Sugarcane Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on sugarcane in an endorsement to the general crop insurance policy.

COMMENT DATE: Written comments, data, and opinions on this proposed rule should be received not later than November 24, 1989, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a

major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to add to the General Crop Insurance Regulations (7 CFR part 401), a new section to be known as 7 CFR 401.133, the Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to provide the provisions for insuring sugarcane.

Upon publication of 7 CFR 401.133 as a final rule, the provisions for insuring sugarcane contained therein will supersede those provisions contained in 7 CFR part 417, the Sugarcane Crop Insurance Regulations, effective with the beginning of the 1991 crop year. The present policy contained in 7 CFR part 417 will be terminated at the end of the 1990 crop year and later removed and reserved. FCIC will propose to amend the title of 7 CFR part 417 by separate document so that the provisions therein are effective only through the 1990 crop year.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Sugarcane Endorsement to 7 CFR part 401, FCIC proposes to make other changes in the provisions for insuring sugarcane as follows:

1. Sugarcane that will be cut for seed is now insurable. This change was made to relieve insureds of paying premium on uninsurable acreage since most growers do not know by the acreage reporting date what acreage will be cut for seed cane.

2. Section 4—Change the language to indicate that insurance will attach on stubble cane in Florida and Texas the day following harvest if there is no damage before harvest. This change was made because ratoon cane in these two states is not as susceptible to freeze damage as in other states where this endorsement is offered. Language was also added to clarify that if the stubble cane is damaged before harvest, insurance will not attach for the following crop year until the later of April 15 or 30 days after harvest. This will allow us to conduct a stand reduction appraisal.

3. Section 5—Add language to provide for unit division guidelines under the endorsement.

4. Section 7—Add language to establish that on irrigated acreage, appraised production to be counted will include production lost due to inadequate irrigation. This change was made due to continued problems associated with determination of production to count when there is inadequate irrigation. An appraisal for inadequate stand will no longer be made on all stubble acreage over 3 years old in Florida and Texas. It will continue to be made on any acreage in which insurance does not attach the first day following harvest.

FCIC's Board of Directors recently adopted a change which allows a discount against the premium for insureds who choose not to divide their acreage into optional units. Since this discount is available for sugarcane, appropriate explanatory language has been added to the annual premium and unit division sections of this endorsement.

FCIC is soliciting public comment on this proposed rule for 30 days following

publication in the **Federal Register**. Written comment should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance; Sugarcane.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1991 and succeeding crop years, as follows:

1. The authority citation for 7 CFR part 401 continue to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR part 401 is amended to add a new section to be known as 7 CFR 401.133, Sugarcane Endorsement, effective for the 1991 and succeeding crop years, to read as follows:

§ 401.133 Sugarcane endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Sugarcane Endorsement

Insured Crop and Acreage

- The crop insured will be sugarcane grown for processing for sugar or for seed.
- The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage.

2. Causes of Losses

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- Adverse weather conditions;
- Fire;
- Insects;
- Plant disease;
- Wildlife;
- Earthquake;
- Volcanic eruption; or
- If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because you have not selected optional units.

4. Insurance Period

In addition to the provisions in section 7 of the general crop insurance policy, the following will apply.

- Insurance attaches on:
 - Plant cane at the time of planting unless otherwise provided for in writing by us.
 - Stubble cane in all states on the first day following harvest for stubble cane unless the stubble cane was damaged by conditions occurring before harvest the previous crop year. If the stubble cane damaged before harvest the previous crop year, insurance will attach on the later of April 15 or 30 days following harvest. In Louisiana, insurance will attach on all stubble cane after the second crop year, only on the later of April 15 or 30 days after harvest.

b. The calendar dates for the end of insurance period are:

- Louisiana—January 31;
- All other states—April 30

5. Unit Division

Sugarcane acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee;

b. The acreage planted to insured sugarcane is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers, provided:

- The boundaries of the sections or Farm Serial Numbers are clearly identifiable and the insured acreage can be determined; and
- The sugarcane is planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; and

c. The acreage planted to the insured sugarcane is located in a single section or Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

- Sugarcane planted on irrigated acreage does not continue into nonirrigated acreage in the same rows and/or planting pattern; and
- Planting, fertilizing and harvesting are carried out in accordance with applicable recognized good dry-land and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units

to be combined. If your sugarcane acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

6. Notices

a. You must give us notice at least 15 days before you begin cutting any sugarcane for seed. During this time we may make an appraisal for the sugar potential. If we do not appraise the acreage, the production to count will be the production guarantee for the unit. Your notice must include the unit number and the number of acres you intend to harvest as seed.

b. For the purposes of section 8 of the general crop insurance policy, in case of damage or probable loss and you intend to harvest, the required representative samples of unharvested sugarcane must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

If an indemnity is to be claimed on any unit, you must leave the stalks on unharvested acreage and the stubble on harvested acreage intact until inspected by us.

a. The indemnity will be determined on each unit by:

- Multiplying the insured acreage by the production guarantee;
- Subtracting therefrom the total production of sugar to be counted (see subsection 7.b.);
- Multiplying the remainder by the price election; and
- Multiplying this result by your share.

b. The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period, which cannot be processed for sugar by the boiling house operation, will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar (The applicable price for raw sugar will be the local market price on the earlier of the day the loss is adjusted or the day such sugar is sold);

(2) Appraised production to be counted will include:

- Any appraisal under subsection 7.b.(3) and 7.b.(4);
- Unharvested production on harvested acreage, potential production lost due to uninsured causes, and failure to follow recognized good sugarcane farming practices;
- Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and
- Any unharvested production.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We will make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) An appraisal for inadequate stand will be made at the time of inspection on sugarcane acreage where insurance did not attach the first day following harvest. If the

product of the number of stalks per acre multiplied by 2, multiplied by the factor (percentage of sugar) contained in the actuarial table for that purpose does not equal the per-acre guarantee, the per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is June 30 preceding the cancellation date.

10. Report of Production

There is a one-year lag period for reporting your sugarcane production. You must report production for the previous crop year before the cancellation date for the subsequent crop year.

11. Meaning of Terms

a. *Crop year* means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and is designated by the calendar year in which the sugarcane harvest normally begins in the county.

b. *Harvest* means the cutting and removing of sugarcane from the field.

c. *Plant cane* (see definition of sugarcane).

d. *Stubble cane* (see definition of sugarcane).

e. *Sugarcane* means either:

(1) Plant cane growing from seed planted that crop year; or

(2) Stubble cane growing from the stubble left to produce another crop from previously harvested sugarcane.

Done in Washington, DC, on September 27, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-24987 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-08-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 745

Share Insurance

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

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to amend the existing part 745 of the

NCUA Rules and Regulations by adding a new subpart B entitled Payment of Share Insurance and Appeals. The proposed amendment would set forth detailed procedures for the payment of share insurance, the initial determination with respect to uninsured funds, requests for reconsideration of the initial determination, and appeals to the NCUA Board.

DATE: Comments must be received on or before December 26, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT:

Robert Fenner, General Counsel, or Allan Meltzer, Associate General Counsel, at the above address, or telephone (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

Part 745 of NCUA Rules and Regulations was last revised in 1986. While this Part sets forth detailed rules regarding the determination of the amount of share insurance payable upon a liquidation of a federally-insured credit union, it does not set forth any procedures for the appeal of a determination made by the NCUA pursuant to those provisions. The recently enacted Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA") contemplates such regulations.

The following section-by-section analysis describes the proposed changes to the regulation. In addition to these proposed changes, the Board is proposing to change the title of part 745 to "Share Insurance and Appendix" and to label existing §§ 745.0 through and including 745.13 as "Subpart A—Clarification and Definition of Account Insurance Coverage."

Section-by-Section Analysis

Section 745.200 General

This section states that payment of share insurance may either be made directly to the accountholder or by transferring the share account to another federally-insured institution. The amount to be paid is to be determined in accordance with subpart A.

This section does not address the payment of dividends up to the date of liquidation. Comments are specifically solicited on this issue in light of the fact that dividends may be paid only if earnings are available after providing for reserves and operating expenses.

The section further sets out procedures for the payment of multiple accounts, and refers claimants to part

747 of the Rules and Regulations for the rules on computation of time for claims and appeals.

Section 745.201 Processing of Insurance Claims

This section delegates to the duly appointed agent for the Liquidating Agent the authority to make initial determinations on share insurance. Any accountholder who disagrees with this determination may, within 30 days of the date of the initial determination, request reconsideration of the initial determination from the Agent for the Liquidating Agent. The accountholder also has the option of directly appealing the initial determination of the Director of the Office of Examination and Insurance ("Director"), who is delegated the authority to act on such appeals.

Section 745.202 Appeals

This section sets out the time frames within which appeals to the Director must be filed, and the contents of those appeals. It provides for supplementation of appeals, either at the request of the Director or in the discretion of the accountholder. The section further requires that a decision on the appeal be provided in writing within 180 days of receipt of the appeal by the Director, and that such decision constitutes a final Agency action.

Section 745.203 Judicial Review

Pursuant to the provisions of FIRREA, this section notes that an appellant who disagrees with the Agency's final determination may seek judicial review of that determination within 60 days in the Court of Appeals for the District of Columbia or for the district in which the credit union's place of business is located. The section further notes that a failure to file an appeal, either to the initial determination or a decision on a request for reconsideration, is a failure to exhaust administrative remedies and the determination or decision will be deemed to have been accepted by, and binding upon, the accountholder.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). The proposed rule will not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply. In any event, it is anticipated that this provision will affect less than ten persons per calendar year.

Executive Order 12812

The proposed rule will apply to liquidations of both Federal and federally-insured credit unions. The NCUA Board, pursuant to Executive Order 12812, has determined, however, that the proposed amendment will not have a substantial direct effect 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. Further, the proposed rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 745

Credit unions, Account insurance coverage.

By the National Credit Union Administration Board on October 17, 1989.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations in 12 CFR chapter VII as follows:

The authority citation is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1781, 12 U.S.C. 1787, 12 U.S.C. 1789.

2. The heading of part 745 is revised to read as follows:

PART 745—SHARE INSURANCE AND APPENDIX

3. Sections 745.0 through and including 745.13 are designated as subpart A and the subpart heading is added to read as follows:

Subpart A—Clarification and Definition of Account Insurance Coverage

4. A new subpart B consisting of §§ 745.200 through 745.203 is added to part 745 to read as follows:

Subpart B—Payment of Share Insurance and Appeals

Sec.

- 745.200 General.
745.201 Processing of insurance claims.
745.202 Appeal.
745.203 Judicial review.

Subpart B—Payment of Share Insurance and Appeals**§ 745.200 General.**

(a) *Payment.* In the event of the liquidation of an insured credit union,

the Board will promptly determine the insured accountholders thereof and the amount of the insured account or accounts of each such accountholder. Payment may be in cash, or its equivalent, or may be made by making available to each accountholder a transferred account in a new federally-insured credit union in the same community or in another federally-insured credit union or institution in an amount equal to the accountholder's insured account. Notwithstanding the foregoing, the Board may withhold payment of such portion of the insured account of any member as may be required to provide for payment of any direct or indirect liability to the closed credit union or the liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by the member or any person liable therefore.

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of subpart A of this part and the Federal Credit Union Act.

(c) *Multiple accounts.* In the event an insured member holds more than one insured account in the same capacity, and the aggregate amount of such accounts (including share draft accounts held in such capacity) exceeds the amount of insurance afforded thereon, the insurance coverage will be prorated among the member's interest in all accounts held in the same capacity. In the case of individual accounts, the insurance proceeds shall be paid to the holder of the account, whether or not the holder is the beneficial owner. In the case of accounts which are owned jointly, the insurance proceeds shall be paid to the owners jointly. In the case of trust estates, the insurance proceeds shall be paid to the indicated trustee unless otherwise provided for in the trust instrument or under state law. In the case of corporations, partnerships and unincorporated associations, whether or not engaged in an independent activity, the insurance proceeds shall be paid to the indicated holder of the account. Where insurance payment is in the form of a transferred account to another insured institution, the same rules shall be applied.

(d) *Computing Time.* In computing any period of time prescribed by this subpart, the provisions of part 747.119 shall apply.

§ 745.201 Processing of insurance claims.

(a) *Delegations of authority.* The Agent for the Liquidating Agent ("Liquidating Agent") or his or her designee is authorized to make initial

determinations with respect to insurance claims pursuant to the principles set forth in this part, and to act on requests for reconsideration of the initial determination. The Director of the Office Examination and Insurance or his or her designee ("Director") is authorized to make determinations on appeals of the initial determinations or decisions on requests for reconsideration of the Liquidating Agent.

(b) *Initial determination.* In the event the Liquidating Agent determines that all or a portion of an accountholder's account is uninsured, the Liquidating Agent shall so notify the accountholder in writing, stating the reason(s) for such initial determination, and shall provide the accountholder with a certificate of claim in liquidation in the amount of the uninsured account from the Board in its capacity as Liquidating Agent for the insured credit union to enable the accountholder to share in the proceeds of the liquidation of the credit union, if any, up to the amount of the uninsured account.

(c) *Request for reconsideration.* An accountholder may, at his or her option, request reconsideration from the Liquidating Agent of the initial determination within 30 days of the date of the initial determination, or directly appeal the initial determination to the Director pursuant to § 745.202 of this subpart. The Liquidating Agent shall act on the request for reconsideration within 30 days from its receipt.

§ 745.202 Appeal.

(a) *Time for filing.* Within 60 days after issuance of an initial determination, or of the determination on a request for reconsideration by the liquidating agent, the accountholder may appeal by filing with the Director a written request for appeal.

(b) *Content of request.* Any appeal must include:

- (1) A statement of the facts on which the claim for insurance is based;
- (2) A statement of the basis for the initial determination or determination on the request for reconsideration to which the accountholder objects and the alleged error in such determination, including citations to applicable status and regulations;
- (3) Any other evidence relied upon by the accountholder which was not previously provided to the Liquidating Agent.

(c) *Procedures for review of request.*
(1) Within 60 days of the date of the Director's receipt of an appeal, the Director may request in writing that the accountholder submit additional facts

and records in support of its request. The account holder shall have 45 days from the date of issuance of such written request to provide such additional information. Failure by the account holder to provide additional information may, as determined solely by the Director, result in denial of the account holder's appeal.

(2) Within 60 days from the date of the Director's receipt of an appeal, the account holder may amend or supplement the request in writing. In the event that the account holder does amend or supplement the request, the provisions of paragraph (c)(1) of this section with respect to requests for additional information and responses to such requests shall apply with equal force to any such amendment or supplement to a request.

(d) *Determination on appeal.* (1) Within 180 days from the date of the receipt of an appeal by the Director, the Director shall issue a decision determining the extent of the account holder's insurance pursuant to the rules of this part.

(2) The determination by the Director on appeal shall be provided to the account holder in writing, stating the reason(s) for the determination, and shall constitute a final Agency order regarding the account holder's claim for insurance.

(3) If the Director determines that the account holder is entitled to the amount of insurance claimed or a portion thereof, upon payment of such insurance the account holder shall promptly surrender to the Board the certificate of claim in liquidation provided in connection with the initial determination. In the event that the Director determines that the account holder is only entitled to a portion of the amount of insurance claimed, upon the account holder's surrender of such certificate a new certificate of claim in liquidation will be provided which reflects the revised amount of the uninsured account.

(4) Failure by the Director to issue a determination on appeal of the account holder's claim for insurance within the 180-day period provided for under paragraph (d)(1) of this section shall be deemed to be a denial of such claim for purposes of § 745.203 of this subpart.

§ 745.203 Judicial review.

(a) For purposes of seeking judicial review of actions taken pursuant to this subpart, only a determination on appeal issued by the Director pursuant to § 745.202 of this subpart shall constitute a final determination regarding an account holder's claim for insurance.

(b) Failure to file an appeal with regard to an initial determination, or a decision rendered on a request for reconsideration within the applicable time periods shall constitute a failure by the account holder to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and binding upon, the account holder.

(c) Final determination by the Director is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Such action must be filed not later than 60 days after such final determination is ordered.

[FR Doc. 89-25039 Filed 10-23-89; 8:45 am]

BILLING CODE 7535-01-M

12 CFR Part 747

Administrative Actions, Adjudicative Hearings and Rules of Practice and Procedure

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

ACTION: Proposed rule.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") clarifies NCUA's authority to conduct compliance investigations. The NCUA Board has determined that it is in the public's interest to issue a proposed rule setting forth detailed procedures under which Board investigations will be conducted.

DATE: Comments must be received on or before December 26, 1989.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Richard S. Schulman, Trial Attorney, at the above address or telephone: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Analysis

Subpart J—Rules and Procedures Applicable to Investigations

Part 747, subpart J is a new subpart. It creates an informal and formal investigation process through which the NCUA may determine, through the use of administrative subpoena and other investigative tools, whether any credit union or institution-affiliated party (as

defined under FIRREA and, as necessary, by the NCUA Board) has violated, is violating or is about to violate any provision of the Federal Credit Union Act, the Board's regulations and other statutes or regulations that may bear on any parties fitness to participate in the affairs of a credit union, whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as deemed appropriate. The current statutory language (12 U.S.C. 1784, 1786, 1787) controls such authority in the context of credit union examinations. This rule is necessary because the changes in FIRREA have clarified the scope of NCUA investigatory authority.

Section 747.1002 sets forth rules to protect information obtained pursuant to informal and formal investigations.

Section 747.1003(a) broadly defines the scope of NCUA investigations. This rule also incorporates the broader term "institution-affiliated party" used in Section 901 in FIRREA and includes both persons directly associated with the credit union through employment or officer status and outside parties as defined by the statute and as determined by the Board which "caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured credit union."

The statute gives the Board latitude to define who is "institution-affiliated" prospectively through an encompassing regulation or on a "case-by-case basis." The NCUA Board is specifically soliciting comments to better define the term "institution-affiliated party" for the purpose of drafting and establishing published guidelines. As examples, should parties that conduct regular, ongoing business with a credit union, such as vendors, data processors and broker-dealers be deemed to be an "institution-affiliated party."

Section 747.1003(b) defines a "formal" and "informal" investigation. Formal investigations make use of the NCUA Board's power to subpoena documents and take sworn depositions from witnesses.

Section 747.1003(c) is a delegation of authority by the NCUA Board to the General Counsel, or his designee, to initiate investigations. Under this rule, the General Counsel will issue a written order of the purpose of the investigation and designate specific staff to conduct the investigation. The General Counsel may also narrow or expand the scope of an ongoing investigation when appropriate.

Subpart K—Formal Investigative Proceedings

Subpart K is also new. It sets forth rules for the conduct of a formal investigation and outlines the rights of witnesses before the Administration. Section 747.1101 defines the term, "officer conducting the investigation."

Section 747.1102 states that all formal investigations are non-public matters. Section 747.1103 sets out rules for the issuance, service and enforcement of Administration subpoenas. Section 747.1103(a) states that the officer conducting the investigation may issue subpoenas for both documents and testimony.

Section 747.1103(b)(1) lists four permissible means of serving a subpoena on a natural person. This section also permits substitute service by any method that assures actual notice to the respondent. Section 747.1103(b)(2) outlines service on other than natural persons.

Section 747.1103(c) requires the Administration to pay, upon request, witness fees based on the attendance fee and mileage paid in the district courts of the United States. Section 747.1103(d) gives the General Counsel the discretion to seek subpoena enforcement in the courts of the United States.

Section 747.1104 allows the officer conducting the investigation to direct that witness statements be sworn. The rule incorporates criminal sanctions in title 18 of the United States Code for making false statements.

Section 747.1105 outlines the basis on which a witness before the Administration may refuse to answer questions. Subsection (a) lists the right against self-incrimination as granted by the Fifth Amendment to the Constitution of the United States. Subsection (b)(1) prohibits an officer conducting an investigation from granting or promising criminal immunity. Subsection (b)(2) allows the NCUA Board, with the approval of the Attorney General, to issue an order requiring testimony when previously refused. Subsection (b)(3) states that testimony given under subsection (b)(2) may not be used against the witness in any criminal case except a prosecution for perjury, giving false statement, or failing to comply with the order to testify.

Section 747.1106 requires formal investigative depositions to be recorded by an official reporter or other person designated by the officer conducting the investigation. Witnesses may inspect the official transcript of their testimony. Witnesses giving testimony to the Administration are entitled to copies of

transcripts at their expense unless the Board prohibits release of said transcripts for good cause.

Section 747.1107 outlines the rights of witnesses testifying before the Administration. Subsection (a) allows the witness to inspect a copy of the NCUA Board's investigatory order. Subsection (b) permits representation by counsel and sequestration of witnesses during the testimony of other witnesses. Subsection (c) permits counsel to accompany the witness into the proceeding, to advise the witness throughout the testimony, to ask clarification questions of the witness and to take personal notes of the testimony. It also permits the officer conducting the investigation to bring outside counsel or other technical expert into the proceedings in an advisory capacity. Subsection (d) permits the officer conducting the investigation to report misconduct by a witness or counsel during the proceedings. The NCUA Board has authority to bar such individuals from attending the proceeding or bar the counsel from practicing before the NCUA Board.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that this proposed amendment, if adopted, would not have a significant economic impact on a substantial number of small credit unions (primarily those under \$1 million in assets). It would not impose an additional burden upon credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The Board has determined that the requirements of the Paperwork Reduction Act do not apply.

Executive Order 12612

The NCUA Board, pursuant to Executive Order 12612, has determined that this rule will not have a substantial direct effect 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. Further the new rule will not preempt provisions of state law or regulation.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Claims, Credit unions, Equal access to justice, Lawyers, Penalties.

By the National Credit Union Administration Board on October 17, 1989

Becky Baker.

Secretary of the Board

Accordingly, NCUA proposes to amend its regulations in 12 CFR Chapter VII to read as follows:

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

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1789, 12 U.S.C. 1995c.

2. The Table of Contents of part 747 is revised to read as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, AND RULES OF PRACTICE AND PROCEDURE

Sec.

747.01 Scope.

Subpart A—Rules of Practice and Procedure

747.101 Scope.

747.102 Appearance and practice before the Administration.

747.103 Notice of hearing.

747.104 Answer.

747.105 Failure to appear.

747.106 Conduct of hearings.

747.107 Subpoenas.

747.108 Rules of evidence.

747.109 Motions.

747.110 Proposed findings and conclusions and recommended decision.

747.111 Exceptions.

747.112 Briefs.

747.113 Oral argument before the Board.

747.114 Notice of submission to the Board.

747.115 Decision of the Board.

747.116 Filing papers.

747.117 Service.

747.118 Copies.

747.119 Computing time.

747.120 Documents in proceedings confidential.

747.121 Formal requirements as to papers filed.

747.122 Availability to Public of Final Orders.

Subpart B—Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

747.201 Scope.

747.202 Grounds for termination of insurance.

747.203 Notice of charges.

747.204 Notice of intention to terminate insured status.

747.205 Order terminating insured status.

747.206 Consent to termination of insured status.

747.207 Notice of termination of insured status.

747.208 Duties after termination.

Subpart C—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Actions

- 747.301 Scope.
 747.302 Grounds for cease-and-desist orders.
 747.303 Notice of charges and hearing.
 747.304 Issuance of order.
 747.305 Effective date.
 747.306 Temporary cease-and-desist orders.

Subpart D—Rules and Procedures Applicable To Proceedings Relating to Assessment and Collection of Civil Penalties

- 747.401 Scope.
 747.402 Grounds for assessment of civil money penalties.
 747.403 Relevant considerations.
 747.404 Notice of assessment.
 747.405 Period within which penalty is payable.
 747.406 Notice of opportunity for hearing.
 747.407 Request for hearing.
 747.408 Hearing and order.
 747.409 Collection.

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

- 747.501 Scope.
 747.502 Grounds for removal or prohibition.
 747.503 Notice of intent to remove or prohibit; notice of hearing.
 747.504 Issuance of removal order and effective date.
 747.505 Suspension and immediate prohibition.
 747.506 Effect of removal, prohibition, or suspension.
 747.507 Remainder of the board of directors.

Subpart F—Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

- 747.601 Scope.
 747.602 Rules of practice.
 747.603 Notice of suspension or prohibition.
 747.604 Removal or permanent prohibition.
 747.605 Effectiveness of suspension or removal until completion of hearing.
 747.606 Notice of hearing.
 747.607 Hearing.
 747.608 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
 747.609 Decision of the Board.
 747.610 Reconsideration by the Board.
 747.611 Relevant considerations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

- 747.701 Scope.
 747.702 Grounds for suspension or revocation of charter and for involuntary liquidation.
 747.703 Notice of intent to suspend or revoke charter; notice of suspension.
 747.704 Notice of hearing.
 747.705 Issuance of order.
 747.706 Cancellation of charter.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]**Subpart I—Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in Board Adjudications**

- 747.901 Purpose and scope.
 747.902 Eligibility of applicants.
 747.903 Prevailing party.
 747.904 Standards for awards.
 747.905 Allowable fees and expenses.
 747.906 Contents of application.
 747.907 Statement of net worth.
 747.908 Documentation of fees and expenses.
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 747.910 Answer to application.
 747.911 Comments by other parties.
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 747.913 Further proceedings.
 747.914 Recommended decision.
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 747.916 Payment of award.

Subpart J—Rules and Procedures Applicable to Investigations

- 747.1001 Applicability.
 747.1002 Information obtained in investigations.
 747.1003 Authority to conduct investigations.

Subpart K—Formal Investigative Proceedings

- 747.1101 Applicability.
 747.1102 Non-public formal investigative proceedings.
 747.1103 Subpoenas.
 747.1104 Oath; false statements.
 747.1105 Self-incrimination; immunity.
 747.1106 Transcripts.
 747.1107 Rights of witnesses.

3. A new subpart J consisting §§ 747.1001 through 747.1003 is added to part 747 to read as follows:

Subpart J—Rules and Procedures Applicable to Investigations**§ 747.1001 Applicability.**

The rules in this subpart apply to informal and formal investigations conducted by the Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the Board's staff.

§ 747.1002 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the Board, shall be deemed non-public, but the Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his behalf or at his direction to engage in,

discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the Board or its General Counsel pursuant to delegated authority.

§ 747.1003 Authority to conduct investigations.

(a) The General Counsel and persons acting on his behalf and at his direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the Federal Credit Union Act, the Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union, whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his designee, in his discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he delegates authority to act on his behalf and at his direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his behalf and at his direction. The General Counsel may amend such order as he deems appropriate.

4. A new Subpart K consisting of § 747.1101 through 747.1107 is added to part 747 to read as follows:

Subpart K—Formal Investigative Proceedings

§ 747.1101 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the Board, before one or more of its members, or before any officer designated by the Board or its General Counsel, as described in Subpart J of this part, and with or without the assistance of such other counsel as the Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.1102 Non-public formal investigative proceedings.

Unless otherwise ordered by the Board, all formal investigative proceedings shall be non-public.

§ 747.1103 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) *Service upon a natural party.* Delivery of a copy of a subpoena to a natural person may be effected by

(i) Handing it to the person;

(ii) Leaving it at his office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;

(iii) Leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or

(iv) Mailing it by registered or certified mail to him at his last known address.

In the event that personal service as described in paragraphs (b)(1)(i) through (b)(1)(iv) of this section is impracticable, any other method whereby actual notice is given to the respondent may be employed.

(2) *Service upon other persons.* When the person to be served is not a natural

person, delivery of a copy of the subpoena may be affected by

(i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing it by registered or certified mail to any such representative at his last known address; or

(iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than thirty days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.1104 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.1105 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided below, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution

under the laws of the United States or of any other jurisdiction.

(2) If the Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination, the Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the Board requiring him to testify or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.1106 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the Board may for good cause deny such request or the Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

§ 747.1107 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the Board or by its General Counsel, then any party who is compelled or requested to provide documentary

evidence or testimony as part of such proceeding shall, upon request be shown a copy of the Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right to be accompanied, represented and advised by counsel shall mean the right of a person testifying to have an attorney present with him during any formal investigative proceeding and to have this attorney—

(i) Advise such person before, during and after such testimony,

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given, and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) The Board realizes that, from time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his counsel to attend non-public investigative proceedings. Thus, for example, the officer may deem it appropriate that outside counsel to the Board attend and advise him concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his counsel in order to assist counsel in understanding technical issues. The Board wishes to emphasize that these latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witness, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the Board

any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

[FR Doc. 89-25038 Filed 10-23-89; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 444

[Docket No. 89N-0380]

Neomycin Sulfate-Polymyxin B Sulfate-Hydrocortisone Otic Suspension; pH Standard

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the antibiotic drug regulations for neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension to extend the pH range for the product. This action is being taken at the request of a manufacturer to provide for a product that will be less irritating to pediatric patients.

DATES: Comments by December 26, 1989; requests for an informal conference by November 24, 1989.

ADDRESS: Written comments or requests for an informal conference to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

SUPPLEMENTARY INFORMATION: At the request of a manufacturer, FDA is proposing to amend the antibiotic drug regulations for neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension to extend the acceptable pH range for the product.

The individual monograph (regulation) for this product currently specifies a pH range of not less than 3.0 and not more than 5.5. The manufacturer contends

that the current pH range for this product is inappropriate for pediatric patients because it may be irritating to the ear canal. In order to make the product less irritating for pediatric patients, the manufacturer has submitted a petition requesting that a separate pH range of not less than 4.1 and not more than 7.0 be specified in the monograph for this product if it is intended for pediatric use.

FDA has reviewed the manufacturer's request and has tentatively concluded that although amending the pH standard to permit a higher pH range is acceptable, FDA does not have sufficient information to justify two separate pH standards for adults and children or to conclude that products with a pH between 3.0 and 4.1 should not be considered safe and effective for children. Therefore, FDA is proposing that the monograph for neomycin sulfate-polymyxin B sulfate-hydrocortisone otic suspension be amended in 21 CFR 444.442g(a)(1) to extend the pH standard to not less than 3.0 and not more than 7.0. FDA invites comments, with supporting evidence, on the need for separate pH standards for adult and pediatric use of this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this proposed 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.

Economic Impact

The agency has considered the economic impact of this proposed rule and has determined that it does not require a Regulatory Flexibility Analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). Specifically, the proposal would make a minor amendment to an existing technical requirement without imposing a more stringent requirement. Accordingly, the agency certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Submitting Comments or Requests for Conference

Interested persons may, on or before December 26, 1989, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Two copies of any comments shall be submitted, except

that individuals may submit single copies of comments. The comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Interested persons may also, on or before November 24, 1989, submit to the Dockets Management Branch (address above) a request for an informal conference. The participants in an informal conference, if one is held, will have until December 26, 1989 or 30 days after the day of the conference, whichever is later, to submit their comments.

Lists of Subjects in 21 CFR Part 444

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 444 be amended as follows:

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 444 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 444.442g is amended by revising the sixth sentence in paragraph (a)(1) to read as follows:

§ 444.442g Neomycin sulfate-polymyxin B sulfate-hydrocortisone otc suspension.

(a) * * *

(1) * * * Its pH is not less than 3.0 and not more than 7.0. * * *

Dated: October 17, 1989.

Sammie R. Young,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-24993 Filed 10-23-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Department of the Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This proposed rule revises the Cuban Assets Control Regulations, 31 CFR part 515 (the "Regulations"), by

requiring that all U.S. flights to and from Cuba arrive and depart during general U.S. Customs Service business hours, typically 8:30 a.m. to 5:00 p.m.

DATE: Comments must be received by December 26, 1989.

ADDRESSES: Comments may be mailed to the Unit C-560, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220. Comments received will be available for public inspection in the U.S. Department of the Treasury library, 1500 Pennsylvania Avenue NW., Room 5030, Washington, DC 20220. Members of the public may review comments by calling the library (202/566-2777) for an appointment.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (telephone: 202/376-0408), or Steven I. Pinter, Chief of Licensing (telephone: 202/376-0236), Office of Foreign Assets Control, Department of the Treasury, 1331 G Street NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION: This proposed rule would affect all U.S. common carriers engaged in airline flights between the United States and Cuba, and persons holding travel service provider and carrier service provider licenses or provisional authorization issued pursuant to § 515.560(i) of the Regulations, to arrange transportation between the United States and Cuba. These common carriers and travel service providers would be required to insure that flights arranged by them arrive and depart from the United States during general U.S. Customs Service business hours at Miami International Airport, the only port of entry or exit in the United States for flights from or to Cuba currently authorized under the regulations of the U.S. Customs Service. General business hours are between 8:30 a.m. and 5:00 p.m. unless otherwise posted.

In order to assure proper and effective enforcement of the economic sanctions imposed against Cuba, systematic passenger clearance and baggage inspection on flights going to an coming from Cuba are being instituted. Such procedures are necessary to prevent illegal importations and exportations from occurring, and to insure that excessive amounts of U.S. currency are not taken to Cuba for transactions that are restricted by the Regulations. By requiring all flights to depart and arrive during the regular hours of business for the U.S. Customs Service, sufficient resources will be available to conduct regular inspections of these flights.

In the event of an emergency

determined to require arrival or departure at a time outside general business hours, the Office of Foreign Assets Control will issue an emergency license pursuant to § 515.801 of the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required under the Administrative Procedure Act or any other law, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are also inapplicable. Nonetheless, the Office of Foreign Assets Control is soliciting public comment prior to issuing a final rule.

List of Subjects in 31 CFR Part 515

Cuba, Currency, and Travel.

PART 515—[AMENDED]

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR 1959-1963 Comp. p. 157; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp. p. 1174; E.O. 9989, 13 FR 4891, 3 CFR 1943-1946 Comp. p. 748.

2. § 515.560(l) is added to read as follows:

§ 515.560 Certain transactions incident to travel to and within Cuba

(l) Except as authorized by the Director, Office of Foreign Assets Control, any travel service provider or carrier service provider arranging transportation between Cuba and the United States must insure that arrival and departure at the port of entry or exit in the United States occur during the general business hours of the U.S. Customs Service (as defined in 19 CFR 101.6) at the relevant port and entry or exit.

Dated: September 15, 1989.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.
Approved: October 11, 1989.

John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 89-24989 Filed 10-19-89; 11:17 am]
BILLING CODE 4810-25-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-8970]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency

Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their content.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

2. The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Arkansas.....	North Little Rock, City, Pulaski County.	Arkansas River.....	Approximately 2.65 miles downstream of Missouri-Kansas-Texas Railroad. Most upstream corporate limits.....	*249	*250
		Shilcotts Bayou.....	Confluence with White Oak Bayou.....	*261	*259
			Approximately 140 feet upstream of East 56th Street.	*260	*258
		Shilcotts Bayou Tributary.....	Confluence with Shilcotts Bayou.....	None	*333
			Approximately 190 feet upstream of Rock Street.	*260	*258
				None	*301
Arkansas.....	White Hall, City, Jefferson County.	Gamble Creek.....	At the downstream corporate limits.....	None	*241
			At a point approximately 930 feet downstream of the downstream side of U.S. Route 65.	None	*261
			Approximately 250 feet upstream of State Route 256.	*275	*274
California.....	City of Livermore, Alameda County.	Altamont Creek.....	At confluence with Arroyo Las Positas.....	*499	*497
			Approximately 900 feet upstream of confluence with Arroyo Las Positas.	*500	*498
			Approximately 1,350 feet upstream of confluence with Arroyo Las Positas.	*501	*498
			Approximately 1,450 feet upstream of confluence with Arroyo Las Positas.	*501	*501
			Approximately 2,000 feet upstream of confluence with Arroyo Las Positas.	*502	*502

Maps available for inspection at the City Hall, 3rd & Main, North Little Rock, Arkansas.

Send comments to The Honorable Patrick Henry Hays, Mayor of the City of North Little Rock, Pulaski County, P.O. Box 5757, North Little Rock, Arkansas 72119.

Maps available for inspection at the City Hall, 101 Parkway Drive, White Hall, Arkansas.

Send comments to The Honorable Tom Ashcraft, Mayor of the City of White Hall Jefferson County, 101 Parkway Drive, White Hall, Arkansas 71602.

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,650 feet upstream of confluence with Arroyo Las Positas.	*503	*503
			Approximately 3,500 feet upstream of confluence with Arroyo Las Positas.	*506	*506
			Approximately 4,850 feet upstream of confluence with Arroyo Las Positas.	*509	*509
			Approximately 5,050 feet upstream of confluence with Arroyo Las Positas.	*509	*509
			Approximately 5,100 feet upstream of confluence with Arroyo Las Positas.	*511	*511
			Approximately 5,750 feet upstream of confluence with Arroyo Las Positas.	*512	*511
			Approximately 6,200 feet upstream of confluence with Arroyo Las Positas.	*513	*512
			Approximately 6,550 feet upstream of confluence with Arroyo Las Positas.	*517	*513
			Approximately 6,750 feet upstream of confluence with Arroyo Las Positas.	*519	*517
			Approximately 7,400 feet upstream of confluence with Arroyo Las Positas.	*525	*520
			Approximately 7,550 feet upstream of confluence with Arroyo Las Positas.	*527	*527
			Approximately 9,150 feet upstream of confluence with Arroyo Las Positas.	*535	*535
		Arroyo Las Positas	Approximately 39,850 feet upstream of mouth	*495	*495
			Approximately 40,750 feet upstream of mouth	*497	*496
			Approximately 42,750 feet upstream of mouth	*498	*497
			Approximately 44,750 feet upstream of mouth	*499	*497
			Approximately 45,000 feet upstream of mouth	*499	*497
			At Golf Course Maintenance Bridge	*501	*501
			At Bluebell Drive	*501	*502
			Approximately 1,650 feet upstream of Bluebell Drive.	*506	*507
			Approximately 100 feet downstream of Heather Lane.	*508	*508
			At Heather Lane	*513	*513
			Approximately 950 feet upstream of Heather Lane.	*516	*518
			Approximately 425 feet downstream of Central Avenue.	*520	*520
<p>Maps are available for review at the Planning Department, 1052 South Livermore Avenue, Livermore, California 94550. Send comments to The Honorable Dale Turner, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550</p>					
Colorado	Boulder County Unincorporated Areas.	Boulder Creek	Approximately 1,920 feet upstream of North 75th Street.	*5,120	*5,120
			Approximately 1,940 feet downstream Service Road.	*5,122	*5,123
			Approximately 1,420 feet downstream of Service Road.	*5,124	*5,125
			Approximately 520 feet downstream of Service Road.	*5,128	*5,128
<p>Maps are available for review at the Boulder County Department of Public Works, 1777 Sixth Street, Boulder, Colorado. Send comments to The Honorable Josephine W. Heath, Chair, Boulder County Board of Commissioners, P.O. Box 471, Boulder, Colorado 80306.</p>					
Illinois	Village of Burr Ridge, Du Page and Cook Counties.	63rd Street Ditch	About 340 feet downstream of Tomlin Drive	*642	*640
			Just downstream of Pond Inlet	*647	*646
			Just upstream of Pond Inlet	*653	*654
			About 950 feet upstream of Grant Avenue	*695	*696
<p>Maps are available for inspection at the Town Hall, 7660 South County Line Road, Burr Ridge, Illinois. Send comments to The Honorable Emil Coglianese, President, Village of Burr Ridge, 7660 South County Line Road, Burr Ridge, Illinois 60521.</p>					
Indiana	City of Jeffersonville, Clark County.	Greenbriar Tributary	Just upstream of of mouth	*453	*454
			Just downstream of 10th Street	*457	*457
<p>Maps are available for inspection at the Building Department, City/County Building, 501 East Court Avenue, Room 416, Jeffersonville, Indiana. Send comments to The Honorable Dale Orem, Mayor, City of Jeffersonville, City/County Building, 501 East Court Avenue, Jeffersonville, Indiana 47130.</p>					
Missouri	City of Shrewsbury, St. Louis County.	Deer Creek	Just downstream of Burlington Northern railroad.	*434	*436
			Just upstream of Burlington Northern railroad	*438	*437
			Just downstream of Big Bend Boulevard	*443	*444
		North Tributary to River Des Peres.	Within community	*432	*431

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the City Hall, 4400 Shrewsbury Avenue, Shrewsbury, Missouri. Send comments to The Honorable Daniel Lowery, Mayor, City of Shrewsbury Avenue, Shrewsbury, City Hall, 4400 Shrewsbury, Missouri 63119.					
New Hampshire	Lebanon, City, Grafton County.	Connecticut River	Downstream corporate limits	*343	346
		Mascoma River	Upstream corporate limits	None	388
			Approximately 530 feet upstream of State Route 12A.	*352	351
			Approximately 430 feet upstream of the second most downstream crossing of the Boston and Maine Railroad.	*424	425
Maps available for inspection at the City Hall, 51 North Park Street, Lebanon, New Hampshire. Send comments to The Honorable Steve Smith, Manager of the City of Lebanon, Grafton County, 51 North Park Street, Lebanon, New Hampshire 03766.					
New York	Niagara Falls (city), Niagara County.	Bergholtz Creek	At confluence with Cayuga Creek	*571	*572
			At upstream corporate limits	*573	*575
Maps available for inspection at the City Hall, 745 Main Street, Niagara Falls, New York 14302. Send comments to The Honorable Michael O'Laughlin, Mayor of the City of Niagara Falls, Niagara County, 745 Main Street, Niagara Falls, New York 14302.					
Pennsylvania	Temple (borough), Berks County.	Laurel Run	Approximately 1,250 feet upstream of the corporate limits.	None	*339
			At upstream corporate limits	None	*390
		Laurel Run Alternate Branch	At confluence with Laurel Run	None	*342
			At divergence with Laurel Run	None	*378
Maps available for inspection at the residence of Carl B. Geibel, Secretary/Treasurer, 4835 Kutztown Road, Temple, Pennsylvania.					
Texas	Hood County, Unincorporated Areas.	Lake Granbury	Shoreline at the south/southeastern boundary of the City of Granbury, approximately 1 mile downstream of the confluence of Rough Creek.	None	*697
			Shoreline approximately 300 feet south of U.S. Route 377.	None	*698
			Shoreline approximately 800 feet north of U.S. Route 377.	None	*698
			Shoreline west of intersection of U.S. Route 377 and State Route 426.	None	*698
Maps available for inspection at the Hood County Courthouse, Main Street, Granbury, Texas. Send comments to The Honorable Milton Meyer, Hood County Judge, Hood County Courthouse, Main Street, Granbury, Texas 76048.					
Texas	Weatherford, City, Parker County.	Town Creek	Approximately 1,580 feet downstream of North Bowie Drive.	*1,033	*1,032
			Approximately 170 feet downstream of corporate limits.	*1,042	*1,043
Maps available for inspection at the City Hall, 303 Palo Pinto, Weatherford, Texas. Send comments to The Honorable Sherry Watson, Mayor of the City of Weatherford Parker County, City Hall, P.O. Box 255, Weatherford, Texas 76086.					

Issued: October 11, 1989.

Harold T. Duryee,
 Administrator, Federal Insurance
 Administration.

[FR Doc. 24950 Filed 10-23-89; 8:45 am]

BILLING CODE 6718-03-M

Notices

Federal Register

Vol. 54, No. 204

Tuesday, October 24, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-89-016]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application for a designated tobacco auction market at Fitzgerald, Georgia.

Date: November 2, 1989.

Time: 9:30 a.m. local time.

Place: Ben Hill County Courthouse, East Central Street, Fitzgerald, Georgia.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market at Fitzgerald, Georgia. The application was made by B.B. Rogers and Richard Rogers of Fitzgerald, Georgia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1 through 29.3).

Dated: October 17, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture Marketing and Inspection Services.

[FR Doc. 89-25104 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-02-M

[TB-89-017]

Public Hearing Regarding Establishment of a New Tobacco Auction Market

Notice is hereby given of a public hearing regarding an application for a designated tobacco auction market at Metter, Georgia.

Date: November 3, 1989.

Time: 9:30 a.m. local time.

Place: Candler County Courthouse, Broad Street, Metter, Georgia.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market at Metter, Georgia. The application was made by Barbara Sutton and Robert F. Cartee of Claxton, Georgia.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1-29.3).

Dated: October 18, 1989.

John E. Frydenlund,

Acting Assistant Secretary of Agriculture Marketing and Inspection Services.

[FR Doc. 89-25076 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-02-M

[TB-89-018]

Public Hearing Regarding the Conway and Loris, South Carolina Tobacco Markets

Notice is hereby given of a public hearing regarding the Conway and Loris, South Carolina, tobacco markets.

Date: November 7, 1989.

Time: 9:30 a.m. local time.

Place: Conway Chamber of Commerce, Main Street & Third Avenue, Conway, South Carolina.

Purpose: To hear testimony and to receive evidence regarding an application for tobacco inspection and price support services to a new market, which would be a consolidation of the currently designated markets of Conway and Loris, South Carolina. The application was made by E.P. Roberts, President, Conway, South Carolina Tobacco Board of Trade, and Harvey Graham, Sr., President, Loris, South Carolina Tobacco Board of Trade.

This public hearing will be conducted pursuant to the joint policy statement and regulations governing the extension of tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR 29.1-29.3).

Dated: October 17, 1989.

John E. Frydenlund,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-24998 Filed 10-23-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Bureau of the Census

1990 Census, Cutoff Dates For Recognition of Boundary Charges

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: On July 8, 1986, the Bureau of the Census, U.S. Department of Commerce, published in the Federal Register, 51 FR 24653, cutoff dates for recognition of boundary changes received as a result of the 1990 Boundary Annexation Survey. These dates reflect the timing of the 1990 Census of Population and Housing. In order to increase public awareness of these cutoff dates, the Bureau of the Census wishes to restate, without change, this information. The Bureau of the Census compiles information about the boundaries for American Indian and Alaska Native areas in other programs. It uses the same effective and reporting dates for these boundaries.

FOR FURTHER INFORMATION CONTACT: Robert W. Marx, Chief, Geography Division, Bureau of the Census, (301) 763-5636.

SUPPLEMENTARY INFORMATION: For the tabulation of data from the 1990 Census of Population and Housing, the Bureau of the Census will recognize only those boundaries legally in effect on January 1, 1990 that have been reported officially to the Bureau of the Census no later than March 1, 1990. The Bureau of the Census enumerates respondents on the date of the decennial census as residing within the legal limits of municipalities, county subdivisions, counties, states, and equivalent areas as those limits exist on January 1, 1990.

For the purposes of the Boundary and Annexation Survey, the Bureau of the Census defines "municipalities" and "county subdivisions" to include the areas identified as incorporated places (such as cities and villages) and minor civil divisions (such as townships and

magisterial districts). A more complete description appears on pages A1 and A2 of 1980 Census of Population, Volume 1, Chapter A.

The Bureau of the Census will not recognize changes in boundaries that become effective after January 1, 1990 in taking the 1990 Decennial Census; the Bureau of the Census will enumerate the residents of any area that are transferred to another jurisdiction after that date and report them for the 1990 census as residents of the area in which they resided on January 1, 1990. The Bureau of the Census will not recognize in the data tabulations prepared for the 1990 census changes occurring on or before January 1, 1990, but not submitted officially to the Bureau of the Census until after March 1, 1990 except as necessary to conduct decennial census operations.

(Secs. 70.1, 70.2 and 70.3 of the Cutoff for Recognition of Boundary Changes for the 1990 Census (13 U.S.C. 4; 32 FR 15154)); and Department of Commerce Organizational Order 35-2A (40 FR 42765)

Dated: October 19, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89-25006 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-07-M

Urbanized Areas for the 1990 Census—Proposed Criteria

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice.

SUMMARY: The Bureau of the Census identifies and delineates urbanized areas to provide a better separation of the urban and rural population and housing data in the vicinity of large cities. In order to delineate urbanized areas consistently and equitably nationwide, the Census Bureau established specific criteria when it first created these areas for the 1950 census. The Census Bureau, in consultation with data users, periodically reviews and revises these criteria, including a review before each decennial census. The following criteria will apply to the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico. The Census Bureau may apply these criteria to other areas as well.

Because the Census Bureau identifies and tabulates data for urbanized areas solely for the purpose of statistical presentation and comparison, it does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their

associated data, nor does it attempt to meet the requirements of any such nonstatistical program uses.

Nonetheless, the Census Bureau recognizes that some Federal and state agencies are required by statute to use the Census Bureau-defined urbanized areas for allocating program funds, setting program standards, and implementing other aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urbanized area criteria also may affect the implementation of their programs.

If a Federal or state agency voluntarily uses the urbanized areas or their associated data in a nonstatistical program, it is the agency's responsibility to ensure that the results are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the urbanized area results specifically for purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly avoids confusion with the Census Bureau's official urbanized areas.

The Census Bureau proposes to use the following criteria and the results of the 1990 Census of Population and Housing¹ to determine what territory qualifies for designation as an urbanized area, and what the boundaries, central place(s), and title of each resulting urbanized area will be.

A. Definition

An urbanized area comprises a central place² and the adjacent densely

¹ All references to population counts and densities relate to residential data reported in the 1990 Census of Population and Housing. An urbanized area delineated as a result of a special census conducted by the Census Bureau after the 1990 census (an intercensal urbanized area), at the request and expense of local officials, will be qualified using these criteria and the residential population counts and densities reported in that special census.

² The term "place" in the urbanized area criteria includes both incorporated places, such as cities and villages, and census designated places (CDPs). A CDP is an unincorporated population cluster for which the Census Bureau delineates boundaries in cooperation with state and local agencies to permit tabulation of data in Census Bureau products. In Puerto Rico, the Census Bureau, in cooperation with the Office of the Governor, delineates and recognizes zonas urbanas and comunidades as CDP equivalents for use when defining central places and applying the urbanized area criteria.

settled surrounding territory that together have a minimum population of 50,000 people.³

The densely settled surrounding territory adjacent to the central place consists of the following:

1. Territory made up of one or more contiguous census blocks having a population density of at least 1,000 people per square mile,⁴ provided that it is:

a. Contiguous with and directly connected by road to other qualifying territory, or

b. Noncontiguous with other qualifying territory; and:

(1) Within 1½ road miles of the main body of the urbanized area, and connected to it by one or more nonqualifying census blocks that (a) are adjacent to the connecting road and (b) together with the outlying qualifying territory have a total population density of at least 500 people per square mile,⁵

or

(2) Separated by water or other undevelopable territory⁶ from the main

³ When considering the qualification of a potential urbanized area, the urbanized area criteria exclude the people living in the rural portion(s) of extended cities, as defined by applying the Census Bureau's extended city criteria. If excluding the population of the rural portion of an extended city results in a total potential urbanized area population of less than 50,000, the potential urbanized area does not qualify even though the total population of the entire city equals or exceeds 50,000. In addition, for an urbanized area to qualify, at least 25,000 of the people in the potential urbanized area must reside in an area that is not part of a military installation.

⁴ A census block is an area identified by a unique number on Census Bureau maps used for a decennial or special census. Such areas normally are bounded by physical features shown on those maps, such as streets, streams, and railroads. The boundaries of a census block also may consist of nonvisible feature(s) such as the boundary of an incorporated place, minor civil division, county, or other 1990 census tabulation area boundary. Population density is calculated by dividing the total population of the census block(s) by the land area of that block(s). The Census Bureau's calculation of population density generally excludes the area of certain large nonresidential urban land use areas such as railroad yards, industrial areas, airports, cemeteries, and golf courses shown on the Census Bureau's maps.

⁵ The Census Bureau will not include additional noncontiguous area in the urbanized area if the connection required to include it contains territory already qualified under this criterion.

⁶ For purposes of these criteria, undevelopable territory includes only mud flats, marshlands, steep slopes, and other terrain on which development is virtually impossible because of physical limitations. To be classified as undevelopable, the territory must not contain any existing housing or commercial structures. Military installations, parks, and forest preserves shown on the Census Bureau's maps at the time of the decennial or special census also may be classified as undevelopable territory. The land-use zoning of an area is not considered when applying this criterion.

body of the urbanized area, but within 5 road miles of the main body of the urbanized area as long as no more than 1 1/2 miles of otherwise nonqualifying developable territory intervenes.

2. A place containing any territory qualifying on the basis of criterion A.1 will be included in the urbanized area in its entirety (or partially, if the place is an extended city⁷) if that qualifying territory includes at least 50 percent of the population of the place. If the place does not contain any territory qualifying on the basis of the above criterion, or if that qualifying territory includes less than 50 percent of the place's population, the place is excluded in its entirety.⁸

3. Other territory with a population density of fewer than 1,000 people per square mile, provided that it:

a. Eliminates an enclave of no more than 5 square miles in the otherwise qualifying urbanized areas when the surrounding territory qualifies on the basis of population density, or

b. Closes an indentation in the boundary of the otherwise qualifying urbanized areas when the contiguous territory qualifies on the basis of population density, provided that the indentation is no more than 1 mile across the open end, has a depth at least two times greater than the distance across the open end, and encompasses no more than 5 square miles.

B. Urbanized Area Central Places

One or more urbanized area central places function as the dominant centers of each urbanized area. The identification of urbanized area central places permits the comparison of these dominant centers with the remaining territory in the urbanized area.

Urbanized areas are closely related to metropolitan statistical areas (MSAs)⁹

⁷ Only the urban portion of an incorporated place qualifies to be included in the urbanized area if the place qualifies as an extended city. An incorporated place is defined as an extended city if it contains one or more sparsely settled areas, each at least 5 square miles in land area and having a population density of fewer than 100 people per square mile. The sparsely settled area(s) must total at least 25 percent of the land area of the incorporated place or encompass more than 25 square miles.

⁸ A place included in an urbanized area designated as a result of an earlier decennial or special census is retained in the urbanized area in its entirety even if it does not meet this criterion, unless it newly qualifies as an extended city.

⁹ The term MSA, as used in these criteria, refers to a freestanding MSA or one of the primary metropolitan statistical areas (PMSAs) within a consolidated metropolitan statistical area (CMSA) as designated by the Federal Office of Management and Budget (OMB). In the titling criteria, the term also refers to a CMSA when the CMSA mostly encompasses an urbanized area. The MSA central cities and titles used to determine urbanized area central places and titles are those in effect on

in that most urbanized area(s) form the continuously built-up core of MSAs. However, some MSAs included two or more noncontiguous urbanized areas, and some urbanized areas exist outside of MSAs. The Census Bureau identifies one or more central places for each urbanized area. If the urbanized area encompasses all the central cities of a single MSA, then the central place(s) of the urbanized area generally will be the same as the central city(ies) of the corresponding MSA.

Urbanized area central places include:

1. Those MSA central cities entirely (or partially, if the place is an extended city¹⁰) within the urbanized area. There is no limit on the number of qualifying central places, and not all MSA central cities necessarily are included in the urbanized area title.

2. If the urbanized area does not contain an MSA central city, or is outside of an MSA, then the central place(s) is any place(s) that qualifies as specified in criterion C.2 and C.3 of the urbanized area titling criteria. One or two additional places may qualify as central under criterion C.2 of the urbanized area titling criteria. Only one place may qualify as central within an urbanized area under criterion C.3 of the urbanized area titling criteria.

C. Urbanized Area Titles and Codes

The title of an urbanized area identifies those places that are most important within the urbanized area; it links the urbanized area to the encompassing MSA, where appropriate. If a single MSA mostly encompasses the urbanized area, then the title and code of the urbanized area generally are the same as the title and code of the MSA. If the urbanized area is not mostly encompassed in a single MSA, if it does not include any places that are central cities in the encompassing MSA, or if it is not part of an MSA, then the Census Bureau uses the population size of the included places, with a preference for incorporated places, to determine the

January 1, 1990 and, for those areas qualifying as new MSAs based on the results of the 1990 census, the central cities and titles included in the 1990 census data products. Changes to the list of central cities and titles of existing MSAs based on the results of the 1990 census are not included, because such changes occur after the release of the 1990 census data. The Census Bureau will not change the list of existing central places and titles of urbanized areas as a result of any subsequent MSA central city or title changes until after the next national census. The Census Bureau will determine the central places(s) and title of each qualifying intercensal urbanized area at the time of qualification based on the 1990 criteria. Urbanized area title, except for those titled under criterion C.4, include only place and state names.

¹⁰ Only the urban portion of an extended city is classified as central.

urbanized area title. The name of the state (or states) in which the urbanized area is located also is used in each urbanized area title.

The following criteria determine urbanized area titles and codes:

1. The title consist of the same places named in the encompassing MSA when the urbanized area exists mostly within a single MSA as of the 1990 census, provided that the places in the MSA title are located entirely (or partially, if the places are extended cities) within the boundaries of the urbanized area. Any MSA title city(ies) not located in the urbanized area is omitted from the urbanized area title.

2. If the urbanized area does not contain any place that meets criterion C.1, then the urbanized area title includes the name of the most populous incorporated place in the urbanized area containing 2,500 or more people and the names of up to two additional incorporated places in the urbanized area, provided that each additional place has a population of 15,000 or more, and has at least one-third the population of the most populous incorporated place in the urbanized area.

This criterion also is used to determine the title of an urbanized area that is not mostly encompassed within a single MSA or where a single MSA encompasses more than one separate urbanized area, each centered on a separate MSA title city; that is, (a) those urbanized areas mostly within two or more PMSAs, but not within all constituent PMSAs of the CMSA, or (b) those urbanized areas that include one or more MSA title cities and for which other separate urbanized areas exist around one or more other MSA title cities. In these instances, the names used in the title of the urbanized area are restricted to MSA central cities that meet the population size criteria.

3. If the urbanized area does not contain any incorporated place with a population of 2,500 or more, the urbanized area title includes only the name of the largest nonmilitary place.¹¹

4. A regional title may be used to identify an urbanized area with a population of one million or more, if the Census Bureau believes a regional title provides an unambiguous description of the area. Regional titles include only the name of the largest city in the urbanized area, followed by the regional title.

5. The order of place names within an urbanized area title is the same as the order of the central city names in the

¹¹ A nonmilitary place is one in which more than 50 percent of the population lives outside the boundaries of a military installation.

MSA title for urbanized areas that have places that qualify under titling criterion C.1, excluding places not contained in the urbanized area. For urbanized areas that are entitled under criterion C.2, the place names within the urbanized area title are listed in descending order of population.

6. In addition to the name of each qualifying place (including the place name in the regional title), the urbanized area title includes the name of each state into which the urbanized area extends. The order of state names is:

a. The same as the order of their related place names mentioned in the urbanized area title, followed by,

b. The names of other states into which the urbanized area extends in descending order of the state's population in the urbanized area.

7. The numeric code used to identify each urbanized area will be the same as the code for the mostly encompassing MSA (including CMSA and PMSA). If MSA title cities represent multiple urbanized areas, or the urbanized area title city does not correspond to the first name of an MSA title, the Census Bureau will assign a code based on the alphabetical sequence of the urbanized area title in relationship to all other urbanized area and MSA titles.

D. Retention of Boundaries, Contiguity, and Merger of Urbanized Areas

As with the identification of central places and titles, the Census Bureau uses the geographic structure of MSAs (including CMSAs and PMSAs) to determine when to define separate contiguous urbanized areas¹² or to merge contiguous urbanized areas. After delineating the boundaries of each urbanized area, the Census Bureau examines the relationship between the urbanized area and any contiguous urbanized area(s) using the criteria below to determine if each contiguous urbanized area should be recognized separately and, if so, where the boundary should be between these urbanized areas.

1. An urbanized area generally retains all territory previously included within its boundaries. When a previously existing urbanized area becomes

contiguous with another urbanized area, the Census Bureau generally will not move previously qualifying territory from that urbanized area into the contiguous urbanized area.¹³

2. When previously noncontiguous urbanized areas become contiguous, the Census Bureau will choose a prominent physical feature or political boundary to use as the boundary separating the two urbanized areas. The feature or political boundary selected will be at or near the location of the lowest overall population density between the two areas.

3. No new urbanized area will be created from the territory of an existing urbanized area, even if one or more MSAs or PMSAs subsequently are established that subdivide the original territory of the urbanized area.

4. If the boundary used to separate two contiguous urbanized areas follows a political boundary that also is an MSA boundary, the urbanized area boundary will continue to follow that political boundary even if the MSA boundary subsequently changes.

5. When urbanized areas are contiguous, the Census Bureau will use the following criteria to determine if a merger occurs:

a. The Census Bureau merges urbanized areas when:

(1) Two or more newly qualifying urbanized areas are contiguous and are mostly in the same MSA or PMSA.

(2) A newly qualifying urbanized area is contiguous to an existing urbanized area and both are mostly in the same MSA or PMSA.

(3) Previously existing urbanized areas mostly in the same MSA or PMSA become contiguous.

(4) Existing contiguous urbanized areas, previously entirely or mostly in different MSAs, become entirely or mostly part of the same MSA or PMSA because of an MSA merger.

b. The Census Bureau does not merge urbanized areas when:

(1) Existing urbanized areas are contiguous or become contiguous and are entirely or mostly in different MSAs or PMSAs.

(2) Existing urbanized areas are contiguous or become contiguous and are mostly in the same CMSA but mostly in different PMSAs.

(3) Existing urbanized areas are contiguous or become contiguous and the largest central place of one of the urbanized areas is mostly outside the encompassing MSA.

Differences Between the Proposed 1990 Urbanized Area Criteria and the 1980 Urbanized Area Criteria

The following is a summary of the differences between the 1980 urbanized area criteria and the urbanized area criteria proposed for the 1990 census.

1. The Census Bureau will recognize an urbanized area if it contains a place, either incorporated or census designated. Previously, the Census Bureau required a potential urbanized area to contain an incorporated place (except in Hawaii and Puerto Rico, where incorporated places do not occur in the sense of functioning local governmental units). In line with this proposed change, the Census Bureau will replace the term "central city" with "central place."

2. The Census Bureau will add an entire place to an urbanized area only if the qualifying portion is adjacent to or within 1½ road miles of the rest of the urbanized area and the qualifying portion contains at least 50 percent of the population of the place. Previously, a place had to contain only a closely settled area that included at least 50 percent of the population of the place, or a cluster of at least 100 housing units, if the place did not have a population of at least 2,500 or a population density of at least 1,000 people per square mile.

3. The combined population density of any noncontiguous qualifying area and the intervening nonqualifying census block(s) added to the urbanized area must be at least 500 people per square mile. There must be at least one census block that is contiguous to the road connecting the qualifying core area with the noncontiguous qualifying area. Previously, there was no stated minimum population density requirement for adding any noncontiguous qualifying area and the intervening nonqualifying blocks to the urbanized area, but the Census Bureau used this proposed criterion as a guideline in the past.

4. The Census Bureau will close urbanized area boundary indentations only when the depth of the area is at least two times greater than a line closing the opening. This criterion applies only when the indented area within the urbanized area is surrounded by area meeting the population density requirements of 1,000 people per square mile. Previously, the Census Bureau generally closed any indentation less

¹² The Census Bureau considers two urbanized areas to be contiguous if they share a common boundary line (not simply a point), and the areas on both sides of this shared boundary qualify for inclusion in their respective urbanized areas based on the minimum population density criterion of 1,000 people per square mile. Urbanized areas that are separated by no more than 5 miles of undevelopable land or water, but are connected by road, are considered contiguous if both include areas meeting the population density criterion at the points where they adjoin the undevelopable land or water and the qualifying road connection exists.

¹³ The Census Bureau unavoidably may have to delete previously qualifying territory from an urbanized area or shift previously qualifying territory from one urbanized area to another when there has been a change in a place boundary (due to a detachment from or disincorporation of an incorporated place or a retraction from or deletion of a CDP), a change in a county or minor civil division boundary, or the deletion of a feature previously used as a census block boundary.

than 1 mile across the open end and encompassing no more than 5 square miles.

5. The Census Bureau no longer will add to an urbanized area the territory that contains a large concentration of nonresidential urban land use (such as an industrial park, office complex, or major airport) and is adjacent to the urbanized area, even if at least one-quarter of the boundary of the land use area is contiguous with the urbanized area. The Census Bureau does not have sufficient information to implement this criterion consistently on a nationwide basis. Existing urbanized areas will retain territory that qualified under the earlier criterion.

6. In most instances, the Census Bureau will use the title of the (mostly) encompassing MSA title as the urbanized area title. If a single MSA does not include most of the urbanized area of if the urbanized area does not contain any places in the title of the MSA, the Census Bureau generally will use as an urbanized area title the names of up to three of the most populous incorporated places over 2,500 population within the urbanized area. If no such incorporated places exist in the urbanized area, the Census Bureau will use the name of the CDP with the largest populations for the urbanized area title. The overall effect of these criteria will be to have the titles of urbanized title. The overall effect of these criteria will be to have the titles of urbanized areas and MSAs as similar as possible. The Census Bureau used 1970, and in some cases, 1960, urbanized area titles as the titles of 1980 urbanized areas.

7. For each urbanized area, where applicable, the Census Bureau will designate as an urbanized area central place, each place that also is a central city in the encompassing MSA. If there is no such place in the urbanized area, the Census Bureau will designate as an urbanized area central place, each place in the title of the urbanized area. The general effect of these criteria will be to have the central places of urbanized area and the central cities of MSAs as similar as possible in the 1990 census tabulations. Previously, except in the two urbanized areas assigned regional titles, the central cities of urbanized areas included only those places appearing in the urbanized area titles.

8. All criteria related to delineating a boundary between contiguous urbanized areas and to merging contiguous urbanized areas are new. While the Census Bureau generally used the proposed criteria as "guidelines" in the past, it did not previously publish these as criteria. These criteria will result in

the merger of the following 1980 urbanized areas for the 1990 census:

New Haven, CT and Meriden, CT
Norfolk-Portsmouth, VA and Newport News-Hampton, VA
Richmond, VA and Petersburg-Colonial Heights, VA
Tampa, FL and St. Petersburg, FL

In addition, the criteria could result in the merger of other 1980 urbanized areas for the 1990 census, if their urbanized areas become contiguous and are in the same MSA or PMSA. In 1980, the following urbanized areas were within 2 miles of each other and mostly in the same MSA or PMSA:

Aurora, IL and Elgin, IL
Baltimore, MD and Annapolis, MD
Beaumont, TX and Port Arthur, TX
Greensboro, NC and High Point, NC
Johnson City, TN and Kingsport, TN—VA
Kingsport, TN—VA and Bristol, TN—Bristol, VA

Macon, GA and Warner Robins, GA
Oxnard—Ventura—Thousand Oaks, CA and Simi Valley, CA
St. Louis, MO—IL and Alton, IL
San Juan, PR and Vega Baja—Manati PR

DATES: Comments submitted on or before December 26, 1989 will receive consideration in developing the final urbanized area criteria for the 1990 census.

ADDRESSES: Persons wishing to comment or obtain additional information should write to: Mr. Robert W. Marx, Chief, Geography Division, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Marx at the address given above or telephone (301) 763-5636.

DATED: October 18, 1989.

C.L. Kincannon,

Deputy Director, Bureau of the Census.

[FR Doc. 89-25005 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Shark Advisory Panel on November 9, 1989, from 8 a.m. to 4 p.m. The meeting will be held at the Omni Tampa Hotel at Westshore, 700 North Westshore Boulevard, Tampa, FL. The panel will review and comment on the Secretarial fishery management plan for

sharks that is being prepared by the National Oceanic and Atmospheric Administration, National Marine Fisheries Service.

For more information contact Wayne F. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228-2815.

Dated: October 18, 1989.

David S. Crestin,

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

[FR Doc. 89-25008 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-22-M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will meet on October 31–November 1, 1989, at the Sonesta Hotel, 175 High Street, Portland, ME. The Council will begin the meeting at 12:30 p.m., on October 31; will reconvene on November 1 at 8:30 a.m.; and will adjourn when agenda items have been completed. Except as noted below, the meeting is open to the public.

On the first day, the Council will hear a report from the Groundfish Oversight Committee. A closed session (not open to the public) will follow and pertain to employment matters. On the second day, the Council will hear reports from the Herring, Scallop and Large Pelagic Oversight Committees and receive updates on the lobster and surf clam/ocean quahog fisheries. Also, reports will be given on the annual meeting of the Atlantic States Marine Fisheries Commission, and the reauthorization of the Magnuson Fishery Conservation and Management Act.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231-0422.

Dated: October 18, 1989.

David S. Crestin,

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

[FR Doc. 89-25009 Filed 10-23-89; 8:45 am]

BILLING CODE 3510-22-M

EXECUTIVE OFFICE OF THE PRESIDENT**Council on Environmental Quality****Risk Analysis: A Guide to Principles and Methods of Analyzing Health and Environmental Risks; Availability**

AGENCY: Council on Environmental Quality.

ACTION: Notice.

SUMMARY: The Council on Environmental Quality is announcing the availability of "Risk Analysis: A Guide to Principles and Methods for Analyzing Health and Environmental Risks." This guide is intended both as an introduction to risk analysis and as a readily accessible reference manual. Designed for consumers of risk information, the book offers a balance between the technical and nontechnical literature. Some of the topics covered in the guidebook include methodology and techniques, an overview of risk analysis, hazard identification, and risk communication. Included are a glossary, cases studies, examples and reference materials in this 407 page book.

ADDRESS: "Risk Analysis: A Guide to Principles and Methods for Analyzing Health and Environmental Risks" may be ordered from the National Technical Information Service (NTIS), Springfield, VA 22161 or call (703) 487-4650. The NTIS order number is PB-137772KNK. The price is \$17.50, add \$3.00 handling for total order. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements with NTIS. Charge cards orders must include the account number and expiration date.

FOR FURTHER INFORMATION CONTACT: John J. Cahrssen, Council on Environmental Quality, Executive Office of the President, Washington, DC 20503, (202) 395-5750.

John J. Cahrssen,
Legal Advisor.

[FR Doc. 89-25025 Filed 10-23-89; 8:45 am]
BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE**Office of the Secretary****Armed Forces Epidemiological Board; Open Meeting**

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Ad Hoc Subcommittee, Armed Forces Epidemiological Board, DOD.

Date of Meeting: 11 November 1989.

Time: 0930-1600.

Place: Hilton Hotel, New Orleans, Louisiana.

Proposed Agenda: Laboratory procedures and medical testing standards for serum lipids for the U.S. Air Force.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, Room 667, Falls Church, Virginia 22041-3258.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 89-24988 Filed 10-23-89; 8:45 am]

BILLING CODE 3710-08-M

Defense Intelligence Agency Advisory Board; Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92-463, as amended by section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a panel of the DIA Advisory Board has been scheduled as follows:

DATE: Tuesday, 14 November 1989 (8:00 a.m. to 5:00 p.m.)

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC. 20340-1328 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Intelligence Support to the U&S Commands.

Dated: October 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24962 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Policy Board Advisory Committee; Meeting

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on 16-17 November 1989 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: October 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24964 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

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 184, Fort Belvoir, Virginia, on Wednesday, November 8, 1989, from 0800 until 1600. The agenda will include a review of accomplishments related to the systems 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. Shelley Fink on (703) 664-4094.

Dated: October 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-24963 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

Privacy Act of 1974, Systems of Records Notices

AGENCY: Office of the Secretary, DOD.

ACTION: Addition of two new systems of records notices for public comment.

SUMMARY: The Office of the Secretary of Defense proposes to add two new systems of records to its inventory of systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATE: The new systems will be effective on or before November 24, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Dan Cragg, OSD Privacy Act Officer, OSD Records Management and Privacy Act Branch, Room 5C315, Pentagon, Washington, DC 20301-1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a), have been published in the *Federal Register* as follows:

50 FR 22090, May 29, 1985 (Compilation, changes follow)

50 FR 47087, Nov. 14, 1985

51 FR 11807, Apr. 7, 1986

51 FR 11803, Apr. 7, 1986

51 FR 17508, May 13, 1986

51 FR 23573, Jun. 30, 1986

51 FR 44668, Dec. 11, 1986

51 FR 44672, Dec. 11, 1986

51 FR 44670, Dec. 11, 1986

51 FR 44665, Dec. 11, 1986

52 FR 4645, Feb. 13, 1987

52 FR 11849, Apr. 13, 1987

52 FR 23334, Jun. 19, 1987

52 FR 16431, May 5, 1987

52 FR 22837, Jun. 16, 1987

53 FR 15868, May 4, 1988

53 FR 27894, Jul. 25, 1988

54 FR 33756, Aug. 16, 1989

54 FR 33757, Aug. 16, 1989

54 FR 33758, Aug. 16, 1989

The new systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act were submitted on October 12, 1989, to the Committee on Governmental Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 18, 1989.

DHA 01

SYSTEM NAME:

Medical Malpractice Claims Data File.

SYSTEM LOCATION:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, The Pentagon, Washington, DC 20301-1200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals include health care providers named in malpractice/professional negligence claims abstracted and reported whether the claim was denied, closed favorably for the plaintiff or for the U.S. Government and patients of the health care providers, identified to the extent of Social Security Number of military sponsor.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case records relating to malpractice claims recorded against DoD. Record fields consist of Facility Name, Military Department, Date of Incident, Date Claim Filed, Date Claim Closed, Litigation Settlement Data, Diagnosis and Treatment Procedures, Injury Extent Classification, Social Security Number of Military Sponsor, Patient Allegation(s) of Malpractice, Professional Review Assessment, Provider Name, Social Security Number and Medical Specialty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 11101 (Pub. L. 99-660, "Health Care Quality Improvement Act of 1986"); 42 U.S.C. 11131-11134; and E.O. 9397.

PURPOSE(S):

To collect malpractice claims data provided by the Military Services. The data are used to conduct trend analyses of DoD Medical Quality Assurance Programs and to facilitate DoD compliance with requirements of the Health Care Quality Improvement Act of 1986, which includes establishment of a National Data Bank for compilation of medical malpractice information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Office of the Secretary of Defense (OSD) "Blanket Routine Uses" published at the head of this components system

notices compilation are applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on paper in file folders and on a microcomputer system.

RETRIEVABILITY:

Hard copy is filed by sponsor's Social Security Number. Electronic records may be accessed by search on Social Security Number of Military Sponsor.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand alone microcomputer system with a mechanical lock for additional protection.

RETENTION AND DISPOSAL:

Paper records are destroyed after five years. The microcomputer database files are destroyed after five years. Conversion of data to aggregate form with stripping of data fields, not to include personal identifiers, is performed on older data for statistical and other data analysis uses.

SYSTEM MANAGER(S) AND ADDRESS:

The Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301-1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301-1200.

The request should contain the full name of either the medical professional or military sponsor, requesting individual's Social Security Number (or Social Security Number of military sponsor, if inquiry is by a claimant), military department and medical facility and notarized signature of the requester, and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301-1200.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR Part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical facilities of the military departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DHA 02**SYSTEM NAME:**

Adverse Clinical privilege Actions Data File.

SYSTEM LOCATION:

Office of the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, The Pentagon, Washington, DC 20301-1200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All privileged health care providers in the DoD Health Care System.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of case reports to the ASD(HA) concerning permanent actions on the limitation, revocation, or reinstatement of clinical privileges of DoD military and civilian health care providers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1102 and Executive Order 9397.

PURPOSE(S):

To collect and update adverse clinical privilege data provided by the military services to the ASD(HA). The consolidation of Service data is used by ASD(HA) to conduct trend analyses of DoD Medical Quality Assurance Programs.

To an officer, employee, or contractor of the Department of Defense who has a need for such record or testimony to perform official duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

To a Federal executive agency or private organization, if such medical quality assurance record or testimony is needed by such agency or organization to perform licensing or accreditation functions related to Department of Defense Health care facilities or to perform monitoring, required by law, or Department of Defense health care facilities.

To an administrative or judicial proceeding commenced by a present or former Department of Defense health care provider concerning the termination, suspension, or limitation of clinical privileges of such health care provider.

To a governmental board or agency or to a professional health care society or organization, if such medical quality assurance record or testimony is needed by such board, agency, society, or organization to perform licensing, credentialing, or the monitoring of professional standards with respect to any health care provider who is or was a member or an employee of the Department of Defense.

To hospital, medical center, or other institution that provides health care services, if such medical quality assurance record or testimony is needed by such institution to assess the professional qualifications of any health care provider who is or was a member or employee of the Department of Defense and who has applied for or been granted authority or employment to provide health care services in or on behalf of such institution.

To a criminal or civil law enforcement agency or instrumentality charged under applicable law with the protection of the public health or safety, if a qualified representative of such agency or instrumentality makes a written request that such record or testimony be provided for a purpose authorized by law.

In an administrative or judicial proceeding commenced by a criminal or civil law enforcement agency or instrumentality referred to in the above paragraph, but only with respect to the subject of such proceeding.

The Office of the Secretary of Defense (OSD) "Blanket Routine Uses" published at the head of this component's system notices compilation are applicable to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Records are maintained on paper in file folders and on a microcomputer system.

RETRIEVABILITY:

Hard copy is filed by medical practitioner's Social Security Number. Electronic records may be accessed by searching on any information field. Retrievable fields are health care provider's Social Security Number, pay grade of provider, years of Federal service of provider, name of medical treatment facility, reason for clinical privileges action and status of Federation of State Medical Boards or State notification, provider specialty, source of accession, and action taken.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act data. Hard copy records are maintained in locked cabinets in restricted access areas. Computer files are accessed on a password-protected stand alone microcomputer system with mechanical lock for additional protection.

RETENTION AND DISPOSAL:

Paper records are destroyed after five years. The microcomputer database files are destroyed after five years. Conversion of data to aggregate form with stripping of data fields, not to include personal identifiers, is performed on older records for statistical and other data analysis uses.

Destruction of paper records is by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301-1200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301-1200, where a log of these requests will be maintained.

The request should contain the full name, subject individual's social

security number, Military Department, hospital or medical facility and notarized signature of the requester, and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records must address written inquiries to the Assistant Secretary of Defense (Health Affairs), Office of Professional Affairs and Quality Assurance, Room 3D360, The Pentagon, Washington, DC 20301-1200.

CONTESTING RECORD PROCEDURE:

The Office of the Secretary of Defense rules for accessing records and for contesting contents and appealing initial determinations are published in OSD Administrative Instruction No. 81, "OSD Privacy Program"; 32 CFR Part 286b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Medical facilities of the military departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89-24961 Filed 10-23-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Contract Audit Agency

Privacy Act of 1974; New Record System Notice

AGENCY: Defense Contract Audit Agency (DCAA), Department of Defense (DoD).

ACTION: Notice of a new system of records for public comment.

SUMMARY: The Defense Contract Audit Agency of the Department of Defense proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The record system notice for the new system is set forth below.

DATES: The proposed action will be effective without further notice on November 24, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to Mr. Dave Henshall, ATTN: CMR, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, telephone: (202) 274-4400.

SUPPLEMENTARY INFORMATION: The Defense Contract Audit Agency systems

of records notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a), have been published in the **Federal Register** as follows:

50 FR 22884, May 29, 1985 (DoD Compilation, changes follow)
51 FR 18017, May 16, 1986
54 FR 37360, Sep 8, 1989

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on October 12, 1989, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records about Individuals", dated December 12, 1985 (50 FR 52730, December 24, 1985).

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 18, 1989

RDCAA 367.5

SYSTEM NAME:

Employee Assistance Program (EAP) Counseling Records.

SYSTEM LOCATION:

Personnel and Security Division (CPP), Headquarters, Defense Contract Audit Agency (DCAA), Building 4, Room 4B319, Cameron Station, Alexandria, VA 22304-6178.

DCAA regional servicing personnel offices; and offices of EAP contractors who perform employee assistance and counseling services. Addresses can be found in the appendix to DCAA's compilation of system of records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DCAA Federal employees assigned to DCAA activities who are referred by management for, or voluntarily request, employee assistance counseling, referral, and rehabilitation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to patients which are generated in the course of professional counselling, e.g., records on the patient's condition, status, progress and prognosis of personal, emotional, alcohol or drug dependency problems, including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 43; 5 U.S.C. 310; 5 U.S.C. 7301; 10 U.S.C. 3012; 42 U.S.C. 290dd-3 and 290ee-3, 42 U.S.C. 4582; Public Law

100-71; Executive Order 12564; and Executive Order 9397.

PURPOSE(S):

The system is established to maintain records relating to the counselor's observations concerning patient's condition, current status, progress, prognosis and other relevant treatment information regarding patients in an employee assistance treatment program facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In order to comply with provisions of 5 U.S.C. 7301 and 42 U.S.C. 290dd-3 and 290ee-3, the Office of the Secretary of Defense "Blanket Routine Uses" do not apply to this system of records.

Records in this system may not be disclosed without prior written consent of such patient, unless the disclosure would be:

(a) To medical personnel to the extent necessary to meet a bona fide medical emergency;

(b) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluating, or otherwise disclose patient identities in any manner; and

(c) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained and stored in automated data systems, secured filing cabinets, and electronic secured files. Extracts of treatment records are also entered into electronic database on microcomputers.

RETRIEVABILITY:

Records are retrieved manually and automatically by patient's last name, client's case number, Social Security Number, organization, office symbol and counseling area offices or any other combination of these identifiers.

SAFEGUARDS:

Records are stored in locked filing cabinets, and secured working environments. Automated records are protected by restricted access procedures, e.g., password-protected coding system. Access to records is strictly limited to Agency or contractor

officials with a bona fide need for the records. Only individuals on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system. All patient records are maintained and used with the highest regard for patient privacy. Safeguarding procedures are in accordance with the Privacy Act and required in Employee Assistance Program contractual service agreements.

RETENTION AND DISPOSAL:

Patient records are destroyed three years after termination of counseling and then destroyed by shredding, burning, or pulping. Electronic records are purged of identifying data five years after termination of counseling. Aggregate data without personal identifiers is maintained for management/statistical reporting purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Assistance Program Administrator, Personnel and Security Division, Headquarters, Defense Contract Audit Agency, Cameron Station, Alexandria, VA 22304-6178.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Employee Assistance Program Administrator, Personnel and Security Division (CPP), Headquarters, Defense Contract Audit Agency (DCAA), Cameron Station, Alexandria, VA 22304-6178.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, Identification Number (if known), approximate date of record, geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should contact Employee Assistance Program Administrator, Personnel and Security Division (CPP), Headquarters, Defense Contract Audit Agency (DCAA), Cameron Station, Alexandria, VA 22304-6178.

Individuals must furnish the following for their records to be located and identified: Name, Date of Birth, Social Security Number, approximate date of record, geographic area in which consideration was requested.

CONTESTING RECORD PROCEDURE:

The Defense Contract Audit Agency (DCAA) rules for accessing records and

for contesting contents and appealing initial DCAA determinations by the individual concerned are published in DCAA Manual 5410.6; 32 CFR part 290a; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The patient to whom the records pertain, Employee Assistance Program counselors, supervisory personnel, co-workers; other agency personnel, outside practitioners; or private individuals to include family members of the patient.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.
[FR Doc. 89-24960 Filed 10-23-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting Amendment

AGENCY: National Assessment Governing Board, Education.
ACTION: Notice of meeting.

SUMMARY: This notice amends the meeting to be held on October 25, 1989, announced in the *Federal Register* of Monday, October 2, 1989 (54 FR 40476).

SUPPLEMENTARY INFORMATION: The Technical Methodology Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on October 25, 1989 from 10:30 a.m. EDT until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations.

LOCATION: U.S. Department of Education, National Assessment Governing Board, Office of Educational Research and Improvement, Room 402 G, 555 New Jersey Avenue NW., Washington, DC 20208.

Dated: October 19, 1989.
Christopher T. Cross,
Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-25004 Filed 10-23-89; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Research and Development of Nickel/Cadmium Alkaline Batteries

AGENCY: Idaho Operations Office, DOE.
ACTION: Solicitation for financial assistance applications No. DE-PS07-90ID12873 for Research and

Development of Nickel/Cadmium (Ni/Cd) alkaline electric vehicle batteries.

SUMMARY: "Research and Development of Nickel/Cadmium (Ni/Cd) Alkaline Batteries." The U.S. Department of Energy (DOE), Idaho Operations Office (ID), is seeking applications on the basis of open competition, for cost-sharing research and development of Nickel/Cadmium (Ni/Cd) alkaline batteries in support of its Electric and Hybrid Vehicle (EV) Program. The statutory authority for this action is the Electric Vehicle and Hybrid Vehicle Research, Development and Demonstration Act of 1976. This announcement is the complete solicitation document and no other document for this work is available. The objective of this program is to execute one or more cooperative agreements to evaluate currently available fiber-electrode technologies and identify those which possess the potential for advancing nickel/cadmium batteries for Electric Vehicle traction applications. A cooperative agreement is the anticipated instrument because, in accordance with the DOE financial assistance rules, 10 CFR part 600.202, DOE will be substantially involved in the project. The substantial involvement between DOE and the awardee and DOE's authorities and responsibilities under this agreement shall be as follows:

(1) DOE will monitor project status and expenditures, and counsel the awardee if significant variance with plans and budgets occur. DOE will convene periodic project reviews, at a time and place agreeable to the awardee, to permit review of the project status by DOE and/or DOE contractor personnel.

The reviews will determine if satisfactory progress towards the goals of the project are being met and determining whether to continue funding the project, redirecting the research efforts, or canceling support of the project.

(2) Within 30 days of any project review meeting or within 30 days of receipt of any technical progress report, DOE will inform the awardee of any required changes or additions.

(3) DOE review and approval is required prior to building any cells and prior to testing the cells.

(4) DOE will recommend technology transfer activities for consideration by the awardee as part of the activities. DOE will review and approve all technology transfer activities planned by the awardee to ensure that the activities will be effective in helping development and commercial

acceptance of the technology. All projects will be cost-shared by DOE and the Participant and project duration is expected to be approximately 36 months. Applicants should be aware that any awardee will be required to have a cost-share of not less than 10% (ten percent). No fee or profit will be paid to the Participant. DOE anticipates that approximately \$130,000 will be available for support of activities during the first year, and \$150,000 to \$300,000 for each of the following two years. Negotiation, award, and administration will be in accordance with DOE Financial Assistance Regulations (10 CFR part 600). The Catalog of Federal Assistance number for this program is 81.086. Profit making entities, individuals, educational institutions, nonprofit institutions and other entities are eligible to submit applications in response to this solicitation. Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government are not eligible for award and should not submit applications. Applications which anticipate participation of such a laboratory by subcontract, use agreement, or other arrangement must include satisfactory evidence of specific authorization from the cognizant Federal agency.

Background

Public Law 94-413, enacted on September 17, 1976, then modified by Public Law 95-238, authorized the U.S. Department of Energy (DOE) to conduct a program of research, development and demonstration designed to promote electric and hybrid vehicle technologies to commercial feasibility. Basic and applied research on batteries for electric and hybrid vehicles were among the activities specified by this legislation.

Over the past ten years DOE has searched for the battery type that would be the breakthrough for electric vehicle transportation. The search goes on with static electrolyte, flowing electrolyte and solid electrolyte types. Progress toward achievement of the long range goals is as elusive as ever. Several battery types, in their earliest stages of development, have exhibited high promise, but that promise has become more and more modest as research turns up additional problems of a practical nature. Currently only two battery types show field operational capability: Lead/acid and nickel/iron (Ni/Fe). Research work on the nickel/cadmium (Ni/Cd) battery for EV traction has focused on the non-sintered nickel electrode, in an effort to produce a low cost Ni/Cd battery. However, the power limitation of this technology has always been a

concern. This limitation is perhaps fundamental. At issue is internal "resistance" versus pore structure as an explanation for the battery's poorer performance when compared with the lead/acid battery of the same ampere-hour rating. This is a paradox, because standard rechargeable Ni/Cd batteries are popular because of their high power with high voltage cranking ability. The non-sintered nickel electrode technology has a rapid temperature-rise characteristic at high discharge rates. The high internal heat generation causes graphite oxidation, cell swelling, and loss of cell capacity on each cycle following a high rate demand. The standard Ni/Cd battery technology possesses two characteristics which make it attractive as an improved power source for EV traction. It is a high power delivery device, as described above, and exhibits better operating characteristics at cold ambient temperatures than the lead/acid battery. Thermal management is required on battery types that lose their capability at low ambient temperatures. Thermal management is a complication in the system that elevates cost, adds bulk and weight to the vehicle, and requires energy from the battery to maintain its operating temperature which reduces the energy available for powering the vehicle.

SCOPE

This technology evaluation program is designed to refocus the Ni/Cd efforts along more conventional lines. First it is designed to evaluate available fiber-electrode technologies and identify the best technology. Assuming that this evaluation identifies a technology that possesses the potential to reduce cost without sacrificing performance and life, the next effort would be directed at identification of a suitable cadmium recombination electrode technology. If successful on both counts, this project could lead to a cost-reduced Ni/Cd battery technology with low maintenance requirements. This technology would offer significant advantages over Ni/Fe batteries, which possess no known potential for gas recombination and require almost daily watering.

The proposer is to provide a concise but definitive scope of work for inclusion into any resulting agreement. The individual key tasks are to be defined and listed in logical sequence. It is the responsibility of the proposer to include all items in the scope of work that are required to accomplish the stated purpose of the project. Each task is to be priced separately. DOE may choose none, all, or some combination of the tasks to be funded. As a

minimum, the following tasks should be included and discussed in the statement of work:

1. Perform a survey of all fiber nickel and cadmium electrode technologies (without carbon or graphite additives) available from both foreign and domestic battery developers. Using 50 Wh/kg (at 3-hour discharge rate) as the specific energy, 120 W/kg (at 50% depth of discharge) as the peak specific power, and -20 to +60°C as the operating temperature range as targets, the surveyed technologies shall be ranked and current status documented.

2. Build three sample cells each, of the top three rated electrode combinations (20 Ah minimum size). Charge-discharge performance shall be established at five different temperatures within the range of interest (room temperature being one point). A second series of tests shall be performed with the cells charged at room temperature and then discharged at each of the five temperatures previously chosen. Room temperature charging shall be at the 5- to 6-hour rate, with all discharging at the one-hour rate. When operating at temperatures other than room temperature, the charging rates shall be established at the gassing threshold for each temperature. These thresholds will be reported as part of the cell characteristics.

3. Identify the best technologies from task 2 to perform life cycle tests. Eight cells (20 Ah minimum size) are to be built. Four cells are to be cycled at the one-hour discharge rate using a water bath to control temperature. The Simplified Federal Urban Driving Cycle (SFUDC) is to be run at regular intervals (i.e. every 50 cycles) to determine if any degradation of the dynamic characteristics is occurring.

The objective is to determine if the best fiber nickel electrode, in combination with the best cadmium electrode, can achieve or exceed 1000 cycles. The life testing requirement is to extract 70% of the maximum one-hour rate energy from the battery. Beginning-of-life performance is to be established after 20 break-in or conditioning cycles. End-of-life is to be determined when the voltage under load drops below the cutoff voltage before the specified energy is delivered; or when the acceleration fails to meet the driving cycle requirements on two consecutive cycles or twice during the same cycle on the SFUDC regime. Cutoff voltage may not be defined lower than sixty percent (60%) of the open circuit voltage. The remaining four cells are to be sent to an independent testing facility designated by DOE.

4. Survey the available cadmium recombination electrode technologies and report on the feasibility of using one or more of these technologies to build sealed or low maintenance batteries. The objective is to prove the potential for one-year (minimum) maintenance-free operation in an EV traction application. Noble metal catalysts are not an acceptable alternative to a recombining electrode technology.

5. Build eight cells (20 Ah minimum size) of the type from Task 3 and include the best cadmium recombination electrode, if the recombination technology shows promise. Establish a test plan and test four cells to show the effectiveness of the recombination electrode. Testing shall include an initial charge current equivalent to a 5- to 6-hour discharge rate, with allowance for taper current charging after 80% SOC. The data must be usable to define the maximum taper charge current that the recombination electrode can accommodate. The remaining four cells will be sent to an independent test facility designated by DOE.

6. Demonstrate scale-up of the chosen technologies: (1) build six full-size EV cells (150-200 Ah capacity) and (2) upon approval from DOE, build eight full-size 6-volt modules for delivery.

7. Prepare a detailed weight and cost analysis of the technology used in tasks 3 and 5. The analysis shall highlight costly materials and manufacturing areas. This analysis shall identify and address the high-cost aspects of mass production process (due to high labor requirements, expensive equipment, low production rates, and/or low yields).

Note: Any hazardous waste produced or the handling of hazardous material must be handled in accordance with applicable EPA and/or OSHA regulations. The proposal must reference applicable EPA regulations and your procedures on how the waste will be treated or disposed, and how hazardous material is to be handled.

EVALUATION CRITERIA

All timely proposals received will be evaluated and point scored in accordance with the technical evaluation criteria listed below.

The criteria are listed in descending order of importance.

Technical Proposal Evaluation Criteria

The Technical Evaluation Criteria are weighted in the following manner: Criterion A is weighted approximately equal to Criterion B and three times as much as Criterion C. Subcriterion A.1 is weighted about one and one-fourth as much as subcriterion A.2. Subcriterion B.1 is weighted equal to subcriterion B.2.

Subcriterion C.1 is weighted twice as much as subcriteria C.2.

Criterion A: *Statement of Objectives and Facility Description.*

1. The statement of work will be evaluated for technical quality, merit of proposed approach, and probability of achieving positive results.

2. The facility description will be evaluated to determine the capabilities of the facility to build and test NiCd cells and batteries, to handle hazardous material and dispose of hazardous waste.

Criterion B: *Qualification and Capabilities.*

1. Key personnel will be evaluated as to their work experience in the required technology areas and understanding of the technology involved, as demonstrated by education, publications, inventions, and work experience in the required technology areas.

2. The proposing organization, including subcontractor's, capabilities will be evaluated relative to (1) experience and expertise in the required technology areas, (2) the ability to manage the proposed effort, (3) past technical performance, and (4) ability to handle hazardous material and hazardous waste.

Criterion C: *Project Management Plan.*

1. Quality of the management plan provisions for technical, quality, and administrative controls, to assure appropriate project maintenance and overall management for the building and testing of cells and batteries.

2. Cost effectiveness of building and testing cells and batteries as required.

Applications shall be responsive to all the above criteria. Cost considerations will not be point scored or adjectively rated. In making the selection decision, the apparent advantages of individual technical applications will be weighed against the evaluated probable cost to the Government (including cost sharing) to determine whether better applications, excluding cost considerations are worth the evaluated probable cost differentials over other proposals. If applications are very closely ranked and the Source Selection Official determines that the superiority in the technical aspects of the higher related application(s) is not meaningful when viewed in relationship to lower rated applications, evaluated probable costs to the Government may form the basis for selection.

Other Provisions

Stevens Amendment to the DOD Appropriations Act

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds including but not limited to State and local Governments shall clearly state (1) the percentage of the total cost of the program or project, which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

Instructions

Each application in response to this solicitation should be prepared in one volume. One original and seven copies of each application is required. Applications shall exclude material not essential to evaluation of the proposal. Applications shall be as short as possible consistent with completeness, clearly and concisely written and neat and logically assembled. The importance of supplying full and completely responsive information for each of the evaluation criteria cannot be overemphasized. If the offer is submitted under a joint venture arrangement, this fact must be clearly set forth. In conducting the evaluation of applications, the Government may utilize assistance and advice from non-Government personnel. Applicants that do not consent to the use of non-Government personnel in evaluating their proposal(s) are required to make that statement on the cover of their application(s). Applicants are further advised that DOE may be unable to give full consideration to an application submitted without such consent. Information contained in the applications shall be treated in accordance with the policies and procedures set forth in 10 CFR part 600.18. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this solicitation. DOE may require applications to be clarified or supplemented either through additional written submissions or oral presentations: However, the award may be made solely on the information contained in the proposal. Unsuccessful proposals/applications will not be returned but will be destroyed by DOE. DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in

the applicable cost principles. Further, costs incurred prior to the signing of a cooperative agreement are not reimbursable. The cost principles that shall apply will depend on the type of awardee(s): FAR 31.2 shall apply to commercial organizations; OMB Circular A-21 shall apply to educational institutions; OMB Circular A-87 shall apply to State and local governments; and OMB Circular A-122 shall apply to nonprofit organizations. Reporting under any agreement awarded will be in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance." The awardee(s) must have an accounting system capable of accumulating costs by project. All applicants are required to provide in their proposal the nine-digit Taxpayer Identification Number (TIN) assigned by the U.S. Internal Revenue Service. Applications should be submitted to the contact given below.

Applications must include a completed Standard Form 424 "Application for Federal Assistance," a 424A "Budget Information," and 424B "Assurances," including the Drug-Free Workplace Certification. These may be obtained from the Contract Specialist named below. The specific reporting requirements, prepared in accordance with DOE Order 1332.2 "Uniform Reporting System for Federal Assistance," are also obtainable from the Contract Specialist.

Notice of Possible Availability of Loans for Bid Proposal Preparation by Minority Business Enterprises Seeking DOE Contracts and Assistance

Section 211(e)(1) of the DOE Act (Pub. L. 95-91 as amended by Pub. L. 95-619) authorizes the Department of Energy (DOE) to provide financial assistance to minority business enterprises to assist them in their efforts to participate in DOE acquisition and assistance programs. Financial assistance is in the form of direct loans to enable the preparation of bids or proposals for DOE contracts and assistance awards, subcontracts with DOE operating contractors, and contracts with subcontracts of DOE operating contractors. The loans are limited to 75 percent of the costs involved. Availability of these loans is subject to annual appropriation of funds and the remaining availability of funds from such appropriations. DOE does not warrant that such assistance can be made available in sufficient time to prepare a proposal for this solicitation. DOE does point out that the program includes provisions for a preliminary review in advance of a specific loan

request. Information regarding loan availability, eligibility criteria, and how to apply may be obtained from: San Francisco Operations Office, U.S. DOE, Attn: Minority Loan Program Office, 1333 Broadway, Oakland, CA 94612, (415) 273-8403.

The closing date and time will be: 4:00 p.m., Idaho Falls, Idaho local time, on November 17, 1989. Be aware that the applications must be submitted no later than the closing date and time, according to the criteria of 10 CFR part 600.13 entitled "Application Deadlines." Evaluation of the proposals will commence approximately one week after the closing date. Late applications will be handled in accordance with 10 CFR part 600.13. Prospective applicants who intend to submit an application in response to this solicitation should so notify the contact below in writing.

Questions regarding this solicitation should also be submitted to the contact below in writing and postmarked prior to October 20, 1989. Questions and answers will be issued in writing by amendment to this solicitation. Copies of all amendments to this solicitation will be sent to those notifying this office of their intent to submit an application. Selection and award are expected to be made within four months of the closing date of this solicitation.

CONTACT: Kenny K. Osborne, Contract Specialist, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Elizabeth M. Bowhan,
Contracting Officer.

Issued this 25th day of September at Idaho Falls, Idaho.

J. Roger Gonzales,
Director, Contracts Management Division.
[FR Doc. 89-25028 Filed 10-23-89; 8:45 am]
BILLING CODE 6450-01-M

Secretarial Panel for the Evaluation of Epidemiologic Research Activities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretarial Panel for the Evaluation of Epidemiologic Research Activities, DOE.

Date and Time: Monday, November 13, 1989, 8:30 a.m.-5:30 p.m. Tuesday, November 14, 1989, 8:00 a.m.-4:30 p.m.

Place: The Registry Hotel, 3023 Quebec Street, Denver, CO 80207.

Contact: Steven F. Boedigheimer, Executive Director, S.P.E.E.R.A., 1000

Independence Ave., SW., Washington, DC. 20585, Telephone: (202) 586-7304.

Purpose: The Panel was established to provide the Secretary with an independent evaluation of the Department of Energy's epidemiology program and the appropriateness, effectiveness, and overall quality of the Department's epidemiologic research activities.

Tentative Agenda:

Monday, November 13, 1989

- 8:30 am—Invited Testimony and Work Session
- 11:30 am—Tentatively Scheduled:
 - Oil, Chemical and Atomic Workers
 - Physicians for Social Responsibility
 - United Steel Workers of America, Local 8031
- 11:30 am—Public Comment
- 12:00 pm—Lunch Break

Monday, November 13, 1989 (con't)

- 1:15 pm—Invited Testimony and Work Session
- 5:30 pm—Tentatively Planned
 - A Presentation on environmental epidemiology and data management

Tuesday, November 14, 1989

- 8:30 am—Invited Testimony and Work Session
- 11:30 a.m.—Tentatively Scheduled
 - Technical Steering Panel of the Hanford Environmental Dose Reconstruction Project
 - Discussion and action on an Interim Report to the Secretary of the Department of Energy (For discussion draft see below; public comment on Panel activities at 11:30 am Monday November 13)
- 11:30 am—Lunch Break
- 1:00 pm—Invited Testimony and Work Session
- 5:00 pm—Tentatively Scheduled
 - Panel discussion on epidemiologic research activities of the Department of Energy
 - Orientation to Rocky Flats

Note: The Panel's discussion draft of an Interim Report will be available for review approximately ten (10) days before the meeting at the Department of Energy's Public Reading Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC.

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairperson's judgment facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the

Executive Director at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Mintues: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room 1E-190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC between 9:00 and 4:00 pm, Monday through Friday except Federal holidays.

Issued: Washington, DC, on: October 18, 1989.

J. Robert Franklin,

Deputy, Advisory Committee Management Officer.

[FR Doc. 89-25029 Filed 10-23-89; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Yakima/Klickitat Production Project: Floodplain Action

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposal to construct and operate anadromous fisheries facilities within a floodplain of the Yakima and Klickitat River basins.

SUMMARY: BPA proposes to fund the construction and operation of anadromous fish production facilities on the Yakima and Klickitat River basins. Due to the nature of the proposed facilities, some may be located within the 100-year floodplain. The Yakima Indian Nation submitted a recommendation to the Pacific Northwest Electric Power and Conservation Planning Council (Council) identifying the need for these facilities to supplement natural fish runs. This recommendation was adopted by the

Council and incorporated as sections 703(f)(3), 503(c)(2), and 803(d) of the Columbia River Basin Fish and Wildlife Program. The purpose of the Program is to work toward rebuilding fish and wildlife populations harmed by the development and operation of the Federal Columbia River Power System.

FOR FURTHER INFORMATION CONTACT:

Anthony R. Morrell, Assistant to the Administrator for Environment, Bonneville Power Administration, P.O. Box 3621-AJ, Portland, Oregon 97208; (503) 230-5136. Maps and additional information are available from the Yakima Project Manager, Tom Clune, P.O. Box 2685, Yakima, Washington 98907; (509) 575-5805.

SUPPLEMENTARY INFORMATION: The proposed plan for the Yakima basin calls for 1 or 2 central facilities, 5 to 8 satellite facilities, and 5 to 10 acclimation sites. The proposed plan for the Klickitat basin calls for one central facility, two satellite facilities, and several acclimation facilities. Water intake and output structures for each facility would be located in the floodplain facilities, to take water from the river for different functions of the facilities and to release water back to the river again. Construction for these facilities could begin as early as 1992.

DOCUMENTS AVAILABLE: An Environmental Assessment (EA) on the project is being prepared. A draft of the EA was distributed for public review in June through August 1989. The EA will include a floodplain assessment, an evaluation of the proposed facilities, and other information on potential environmental effects. You may obtain copies of the EA (106 pages plus appendices) by calling BPA's toll-free numbers: 800-841-5867 for Oregon; or 800-624-9495 for other States. You will reach a recorded message where you may leave a request for the *Yakima/Klickitat EA*.

Issued in Portland, Oregon, on October 10, 1989.

Jack Robertson,

Acting Administrator.

[FR Doc. 89-25032 Filed 10-23-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. G-17554-000, et al.]

Conoco Inc., et al.; Applications for Termination or Amendment of Certificates¹

October 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 5, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-17554-000, D, 9-26-89.....	Conoco Inc., P.O. Box 2197, Houston, TX 77252.	Texas Gas Transmission Corporation, Bayou Pigeon Field, Iberia Parish, Louisiana.	Assigned 7-1-87 to Sound Resource Inc. and James E. Hughes.
C178-195-001, D, 9-21-89.....	Union Oil Co. of California, P.O. Box 3100, Midland, TX 79702.	Natural Gas Pipeline Company of America, Carrick Field, Beaver County, Oklahoma.	Assigned 8-1-89 to Hondo Oil and Gas Compan.
C185-490-002, D, 9-25-89.....	ARCO Oil and Gas Co., Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	El Paso Natural Gas Company, New Mexico Federal Unit Leases, Lea County, New Mexico.	Assigned 1-1-89 to V.H. Westbrook.
C189-548-000, (G-6831), D, 9-18-89.	Amoco Production Co., P.O. Box 3092, Houston, Texas 77253.	Transco Energy Marketing Company, Harris Field, Live Oak County, Texas.	Assigned 4-1-89 to Kamlok, Inc.

Filing Code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

[FR Doc. 89-24968 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C189-549-000, et al.]

Exxon Corp., et al.; Applications for Certificates¹

October 17, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 6, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants

parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
C189-549-000 (C162-1251) F 9-21-89.	Exxon Corp., P.O. Box 2180, Houston, TX 77252-2180.	Arkla Energy Resources, a Division of Arkla, Inc. Arkoma Area, Haskell and LeFlore Counties, Oklahoma.	Acreage acquired 4-1-88 from Sun Exploration and Production Company.
C189-550-000 (G-6355) F 9-26-89.	Marathon Oil Co., P.O. Box 3128, Houston, TX 77253.	El Paso Natural Gas Company, Arrowhead (Jalmat Gas Pool), Lea County, New Mexico.	Acreage acquired 2-1-88 from Concoco Inc.
C189-551-000 (G-3810) F 9-29-89.	Exxon Corp.	El Paso Natural Gas Company, South Fullerton Field, Andrews County, Texas.	Acreage acquired 10-1-88 from Sun Exploration and Production Company.
C189-552-000 (G-5991) F 9-29-89.	Exxon Corp.	El Paso Natural Gas Company South Fullerton Field, Andrews County, Texas.	Acreage acquired 10-1-88 from Sun Exploration and Production Company.

Filing Code. A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial Succession.

[FR Doc. 89-24969 Filed 10-23-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP90-61-000 et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

October 17, 1989.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP90-61-000]

Take notice that on October 16, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP90-61-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Natural Gas Corporation (American), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 27, 1989, under its Rate Schedule ITS, it

proposes to transport up to 515 MMBtu per day equivalent of natural gas for American. United states that it would transport the gas from a receipt point in Sabine Parish, Louisiana, and would deliver the gas to a delivery point in Covington County, Mississippi.

United advises that service under § 284.223(a) commenced August 1, 1989, as reported in Docket No. ST89-4860-000 (filed September 29, 1989). United further advises that it would transport 515 MMBtu on an average day and 187,975 MMBtu annually.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. National Fuel Gas Supply Corp.

[Docket No. CP88-759-003]

Take notice that on September 29, 1989, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88-759-003, a petition, as supplemented on October 11, 1989, to amend the certificate of public convenience and necessity issued in Docket No. CP88-759-000, as amended, so as to authorize, for an additional one-year period commencing December 16, 1989, the transportation on an interruptible basis of up to 112,952 Mcf per day on behalf of National Fuel

Distribution Corporation (Distribution) for the account of 70 of its existing customers. National Fuel also seeks authorization to transport up to 46,437 Mcf per day for the account of 12 additional customers of Distribution for a like term. Finally, National Fuel seeks an additional one-year term commencing December 16, 1989, for the authorization granted to National Fuel in Docket No. CP87-389-003, et al. All of these requests are more fully set forth in the petition and open to public inspection.

It is stated that National Fuel was authorized on December 16, 1988, in Docket No. CP88-759-000 to transport up to 114,132 Mcf of natural gas per day on behalf of Distribution for the account of 83 customers of Distribution. It is stated that on April 27, 1989, and July 26, 1989, the Commission in Docket Nos. CP88-225-002, et al., and CP87-389-003, et al. respectively authorized National Fuel to transport additional volumes of gas and/or modify the receipt or delivery points applicable to certain of these customers.

National Fuel now requests to further amend the certificates issued in Docket No. CP88-759-000, as amended and modified, so as to extend the term of the interruptible transportation of up to 112,952 Mcf per day on behalf of

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

² Appendices A and B can be picked up in the Office of Public Reference, as they will not be published in the Federal Register.

Distribution for the account of 70 of the original customers (Appendix A),¹ and to add 12 new end-user customers using up to 46,437 Mcf per day (Appendix B).¹

National Fuel also seeks to extend the term of the authorization issued July 26, 1989, in Docket Nos. CP87-389-003, *et al.* by an additional one year. It is indicated that National Fuel proposes to extend the authorization for all of the customers of Distribution covered by the July 26, 1989, order except Stackpile Carbon. Details such as receipt/delivery points and sellers are available in National Fuel's application.

National Fuel proposes no change in the authorized rates and proposes no new facilities to implement the change in service.

Comment date: November 7, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP90-23-000]

Take notice that on October 5, 1989, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP90-23-000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the increase in daily contract demand of two existing sales customers and the addition of a new point of delivery for such customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas states that it currently makes sales under its Rate Schedule G-4 to Cincinnati Gas & Electric Company (CG&E), and the Union Light, Heat and Power Company (Union Light). Texas Gas proposes to increase the contract demand for CG&E by 42,000 MMBtu per day and increase the contract demand of Union Light by 8,000 MMBtu per day, for a total increase of 50,000. Texas Gas also proposes to add, as a new delivery point for both CG&E and Union Light, the existing interconnection between Texas Gas and Columbia Gas Transmission Corporation (Columbia) at Lebanon, Ohio.

It is said that the increases in daily contract demand represents a portion of the daily contract demand which Columbia abandoned on the Texas Gas system under the automatic provisions of § 157.21(a) of the Commission's Regulations.

It is further said that the additional contract demand for CG&E and Union Light would increase both companies' access to Texas Gas as a long-term

supplier as well as continue to provide both companies with access to competitively-priced natural gas.

Comment date: November 7, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. East Tennessee Natural Gas Co.

[Docket No. CP90-51-000]

Take notice that on October 12, 1989, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37939-0245, filed in Docket No. CP90-51-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations for authorization to establish, construct and operate new delivery points for existing customers, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee requests authorization to construct and operate 8 new delivery points, as listed below:

(1) One new delivery point and meter facilities for the Athens Utilities Board (Athens), located in McMinn County, Tennessee, to be located where East Tennessee's transmission line crosses county road No. 713.

(2) One new delivery point and meter facilities for the Citizens Gas Utility District of Scott and Morgan Counties (CGUD), to be located in Morgan County, Tennessee.

(3) One new delivery point and meter facilities for Loudon Utilities (Loudon), to be located on East Tennessee's Lenoir City Lateral in Loudon County, Tennessee.

(4) One new delivery point and meter facilities for Oak Ridge Utility District (ORUD), to be located in Roane County, Tennessee.

(5) Two new delivery points for the Middle Tennessee Utility District of Cannon, Cumberland, DeKalb, Hamilton, Putnam, Rhea, Rutherford, Smith, Warren, White, and Wilson Counties, Tennessee (MTUD), both points to be located on East Tennessee's Monterey Lateral in Cumberland County, Tennessee.

(6) One new delivery point for the Natural Gas Utility District of Hawkins County, Tennessee (NGUD), to be located on East Tennessee's American St. Gobain-Hawkins County Extension in Hawkins County, Tennessee.

(7) One new delivery point for Chattanooga Gas Company (Chattanooga), to be located on East Tennessee's Atlanta Lateral in Hamilton County, Tennessee.

East Tennessee states that the total volumes that would be delivered to the customers listed above, would not exceed the total volumes currently authorized for delivery. It is also stated that no existing tariff would prohibit the proposal and that East Tennessee would have sufficient capacity to effect deliveries at each of the proposed delivery points without detriment or disadvantage to its other customers. It is indicated that the proposed delivery points would have no impact on East Tennessee's peak day authorizations because no increased authorization of deliveries to any customers is proposed. It is stated that the proposed delivery points would be financed by cash on hand. East Tennessee indicates that the volumes that would be delivered to the proposed points and the estimated cost of each new delivery point are as follows.

Customer	Peak day (Mcf)	Max. hour (Mcf)	Cost
Athens.....	2,143	125	\$100,000
CGUD.....	341	20	33,000
Loudon.....	1,160	68	100,000
ORUD.....	1,714	100	130,000
MTUD.....	(1) 1,000	58	5,000
	(2) 50	3	5,000
NGUD.....	5,143	300	8,000
Chattanooga.....	2,000	117	95,000

East Tennessee states that the new delivery point for Athens would be to enhance system pressure and to meet industrial and residential growth in the West Athens area. It is stated that the delivery point for CGUD would be to improve the integrity of that system which is presently not looped and it would enable CGUD to minimize the number of customers losing services in the event of an emergency and meet continuing growth in residential and industrial markets. It is stated that the Loudon delivery point would serve an industrial park north of Loudon, Tennessee, and would also permit Loudon to serve adjacent commercial and residential development. It is indicated that the ORUD delivery point would enhance system integrity and enable ORUD to serve a growing portion of its service area by improving system capacity and reliability.

East Tennessee states that one of the MTUD delivery points would enable MTUD to serve those consumers currently without gas service, and that the other MTUD delivery point would primarily provide service to an industrial food processing plant. It is indicated that the Chattanooga delivery point would enhance system pressure

and provide additional supply to a rapidly growing area in Hamilton County that might otherwise experience numerous outages during a peak hour, and would also permit Chattanooga to meet continuing growth in Hamilton County.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP90-35-000]

Take notice that on October 10, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed in Docket No. CP90-35-000, a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for BP Gas Inc. (Shipper), under its blanket certificate issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso states that it proposes to transport up to 100,225 MMBtu of natural gas per day for Shipper from any point of receipt on El Paso's system to delivery points at the borderline between Arizona and California and to a delivery point in Oklahoma.

El Paso also states that the estimated daily and annual quantities would be 10,550 MMBtu and 3,850,750 MMBtu, respectively.

El Paso further states it commenced this service on August 25, 1989, as reported in Docket no. ST89-4574-000.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. El Paso Natural Gas Co.

[Docket No. CP90-47-000]

Take notice that on October 11, 1989, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP90-47-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texaco Gas Marketing Inc. (TGM) under El Paso's blanket certificate issued in Docket No. CP88-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport, on an interruptible basis, up to 10,550 MMBtu equivalent of natural gas on a peak day, 10,550 MMBtu equivalent, and 3,850,750

MMBtu on an annual basis for TGM. It is stated that El Paso would receive the gas for TGM's account at any point on El Paso's system and would deliver equivalent volumes to TGM at various points on El Paso's system in Maricopa County, Arizona. It is asserted that the transportation service would use existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced on September 2, 1989, under the self-implementing authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-4783.

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Pacific Gas Transportation Co.

[Docket No. CP90-1-000]

Take notice that on October 3, 1989, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, CA 94105, filed pursuant to section 3 of the Natural Gas Act, Executive Order No. 10485 as amended by Executive Order No. 12038, the Department of Energy's Delegation Order No. 0204-112 and § 153.10 *et seq.* of the Regulations of the Federal Energy Regulatory Commission (Commission) an application for Authorization under section 3 of the Natural Gas Act for a Presidential Permit for the construction, operation, maintenance and connection at the International Boundary between Canada and the United States of facilities for the Importation of Natural Gas. PGT states that this application is filed in conjunction with its application for a Certificate of Public Convenience and Necessity (Certificate Application) filed on December 20, 1988, in Docket No. CP89-460-000 and as amended on October 2, 1989, all as more fully set forth in the request on file with the Commission and open to public inspection.

PGT is a natural gas company as defined by the Natural Gas Act (NGA) and is engaged in the business of transporting, purchasing, importing and selling natural gas in interstate commerce. PGT owns and operates a natural gas pipeline which extends from the International Boundary with Canada at a point near Kingsgate, British Columbia through the states of Idaho, Washington and Oregon to the Oregon-California border at a point near Malin, Oregon. PGT is a wholly-owned subsidiary of Pacific Gas and Electric Company (PG&E). PG&E is an operating public utility engaged in the business of supplying electric and natural gas service throughout the most northern and central California.

PGT's Certificate Application, as amended, seeks authorization to construct and operate facilities that will allow approximately 853 MMcf/d of natural gas to be received at Kingsgate, British Columbia and approximately 61 MMcf/d to be received at Stanfield, Oregon. At the International Boundary PGT will install 42-inch diameter buried pipe connecting to the existing Kingsgate meter station just north of the International Boundary.

PGT will, on the proposed facilities, provide transportation services pursuant to the FERC tariffs.

PGT states that copies of this filing have been mailed to its customers, interested state commissions and all parties appearing on the official service list in Docket No. CP89-460-000.

Comment date: November 7, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

8. CNG Transmission Corporation

[Docket No. CP90-38-000]

Take notice that on October 10, 1989, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26302-2450, filed in Docket No. CP90-38-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Texas-Ohio Gas, Inc. (Texas-Ohio) under its blanket certificate issued in Docket No. CP86-311-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

CNG proposes to transport gas for Texas-Ohio from various interconnections between Texas Eastern Transmission Corporation and CNG to Niagara Mohawk Power Corporation.

CNG further states that the maximum daily, average daily and annual quantities that it would transport for Texas-Ohio would be 10,000 dt equivalent of natural gas, 52 dt equivalent of natural gas and 18,980 dt equivalent of natural gas, respectively.

CNG indicates that in a filing made with the Commission in Docket No. ST89-4834 it reported that transportation service for Texas-Ohio had begun on August 24, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: December 4, 1989, in accordance with Standard Paragraph G at the end of this notice.

Trunkline Gas Co.

[Docket No. CP90-29-000]

Take notice that on October 6, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP90-29-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval of partial abandonment of sales service to Panhandle Eastern Pipe Line Company (Panhandle), an existing jurisdictional sales customer, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Trunkline and Panhandle have entered into a new Service Agreement dated September 1, 1989. The new agreement provides for a firm daily sales contract demand reduction to 200,000 Mcf pursuant to Panhandle's election of its rights under Order No. 490. By this application, Trunkline seeks Commission authorization to partially abandon such jurisdictional service to be effective November 1, 1989 to coincide with the effective date of the service agreement.

Comment date: November 7, 1989 in accordance with Standard Paragraph F at the end of the notice.

10. Pacific Gas Transmission Co.

[Docket No. CP89-460-001]

Take notice that on October 3, 1989, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed this Amendment to its Application in Docket No. CP89-460-000, pursuant to section 7(c) of the Natural Gas Act (NGA) for a Certificate of Public Convenience and Necessity authorizing PGT to build and operate facilities and authorizing the interstate transportation of natural gas transported thereby for certain customers located in the Pacific Northwest and in California (Shippers). The proposed facilities would complete the looping of PGT's existing pipeline within its existing rights-of-way and are referred to as the Expansion Project. PGT intends to provide firm and interruptible transportation services on these new, incremental facilities, all as more fully set forth in the request on file with the commission and open to public inspection.

PGT's original application in Docket No. CP89-460-000 seeks authorization to construct and operate facilities and authorization for the interstate transportation of natural gas transported thereby for certain shippers in the Pacific Northwest the intermountain region and California (jointly referred to as shippers). Specifically, PGT seeks authorization to construct and operate

an incremental looping of its existing pipeline facilities from Kingsgate, British Columbia to Malin, Oregon at the interconnection with the facilities of PGT's parent Pacific Gas and Electric (PG&E). The original facilities design in Docket No. CP89-460-000 provided for firm annual average transportation service of approximately 150 MMcf per day to the Pacific Northwest and 600 MMcf per day to California.

Since the filing of the original application in Docket No. CP89-460-000, PGT states that it has fully subscribed the capacity on the proposed facilities through the execution of exclusive Precedent Agreements. Moreover, PGT states, discussions with these Shippers led to a commitment by PGT to modify the design of the looping facilities to reflect the specific annual seasonal requirements of these shippers and to add additional delivery points.

PGT states that the purpose of its amendment is to reflect these additional shippers, their volumetric requirements and the resulting facility and related cost changes. Accordingly, PGT states, it incorporates its original application by reference. PGT now seeks authorization to construct and operate facilities that will allow, on a firm annual average basis, approximate receipts and deliveries as follows:

Receipts (including fuel and line losses):
 —872 MMCF/d at Kingsgate, British Columbia
 —62 MMcf/d at Stanfield, Oregon
 Deliveries:
 —150 MMcf/d in the Pacific Northwest
 —766 MMcf/d to PG&E near Malin, Oregon

PGT will install approximately 430 miles of 42-inch diameter pipeline looping from the International Boundary to Malin, where PGT's system interconnects with that of PG&E and an additional 56,800 horsepower of compression.

The Expansion Project also includes looping of the PG&E intrastate pipelines within the state of California. The proposed 42-inch looping will continue for 294 miles on PG&E's system to a terminus near Brentwood, California. PG&E will also install an additional 120 miles of 36-inch looping south of Brentwood, paralleling existing pipelines to Panoche Station. PG&E facilities are all within the state of California Public Utilities Commission (CPUC). PG&E is seeking appropriate certificate authorization from the CPUC of such facilities (CPUC Application No. 89-04-033).

PGT's existing compressor station will be used. Horsepower additions are

proposed at three compressor stations. Compressor equipment changes will be required on 22 existing units at 11 existing stations. One turbine and compressor will be added at an existing station. Two existing compressors and their turbines will be replaced. Turbines used to drive the remaining existing compressors are expected to remain in place for the new service. Existing metering facilities will be expanded to increase flows and new meters and taps will be installed for deliveries to Wallula and Hermiston.

Proposed Expansion Service

As more fully described in the application, PGT states that the firm transportation capacity proposed to be constructed is fully subscribed. The Shippers have signed Precedent Agreements committing to the Expansion Project on an exclusive basis for the firm capacity identified below:

	Annual average MMcf/d	Winter MMcf/d	Summer MMcf/d
<i>Pacific Northwest</i>			
Kingsgate, B.C. to Spokane WA; Washington Water Power Company	45	60	30
Kingsgate, B.C. to Stanfield, OR and proximity; Cascade Natural Gas Corporation.....	30	37.5	22.5
IGI Resources, Inc.....	33	38	28
Northwest Natural Gas Company.....	48	50	30
Total Pacific Northwest.....	148	185.5	110.5

<i>California</i>			
Kingsgate, B.C. to Kern River Station, CA:			
American Hunter Exploration, Ltd.			50
BP Gas Inc.			10
The City of Burbank			5
The City of Glendale			5
The City of Long Beach.....			15
The City of Pasadena.....			5
NATGAS US Inc.			50
Pacific Gas and Electric Company.....			100
Pancontinental Oil Ltd.....			5
Salmon Resources Limited			50
San Diego Gas and Electric Company.....			100
Southern California Edison Company.....			200
Suncor Inc.			50
Trigen Resources Corporation.....			50
Stanfield, OR to Kern River Station, CA:			
BP Resources Canada Ltd.....			10
Williams Gas Marketing Company.....			50
Total California			753

The Canadian gas purchased by the Shippers will be transported to the International Boundary near Kingsgate, through additional pipeline expansions in Alberta and southeastern British Columbia. PGT will transport the gas for the Shippers through the Expansion Project, to various off-line delivery points in Idaho, Washington, and Oregon for redelivery to the Pacific Northwest and intermountain region Shippers, and to a delivery point on PG&E's pipeline system at Malin, Oregon where PG&E will provide the firm transportation on to Kern River Station for redelivery to California Shippers. PGT will also receive certain volumes at Stanfield, Oregon for delivery to Kern River Station.

Expanding its facilities as necessary, PG&E will deliver thermally equivalent volumes, adjusted for fuel and line losses, to southern California at the major intrastate interconnection of the PG&E and Southern California Gas Company (SoCal Gas) systems at the Kern River Station. Gas service to northern and central California will also be provided from this point by PG&E. In the Pacific Northwest and the intermountain region, Shippers will be responsible for redelivery of the gas to their own distribution systems from the point of interconnection with Northwest's existing system at Stanfield, Spokane, or other established delivery points.

PGT estimates that on or about November 1, 1993, it will begin deliveries for the Customers, assuming the receipt of all necessary regulatory approvals and the completion of necessary preconstruction activities in time to allow construction to begin in early 1992.

Proposed Facilities, Capital Costs, and Tariffs

PGT's proposed facilities now consist of 430 miles of 42-inch pipeline looping which will operate at the same maximum pressure as PGT's existing pipeline, 911 psig.

Capital costs, including allowance for funds used during construction, for PGT's portion of the Expansion Project are estimated, on a fourth quarter 1988 cost basis, at \$653,050,000, an increase over the originally filed costs of \$164,934,000. PGT proposed to finance the Expansion Project, with an initial projected mix of 70 percent debt and 30 percent equity capital. PGT proposes to depreciate the Expansion Project based on a 30-year life.

The cost for the proposed new transportation services continue to include only incremental costs and do not include any costs of PGT's existing

pipeline system. Under this cost allocation proposal, PGT's existing customers bear no cost responsibility for service on the Expansion Project.

PGT now proposes to provide new firm transportation service, based on the incremental cost of the Expansion Project, via only Rate Schedule T-3, which now incorporates all firm transportation service. Previously-filed Schedule T-4 is now deleted.

The proposed rate structure has been modified from a two-part monthly reservation charge to a one-part reservation charge initially designed to recover 100 percent of the total fixed costs of the Expansion Project based upon contracted maximum daily quantities. This change reflects the Commission's rate design policy at Docket No. PL-89-2, et al. PGT continues to request the authority to negotiate individually with Customers, a reservation charge which may be lower than the maximum level contained in this Application. Firm transportation priorities would be based on the value of the Customer's per-unit reservation charge.

Some specific changes from PGT's original proposal in Docket No. CP89-460-000 in its amendment are:

(1) PGT proposes to install approximately 430 miles of 42-inch diameter pipeline looping instead of the 36-inch diameter pipeline looping previously proposed.

(2) PGT states that discussions with its shippers led to a commitment by PGT to modify the design of the looping facilities to reflect the specific annual seasonal requirements of the shippers.

(3) The original facilities design provided for firm annual average transportation service of approximately 150 MMcf per day to the Pacific Northwest and 600 MMcf per day to California; whereas, the amended proposal calls for an increase in deliveries to California of approximately 766 MMcf per day near Malin, Oregon.

(4) Capital costs for the amended proposal are now estimated at \$635,050,000 on a 1988 cost basis rather than the \$470,116,000 previously proposed.

(5) The original proposed rate structure consisted of a two-part monthly reservation charge using a D-1 and D-2 component, each designed to uncover 50 percent of the total fixed cost of the expansion; whereas, the amended proposal consists of a one-part reservation charge initially designed to recover 100 percent of the total fixed cost of the expansion project.

Comment date: November 7, 1989, in accordance with the first subparagraph

of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24974 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-2210-000]

ANR Pipeline Co.; Application

October 18, 1989.

Take notice that on October 12, 1989,¹ ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed an application in Docket No. CP89-2210-000, pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing ANR to change its methodology for determining the heat content of natural gas measured and to maintain customer entitlements at current levels, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that the instant application is being filed to reflect a change in method of measuring the Btu content of gas subject to its rate schedules which are on file with the Commission. More specifically, ANR states that henceforth the Btu content of the gas would be measured on a "dry" basis rather than a "saturated" basis in accordance with its rate case filings submitted in Docket No. RP89-181-000. It is explained that although the

maximum daily contract quantities and annual contract quantities are expressed in dekatherms, the effect of the change in method of measurement would result in a customer's having the right to receive 1.77 percent less heating value than before the change. Therefore, to maintain customer entitlements at current levels, ANR proposes to increase the dekatherm amounts 1.77 percent for customers requesting such increase.

ANR states that it is presently carrying out the process of executing service agreements with the sales customers listed in the appendix hereto, to reflect the increased amounts up to 1.77 percent, and copies of such agreements would be filed with the Commission when available. Furthermore, ANR proposes to make the revised service entitlements set forth in the appendix effective on November 1, 1989, and to operate pursuant thereto from that date forward. ANR advises that all but two of ANR's "X-" rate schedules are measured in volumes and not dekatherms. ANR further advises that those contracts are either not affected by the change of heat content measurement method or the customers have not elected an increase.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 25, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules

of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

ANR PIPELINE COMPANY; PROPOSED CONTRACT ENTITLEMENT INCREASES

[Volumes in Dth]

Resale customers	Entitlement base		Revised entitlement		Proposed increase	
	MDQ	ACQ	MDQ	ACQ	MDQ	ACQ
CD-1						
Associated Natural Gas Co.....	10,796	1,300,000	10,796	1,300,000	0	0
Battle Creek Gas Co. ¹	4,700	1,700,000	4,700	1,700,000	0	0
Fountaintown Gas Co.....	4,500	450,000	4,500	450,000	0	0
Illinois Power Co.....	8,000	1,050,000	8,000	1,050,000	0	0
Iowa Electric Light and Power Co.....	5,502	530,534	5,599	539,324	97	9,390
Iowa Southern Utilities Co.....	40,000	2,900,000	40,000	2,900,000	0	0
Madison Gas and Electric Co.....	129,150	13,500,000	129,150	13,500,000	0	0
Michigan Gas Utilities Co. ¹	12,500	3,200,000	12,500	3,200,000	0	0
Michigan Gas Utilities Co.....	105,656	11,235,600	105,656	11,235,600	0	0
Michigan Gas Co.....	92,136	12,000,000	92,136	12,000,000	0	0
Midwest Gas Co.....	9,471	1,024,320	9,471	1,024,320	0	0
Northern Indiana Fuel & Light Co.....	14,070	1,000,000	14,319	1,017,700	249	17,700
Northern Indiana Public Service Co.....	12,261	1,615,787	12,261	1,615,787	0	0
Ohio Gas Co.....	2,200	127,500	2,200	127,500	0	0
Ohio Valley Gas Corp.....	9,500	820,000	9,500	820,000	0	0
United Cities Gas Co.....	10,030	557,175	10,030	557,175	0	0
West Ohio Gas Co.....	9,107	500,000	9,268	508,850	161	8,850
Wisconsin Fuel and Light Co.....	70,000	9,000,000	71,239	9,159,300	1,239	159,300
Wisconsin Gas Co.....	665,000	54,400,000	676,700	55,350,000	11,700	950,000
Wisconsin Natural Gas Co.....	352,391	48,500,000	358,628	49,358,450	6,237	858,450
Wisconsin Power and Light Co.....	120,000	11,475,000	122,124	11,678,108	2,124	203,108

¹ The instant filing was received by the Commission on September 29, 1989. However,

pursuant to § 381.103(b)(iii) of the Regulations, the

filing date corresponds to the date the appropriate filing fees were received, i.e., October 12, 1989.

ANR PIPELINE COMPANY; PROPOSED CONTRACT ENTITLEMENT INCREASES—Continued

[Volumes in Dth]

Resale customers	Entitlement base		Revised entitlement		Proposed increase	
	MDQ	ACQ	MDQ	ACQ	MDQ	ACQ
Wisconsin Public Service Corp.....	237,040	25,582,500	237,040	25,582,500	0	0
Total CD-1	1,924,010	202,468,416	1,945,817	204,675,214	21,807	2,206,798
MC-1						
Michigan Copnsolidated Gas Co.....	856,000	100,000,000	856,000	100,000,000	0	0
SGS-1						
Albany, Missouri, City of.....	1,717	138,000	1,747	140,443	30	2,443
Aledo, Illinois, City of.....	3,204	310,000	3,261	315,487	57	5,487
Allerton Gas Co.....	1,159	314,686	1,180	320,256	21	5,570
Alta Vista, Kansas, City of.....	995	50,000	995	50,000	0	0
Bethany, Missouri, City of.....	2,744	300,000	2,744	300,000	0	0
Bloomfield, Iowa, City of.....	3,015	220,000	3,015	220,000	0	0
Chrisney, Indiana, Town of.....	955	181,403	955	181,403	0	0
City Gas Co.....	6,030	850,000	6,137	865,045	107	15,045
Community Natural Gas Co., Inc.....	2,990	250,000	3,043	254,425	53	4,425
Havensville, City of.....	200	15,000	200	15,000	0	0
Grant City, Missouri, City of.....	1,558	65,000	1,558	65,000	0	0
Indiana Gas Co., Inc.....	2,614	150,000	2,614	150,000	0	0
Indiana Natural Gas Corp.....	2,513	477,375	2,513	477,375	0	0
Lamoni, Iowa, City of.....	2,171	200,000	2,171	200,000	0	0
Lincoln Natural Gas Co., Inc.....	6,030	1,071,981	6,030	1,071,981	0	0
Lineville, Iowa, City of.....	603	25,000	603	25,000	0	0
Milan, Missouri, City of.....	3,161	220,000	3,161	220,000	0	0
Missouri Valley Natural Gas Co.....	4,878	413,500	4,964	420,819	86	7,319
Morning Sun, Iowa, City of.....	1,106	75,000	1,106	75,000	0	0
Moulton, Iowa, City of.....	704	42,000	704	42,000	0	0
New Boston, Illinois, City of.....	804	53,000	818	53,938	14	938
Paris-Henry County Public Utility.....	6,200	800,000	6,310	814,160	110	14,160
Preinceton, Missouri, City of.....	1,616	90,000	1,616	90,000	0	0
St. Joseph Light and Power Co.....	8,939	1,500,000	9,097	1,526,550	158	26,550
Stanbery, Missouri, City of.....	1,111	85,000	1,131	86,505	20	1,505
Unionville, Missouri, City of.....	2,221	145,000	2,221	145,000	0	0
Mayland, Iowa, City of.....	1,196	80,000	1,196	80,000	0	0
West Tennessee P.U.D.....	4,523	859,275	4,603	874,484	80	15,209
Wetmore, Kansas, City of.....	402	23,100	402	23,100	0	0
Winfield, Iowa, City of.....	1,382	85,000	1,406	86,505	24	1,505
Wisconsin Southern Gas Co.....	3,015	400,000	3,068	407,080	53	7,080
Total SGS-1.....	79,756	9,489,320	80,569	9,596,556	813	107,236

¹ Note: Entitlements shown are pending Commission authorization in Docket No. CP88-14-000.

[FR Doc. 80-24973 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-231-001, TM90-1-30-001, TM90-3-30-000]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

October 17, 1989.

Take notice that Trunkline Gas Company (Trunkline) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute First Revised Sheet No. 3-A.5
First Substitute First Revised Sheet No. 3-A.6

The proposed effective date of these revised tariff sheets is October 1, 1989.

Trunkline states that on August 31, 1989 Trunkline filed revised tariff sheets to reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988, December 8, 1988, February 17, 1989 and May 10, 1989 in

Docket No. RP88-239-000 reflecting the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 21.4(c) of Trunkline's FERC Gas Tariff, Original Volume No. 1. Additionally, Trunkline proposed to modify section 21.4(c) of its tariff to permit automatic adjustments of carrying charges in order to simplify the billing process and avoid the necessity of the annual adjustment filing to reflect carrying charge differences.

Trunkline states that it is submitting these revised sheets in compliance with the Commission's Letter Order dated September 29, 1989 in Docket Nos. RP89-231-000 and TM90-1-30-000 to include the first annual adjustment to carrying costs to reflect actual carrying charges for the first years' operation of the TOP Settlement Cost Surcharge mechanism.

Trunkline states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24972 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-232-001, TM90-5-28-000, TM90-4-28-001]

**Panhandle Eastern Pipe Line Co.;
Proposed Changes in FERC Gas Tariff**

October 17, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1: First Substitute First Revised Sheet No. 3-C.4 First Substitute First Revised Sheet No. 3-C.5 First Substitute First Revised Sheet No. 3-C.6

The proposed effective date of these revised tariff sheets is October 1, 1989.

Panhandle states that on August 31, 1989 Panhandle filed revised tariff sheets to reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988 and December 5, 1988 in Docket No. RP88-241-000 reflecting the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 23 of Panhandle's FERC Gas Tariff, Original Volume No. 1. Additionally, Panhandle proposed to modify sections 23.4(c) and 23.5 of its tariff to permit automatic adjustments of carrying charges in order to simplify the billing process and avoid the necessity of the annual adjustment filing to reflect carrying charge differences.

Panhandle states that it is submitting these revised sheets in compliance with the Commission's Letter Order dated September 29, 1989 in Docket Nos. RP89-232-000 and TM90-4-28-000 to include the first annual adjustment to carrying costs to reflect actual carrying charges for the first years' operation of the TOP Settlement Cost Surcharge mechanism.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24971 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-227-001, TM90-2-28-001, TM90-6-28-000]

**Panhandle Eastern Pipe Line Co.;
Proposed Changes in FERC Gas Tariff**

October 17, 1989

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on October 12, 1989, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1: First Substitute First Revised Sheet No. 3-C.7 First Substitute First Revised Sheet No. 3-C.8 First Substitute First Revised Sheet No. 3-C.9

The proposed effective date of these revised tariff sheets is October 1, 1989.

Panhandle states that on August 31, 1989 Panhandle filed revised tariff sheets to reflect revisions to the Order No. 500 take-or-pay direct billing amounts approved by Commission Orders dated September 28, 1988, December 8, 1988, March 1, 1989 and May 17, 1989 in Docket No. RP88-240-000 reflecting the first annual adjustment to carrying charges and monthly TOP Fixed Surcharges as provided in section 24 of Panhandle's FERC Gas Tariff, Original Volume No. 1. Additionally, Panhandle proposed to modify section 24.2 of its tariff to permit automatic adjustments of carrying charges in order to simplify the billing process and avoid the necessity of the annual adjustment filing to reflect carrying charge differences.

Panhandle states that it is submitting these revised sheets in compliance with the Commission's Letter Order dated September 29, 1989 in Docket Nos. RP89-227-000 and TM90-2-28-000 to include the first annual adjustment to carrying costs to reflect actual carrying charges for the first years' operation of the TOP Settlement Cost Surcharge mechanism.

Panhandle states that copies of its filing have been served on all parties, affected jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR Section 385.214, 385.211 (1989)]. All such motions or protests should be filed on or before

October 24, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-24970 Filed 10-23-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

**Energy Research Advisory Board;
Open Meeting**

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Energy Research Advisory Board (ERAB), DOE.

Date & Time: November 8, 1989, 1-5 p.m.; November 9, 1989, 8:30 a.m.-12 noon.

Place: U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5444.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

November 8, 1989

1 p.m. Administrative Items

1:15 p.m. Discussion on ERAB Activities and Future Plans for the Secretary's Advisory Board

2:15 p.m. Review of Cold Fusion Panel's Final Report

4:50 p.m. Public Comment (10 minute rule)

5 p.m. Adjourn

November 9, 1989

8:30 a.m. Discussion of the Panel on Accelerator Production of Tritium

10 a.m. DOE's Activities in Developing a National Energy Strategy

11 a.m. Possible Future Board Studies
12:50 p.m. Public Comment (10 minute rule)

1 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on October 19, 1989.

J. Robert Franklin,

Deputy Advisory Committee, Management Officer.

[FR Doc. 89-25033 Filed 10-23-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-45-NG]

Transco Energy Marketing Co.; Conditional Order and Final Interim Order Granting Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of conditional order and final interim order granting authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued a conditional order and a final interim order granting Transco Energy Marketing Company (TEMCO) authorization to import natural gas from Canada. The order issued in FE Docket No. 89-45-NG conditionally authorizes TEMCO to import up to 75,000 Mcf per day of natural gas using proposed new facilities over a term beginning on the date authorization is granted and ending October 31, 2002. The order also conditionally authorizes TEMCO to import up to the same volume of natural gas on a two-year blanket basis over proposed new facilities if the gas is not taken under TEMCO's long-term contracts. The order also provides

authorization to import the same volumes of natural gas through existing facilities until a final opinion and order is entered, or, in the case of the blanket authority, for up to two years from the date of first delivery.

Final approval of this import using proposed new facilities is conditioned on DOE's completion of its responsibilities under the National Environmental Policy Act of 1969 and its reexamination at the time this conditional order is finalized. Approval of this import using existing facilities is made under the DOE's categorical exclusion published at 54 FR 12474.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 11, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-25030 Filed 10-23-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 88-63-NG]

Vector Energy (U.S.A.) Inc.; Application to Amend Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application to amend authorization to import natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on September 26, 1989, of an application filed by Vector Energy (U.S.A.) Inc. (Vector) to amend DOE/FE Opinion and Order No. 308 (Order 308) (April 24, 1989, 1 FE Para. 70,217) that grants Vector authority to import up to 13.14 Bcf per year of Canadian natural gas over a term beginning December 1, 1989, through November 30, 2009. Vector asks that its authorization be amended because, subsequent to the issue of Order 308, some of the pricing provisions in the gas sale and purchase agreements for the proposed import were amended to conform to certain National Energy Board requirements to obtain a Canadian export license.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene,

and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., November 24, 1989.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert Groner, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1657;

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Vector, a Delaware corporation, is a wholly-owned subsidiary of Vector Energy, Inc., with its principal place of business in Calgary, Alberta. The principal business of Vector is that of an oil and gas producer and marketer with markets in the U.S. and Canada. Order 308 authorized Vector to import natural gas from Canada "in accordance with the arrangement proposed in the application in this proceeding" to fuel a new 162 MW cogenerator being constructed by Altresco Pittsfield L.P. (Altresco) at the General Electric manufacturing and research facility in Pittsfield, Massachusetts. Amendments to some of the pricing provisions in the gas sale and purchase agreements between Vector and the seven Alberta producers contracted to supply the proposed import have altered some of the elements of the pricing mechanism authorized in Order 308. Consequently, Vector requests an amended authorization that takes into account the recent contractual amendments.

On July 24, 1989, Vector, the seven Alberta producers, Altresco, and New England Power, the ultimate purchaser of the power produced by the cogeneration facility, renegotiated certain terms of the June 24, 1988, Agreement and the June 29, 1988, Agreement which underlie the proposed project. Vector states that the contract amendments can be summarized as follows:

(1) The "Base Price" specified in Schedule "B" of the agreements has

been changed to \$1.26 (U.S.) per MMBtu from \$1.12 (U.S.) per MMBtu.

(2) The "Index" specified in Schedule "A" to the agreements, and used in calculating the gas price in section 1.1(o), has been revised to 50% oil, 40% Tennessee WACOG, 10% coal, from 50% oil, 25% Tennessee WACOG, 25% Coal; and

(3) The "Base Index" specified in Section 1.1(b) of the agreements, and used in calculating the gas price in Section 1.1(o) has been changed to \$2.05 (U.S.) per MMBtu from \$2.16 (U.S.) per MMBtu (reflecting a change in the base year to the first half of 1989 from 1987).

Vector states that the renegotiated terms of the gas sale and purchase agreements are consistent with the DOE policy guidelines and terms of Order 308. According to Vector, the renegotiated indexing provisions are more heavily weighted toward U.S. natural gas costs. Vector states that there were no changes to the contract price renegotiation provisions designed to ensure that the imported gas will be competitive with U.S. natural gas and other fuels. Further, Vector states that there has been no change with respect to the demonstrated need for the gas supplies or the contractual warranty obligations of the suppliers. Therefore, Vector requests that Order 308 be amended only to the extent necessary to reflect the pricing amendments to the gas supply and purchase agreements, and that no other changes be made to the terms states in Order 308.

The decision on this application will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Other matters that may be considered in making a public interest determination in a long-term arrangement such as this include need for gas and security of the long-term supply. Parties that may oppose this application should comment in their responses on the issues of competitiveness, need for the gas, and security of supply as set forth in the policy guidelines. The applicant asserts that this amended import arrangement continues to be competitive, needed, and secure. Parties opposing the arrangement bear the burden of overcoming these assertions.

All parties should be aware that if the requested amended import is approved, the authorization will continue to be conditioned on the filing of quarterly reports indicating volumes imported and the purchase price. Further, all parties

should be aware that FE intends to review the entire import arrangement.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. Persons who have already been granted permission to intervene in this docket need not file new motions to intervene, but may submit additional comments or request additional procedures in this case concerning Vector's request to amend Order 308. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, and oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.318.

A copy of Vector's amendment application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 18, 1989.

Clifford P. Tomaszewski,

Acting Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89-25031 Filed 10-23-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3674-3]

Chadbourn Tire Fire Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for past response costs at the Chadbourn Tire Fire Site, Chadbourn, North Carolina, with Kenneth J. Ray and Horace M. Cox. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Investigation Support Clerk, Site Investigation and Support Section, Waste Management Division, U.S. EPA, Region IV, 345 Courtland St., NE., Atlanta, GA 30365, 404/347-5059.

Written comments may be submitted to the person above by (30) days from date of publication.

Dated: October 16, 1989.

Lee A. Deihns III,

Acting Regional Administrator.

[FR Doc. 89-25023 Filed 10-23-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-842-DR]

Puerto Rico; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico (FEMA-842-DR), dated September 21, 1989, and related determinations.

DATED: October 11, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated October 11, 1989, the President amended his declaration of a major disaster for the Commonwealth of Puerto Rico, dated September 21, 1989, as follows:

I have determined that the damage from Hurricane Hugo in certain areas of the Commonwealth of Puerto Rico, which resulted in my declaration of a major disaster on September 21, 1989, is of sufficient severity and magnitude that special conditions are warranted regarding the limitation of Federal funds provided under PL 93-288 for Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to \$10 per capita. Eligible costs for Public Assistance exceeding \$10 per capita will be funded at 100 percent.

Please notify the Governor of Puerto Rico and the Federal Coordinating Officer of this amendment to my major disaster declaration. (Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24945 Filed 10-23-89; 8:45 am]

BILLING CODE 6718-02-M

Virgin Islands; Amendment to Notice of a Major Disaster Declaration

[FEMA-841-DR]

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of the Virgin Islands (FEMA-841-DR), dated September 20, 1989, and related determinations.

DATED: October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that, in a letter dated October 12, 1989, the President amended his declaration of a major disaster for the Territory of the Virgin Islands dated September 20, 1989, as follows:

I have determined that the damage from Hurricane Hugo in certain areas of the Territory of the Virgin Islands, which resulted in my declaration of a major disaster on September 20, 1989, is of sufficient severity and magnitude that special conditions are warranted regarding the limitation of Federal funds provided under Public Law 93-288, as amended by Public Law 100-707, for the Individual and Family Grant program and Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to \$10 per capita. Eligible costs for Public Assistance exceeding \$10 per capita will be funded at 100 percent.

I further amend my declaration to authorize Federal funds for the Individual and Family Grant program at 75 percent of total actual costs up to \$10 per capita. Actual costs exceeding \$10 per capita will be funded at 100 percent.

Please notify the Governor of the Virgin Islands and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-24946 Filed 10-23-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port Authority of New York and New Jersey

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10220. Interested parties may submit comments on each

agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003158-005

Title: Port Authority of New York and New Jersey Terminal Agreement.

Parties: Port Authority of New York and New Jersey Ecuadorian Line, Inc.

Synopsis: The Agreement modifies the parties basic terminal lease to provide for the construction of a one-story office building of approximately three thousand (3,000) square feet and interior work involving the installation of trade fixtures and equipment.

Agreement No.: 224-010690-003

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles (LA), Trans Pacific Container Service Corporation (TPCS), [Assignee of Mitsui O.S.K. Lines (MOL)].

Synopsis: The Agreement amends the basic agreement to provide that TPCS will: pay LA a minimum annual guarantee of \$6,350,000 based on wharfage and dockage revenues; share wharfage and dockage revenues with LA on a 50/50 basis from the first dollar until \$12,700,000 has been reached and, thereafter, TPCS will retain 75% of dockage and wharfage tariff charges; increase the term of the lease to 15 years; guarantee LA 800,000 revenue tons of MOL's OCP cargo; waive certain late completion penalties against LA arising from the construction of the terminal; accept certain modified expanded provisions in the lease; and, automate its wharfage reports into LA's accounting system.

By Order of the Federal Maritime Commission.

Dated: October 19, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-25043 Filed 10-23-89; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping

Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

SIT Transportes Internacionales Inc.,
700 Belleville Turnpike, Kearny, NJ
07032

Officers: Jose Luis Tabuenca,
President/Director, Jose Tabuenca
Garcia, Secretary/Treasurer, Astrid
Van Stolk, V. Pres./Manager of
Operations

Josmar and Son Enterprises, Inc. dba
Josmar International Freight
Forwarding Co., 8861 S.W. 85th
Terrace, Miami, FL 33173

Officer: Jose R. Cosio, President
Super Trans Plus, Inc., 746 S. Glasgow
Ave., 2nd FL, Inglewood, CA 90301

Officers: Bob Jan, President, David
Lee, Secretary, Alex Pon,
Stockholder

MTC Cargo Systems, Inc. dba MTC
Cargo Services, 11541 Everston St.,
Norwalk, CA 90650

Officers: Federico Magdangal,
President, Edgar M. Trovada, V.
President/Chief of Operations,
Anna May C. Trovada, Corporate
Secretary, Suzette A. Cabalu,
Corporate Treasurer

A.H.S. International Inc., 200 Eastern
Ave., Bensenville, IL 60106

Officers: Hyo Sub Yoon, President/
Director/Stockholder, Hyon Soon
Yoon, Secretary/Treasurer/
Director, So Sup Yoon, Director

Jorge M. Palacios, 3741 N.W. 66th Ave.,
Virginia Gardens, FL 33166

Vantage International Forwarding Ltd.,
11222 La Cienega Blvd, No. 225,
Inglewood, CA 90304

Officer: Rene K. Debrunner, President
Arrow Cargo dba Aramex-Arrow Air
Cargo Co., 2601-B Saulino Ct.,
Dearborn, MI 48120

Officers: Louis K. Arida, President,
Marlene L. Arida, Secretary/
Treasurer, Albert H. Knoth, Vice
President

Karl Heinz Schneider dba Lee's
International, 16100 S.W. 88th Ave.
Rd., Miami, FL 33157

Hartford Despatch & Warehouse
Company, Inc., dba Hartford
Despatch International, 225
Prospect St., East Hartford, CT
06108

Officers: Robert K. Mooney,
Chairman, Anson B. Mooney,
President, William E. Crowley, Vice
President, Jacqueline S. Danise,
Vice President, Alan E. Stegman,

Vice President, G. Nicholas
Pahaults, Treasurer

Benjamin B. Nelson, Jr., 3312 Burnt Mill
Road, Virginia Beach, VA 23452

Christa Katten, 734 So. Foothill Blvd.,
Cloverdale, CA 95425

Speedway Consolidators, Inc., 9100 S
Sepulveda, Blvd, No. 109-A, Los
Angeles, CA 90045

Officers: Louis Chan, President/
Stockholder, Wilfred Koh, V.
President/Secr./Dir./Stockh., Young
B. (Raymond) Kim, Exec. V.
President, K. Y. Chung, Director/
Stockholder

George Robert Cowan, 4701 Haygood
Point Rd, Virginia Beach, VA 23455

Maria Velez de Espinosa dba Maria
Velez, Mai Basic Four Center Bldg.,
Suite 314, JFK Ave. 2000, Puerto
Nuevo, Puerto Rico 00922

By the Federal Maritime Commission.

Dated: October 18, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-24956 Filed 10-23-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-2685]

Sears, Roebuck and Co.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's 1977 consent order (42 FR 27218) by deleting the prohibition on respondent's use of radius clauses, modifying the prohibition on use clauses, and modifying the order so that when it applies to Sears in its capacity as a shopping center tenant it does so only when Sears is a major tenant.

DATES: Consent Order issued April 20, 1977. Modifying Order issued July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg or Abbott McCartney, FTC/S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of Sears, Roebuck and Company. The prohibited trade practices and/or corrective actions, as set forth at 42 FR 27218, are changed and deleted, in part, as noted in the order that follows.

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

ORDER REOPENING AND MODIFYING FINAL ORDER TO CEASE AND DESIST

Commissioners: Daniel Oliver, Chairman,
Terry Calvani, Mary L. Azcuenaga,
Andrew J. Strenio, Jr., Margot E. Machol

On February 24, 1989, respondent Sears, Roebuck and Co. filed a "Petition to Set Aside Consent Order" ("Petition") asking the Commission to reopen and set aside the consent order issued in this matter on April 20, 1977, 89 F.T.C. 240 (1977). In event the order is not reopened and set aside in its entirety, Sears spells out in an "Alternative Proposed Modification of Order with Explanation" ("Alternative Proposal") specific modifications to the order that Sears requests for "all of the difficulties which have been caused to Sears by this order." Sears filed its request pursuant to subsection 5(b) of the FTC Act, 15 U.S.C. 45(b), and § 2.51 of the Federal Trade Commission Procedures and Rules of Practice, 16 CFR 2.51. One public comment was received.

The order prohibits Sears from, among other things, entering or enforcing certain restrictive lease or easement agreements in connection with its participation in regional and super regional shopping centers.¹ Sears operates department and specialty shopping centers through its Sears Merchandise Group and engages in shopping center development and management through its Homart Development Co. See Petition at 25, 45.

Sears maintains in the Petition that changed conditions of fact and law require the Commission to reopen and set aside the order. Sears also requests that the Commission reopen and set aside the order in the public interest. In the event the Commission decides not to reopen the order in its entirety, Sears' Alternative proposal asks the Commission to reopen and set aside or modify specific portions of the order that Sears finds particularly onerous and harmful to competition.

The Commission has carefully considered Sears' requests and has concluded that Sears has not made a satisfactory showing that reopening of the entire order is warranted based upon changed conditions of fact or law or in the public interest. Nor has Sears established that changed conditions require reopening of any prohibition in the order. However, the Commission has concluded that Sears has made a

¹ The order is limited to Sears' participation in shopping centers containing (1) 200,000 square feet or more of total floor area designed for retail occupancy, (2) at least two tenants other than respondent, (3) at least one major tenant other than respondent, and (4) on-site parking. See Paragraph I.(b).

satisfactory showing that it would be in the public interest to reopen and set aside or modify several prohibitions in the order.

I. The Order to Cease and Desist

The Commission issued its complaint and order on April 20, 1977, with the consent of Sears. See *Sears, Roebuck and Co.*, 89 F.T.C. 240 (1977). The order prohibits five generic types of restrictions in shopping center leases or operating agreements, namely, (1) radius clauses, that is, restrictions on a tenant's ability to operate a like store within a specified distance of the shopping center; (2) use clauses specifying the types of products or services that tenants shall sell; (3) rights held by major tenants to approve or disapprove admission of other tenants into the shopping center; (4) clauses that require developers to exclude specified types of retail merchants or specifically named retail merchants; and (5) tying clauses that require a retail merchant in one shopping center to operate one or more stores in other shopping centers developed or managed by Sears.

II. Standard for Reopening a Final Order of the Commission

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited to show how the public interest warrants the requested modification. 16 CFR 2.51. In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 24, 1983), at 2. For example, it may be in the public interest to modify an order to "relieve any impediment to effective competition that may result from the

order." *Damon Corp.*, Docket No. C-2916, 101 F.T.C. 689, 692 (1983). Once showing of need is made, the Commission will balance the reasons favoring the modification requested against any reasons not to make the modification. *Damon* Letter at 2. The Commission will consider whether the particular modification sought is appropriate to remedy the identified harm.

The language of section 5(b) plainly indicates that the burden is on the petitioner to make "a satisfactory showing" of 1 changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, by means other than conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 2d Sess. 9-10 (1979). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to determine whether modification is required and, if so, the nature and extent of the modification. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981).

III. Sears' Request to Reopen and Set Side the Order in Its Entirety

Sears requests that the order be reopened in its entirety either to set aside the order at this time or set a future date on which the order will expire. Sears, however, fails to show either changed conditions of law or fact that require reopening, now or in the future, or that such action is warranted in the public interest.

Sears first claims that recent changes of law now require that all restrictive shopping center covenants be judged under a rule of reason rather than the *per se* prohibitions contained in the Commission's order. Sears maintains that these restrictive covenants would be found to be reasonable under a reasonableness test. Sears relies upon *Continental T.V. Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), and the "accelerated trend away from widespread application of *per se* rules." See Petition at 4.

Although the *Sylvania* decision was a turning point in the law of vertical

restraints, the Commission has consistently declined to reopen proceedings absent a specific showing that the order prohibits activity that subsequently has been found lawful.² Under a rule of reason analysis, the restraints in question here likely would not be found to restrain trade unreasonably absent a degree of market power. See *Northwest Wholesale Stationers, Inc. v. Pacific Stationery and Printing Co.*, 472 U.S. 284, 296 (1985). Sears, however, makes no showing either that the shopping centers it was associated with in 1977 did not possess market power or that the shopping centers it is associated with today do not possess market power. Without both showings, the Commission is unable to conclude that changes in law require reopening the entire order.

Additionally, Sears fails to make a sufficient showing that any factual changes in the shopping center industry occurring since the order was issued require reopening. Sears highlights an increase in the numbers of developers, major tenants, and mall tenants at a time when construction of new regional shopping centers "has virtually stopped;" an increase in the number of shopping centers built since the Commission's order was issued; and an increase in specialization of shopping centers. See Petition at 3. Sears also points to a trend toward the greater use of firms to manage shopping centers who do not have an ownership interest in the center. However, Sears has failed to show how any of these changes alone or together eliminate the need for the order or make continued application of the order inequitable or harmful to competition.

Nor has Sears established sufficient public interest reasons to reopen the entire order. Sears claims that it is unfairly constrained by the order's prohibitions when most if not all competing tenants and developers in the shopping center industry are not so encumbered. According to Sears, it consented to the order because it believed that the Commission in the late 1970's was likely to issue a trade regulation rule for shopping centers that would proscribe the same activities prohibited by the order. However, that threatened trade regulation rule was never issued.

Although the reopening of several portions of the order may be in the public interest, Sears has not

² See *Encyclopaedia Britannica, Inc.*, Docket No. 8908, Order Reopening the Proceeding and Modifying Cease and Desist Order (July 5, 1988), at 6.

demonstrated that all of the order's provisions cause significant harm that outweigh the reasons not to make the modifications. Thus, Sears has not made a sufficient showing to warrant reopening the entire order in the public interest.³

IV. Sears' Request to Reopen Portions of the Order

The Commission has carefully considered Sears' request that certain specific prohibitions need reopening and modification in the event the Commission does not reopen and set aside the entire order. These prohibitions include the prohibition of radius clauses, use restrictive clauses, clauses giving rights of prior approval to Sears in its capacity as a tenant, tying clauses used by Sears in its capacity as a developer, and the joint use of employees by Sears' Merchandise Group and Sears, shopping center development group. Sears seeks also modification to exclude from the order Sears in its capacity as a specialty tenant and Sears in its capacity as a minority investor or non-owner shopping center manager. See Alternative Proposal.

Radius Clauses

Sears challenges the continuing need for the prohibition against the use of radius clauses by Sears in its capacity as a developer. See Paragraphs III.A.3. Sears' petition describes the efficiencies gained from radius clauses. According to Sears, radius restrictions increase traffic in the shopping center by requiring the tenant to concentrate on its store in the shopping center. A nearby store could siphon away customers from the center.

Sears has made the necessary showing of affirmative need to reopen and modify the prohibition against radius clauses in the public interest. Sears presents examples where tenants in Sears-owned centers have opened retail locations in nearby centers to the detriment of Sears' shopping center. Sears' petition also documents industry-wide usage of radius restrictions. Radius clauses that are limited in scope may stimulate competition and are unlikely to be anticompetitive. In the absence of competitive concerns about these restrictions, the harm to Sears outweighs

³ Sears requests also that the Commission sunset the order in three years. The age of an order, standing alone, is not sufficient to satisfy the standard for reopening in the public interest. Moreover, the Commission generally does not sunset orders that prohibit unlawful conduct. See *William H. Rorer, Inc.*, Docket No. 8599, Order Modifying Cease and Desist Order, 104 F.T.C. 544, 545-46 (1984); *Corn Products Refining Co.*, Docket No. 5502, Letter to Morton M. Maneker, Esq. (August 22, 1985), at 7-8.

any reasons for retaining the prohibition, and reopening is warranted in the public interest. Under the circumstances, the Commission will reopen and set aside this prohibition as the appropriate remedy to address Sears' showing of affirmative need.

Use Clauses

Sears challenges the continuing need for the prohibition against the employment of use clauses by Sears in its capacity as a developer. Use clauses specify the types of products or services that tenants shall sell. See Paragraphs III.A.1., III.B.1. Sears' petition describes the efficiencies gained from use clauses. According to Sears, use clauses promote an optimum tenant mix and preserve the desired character of a shopping center.

Sears' petition demonstrates an affirmative need for modification of this prohibition. Sears shows that descriptions of range of price and fashion and quality in use clauses serve a competitive purpose, are unlikely to threaten tenants' pricing discretion, and are commonly used in the industry. The prohibitions particularly interfere with Sears' ability to draft use clauses narrowly enough to achieve an optimum tenant mix and to preserve the desired character of a shopping center. The Commission has long recognized that use clauses can play an important role in maintaining an optimal tenant mix in a shopping center. See Federal Trade Commission Statement Regarding Shopping Centers (March 1981); *Tyson's Corner Regional Shopping Center*, 85 F.T.C. 970, 1008, 1012, 1012 n.12, 1014, 1017-18 (1975).

Thus, Sears makes a satisfactory showing to warrant reopening of the prohibition of use clauses in the public interest. The Commission has concluded that this harm can be appropriately remedied by deleting the language prohibiting use clauses that refer to ranges of price or fashion or quality.⁴ However, the core prohibition against price fixing remains intact.⁵

⁴ As set forth below, the modification to Paragraph III.B.1. adds the language "of other tenants" consistent with Sears' proposed modification. See Alternative Proposal, Order, Paragraph III.B.1. This clarifies that the prohibition only applies to a tenant or to Sears specifying or controlling the prices of any other tenant. See Paragraph III.B.2.

⁵ Paragraph III.G. imposes certain reporting requirements upon Sears in its capacity as a developer. Sears asks that the Commission modify the subparagraph to accord with any changes in the substantive prohibitions made by the Commission. In view of the modifications made herein to permit use clauses, Paragraph III.G.3. should be reopened and modified to strike references to price ranges, fashion ranges, and quality ranges.

Sears requests that the Commission add a new Paragraph III.F.3. to make clear that Sears could

Prior Approval

Paragraph II.A.2. prohibits Sears, in its capacity as a tenant, from entering or enforcing agreements granting it the right to approve or disapprove the entry into a shopping center of any other tenants. There are related paragraphs that prohibit more limited prior approval clauses, e.g., preventing other tenants' expansion of floor space in the mall without the major tenant's approval. See Paragraphs II.A.3., II.A.4., II.A.7, II.A.8, II.A.11.

Sears challenges the order's approach to rights of prior approval exercised by tenants because the prohibition fails to recognize, according to Sears, the purported efficiency justifications for tenant-held rights of prior approval. Sears claims that it needs a voice in the selection of major tenants because the success of the shopping center and Sears' store in the center depend upon the other major tenants being an asset to the center. See Petition at 46. Accordingly, Sears seeks to reopen and modify these prohibitions to enable it to exercise a right of approval over entry by other major tenants into the center.

Sears fails to make the necessary showing of affirmative need to reopen the prohibitions against rights of prior approval in the public interest. Sears provides examples where a promised anchor tenant backed out and less desirable anchor tenants got locations in shopping centers where Sears was also an anchor. The examples do not indicate whether the harm to Sears resulted from market conditions or the lack of prior approval. That is, after the promised anchor backed out, did the developer have many anchors to choose from, some of whom Sears preferred? Or, was the developer having a hard time finding any anchor, so that Sears might have settled for the less desirable anchor? Sears has not made a satisfactory showing that tenant-held rights of prior approval, in fact, enhance competition, or that Sears has been unable to protect its "legally cognizable interests" by requiring developers to select tenants only according to defined standards contained in shopping center agreements. Accordingly, Sears has not carried its burden to demonstrate an affirmative need to reopen and modify the prohibition against rights of prior approval.⁶

employ use clauses in off-price shopping centers requiring the tenant to sell high quality merchandise. The foregoing modification by the Commission to paragraphs III.A.1. and III.B.1. makes such a modification unnecessary.

⁶ Sears' failure to carry its burden, regarding rights of prior approval disposes also of Sears'

Tying Clauses

Paragraph III.A.4. prohibits Sears, in its capacity as a developer, from conditioning entry of a tenant into one shopping center upon that tenant's entry into another Sears shopping center. Sears claims that the prohibition may prevent it from offering a tenant a package rental rate covering locations in several shopping centers whereby it charges a lower relative rent than the rate for space in one center. Thus, Sears requests that the Commission reopen the prohibition by adding a new paragraph III.F.2. Such a package rental rate would not necessarily violate Paragraph III.A.4. Thus, Sears has not shown an affirmative need to reopen and modify Paragraph III.A.4.

Joint Use of Common Officers and Employees by Sears Merchandising and Development Groups

Paragraph III.C. prohibits Sears from using the same officers or employees in Sears' separate capacities as a tenant in or as a developer of shopping centers. Sears represents that the possible joint use of officers by Sears' Merchandise Group and Homart, Sears' shopping center development arm, is not now a problem because Homart long ago

request that the Commission adopt Sears' proposed order paragraphs in its Alternative Proposal, namely, paragraphs II.A.2., II.A.3., II.A.4., II.A.7., II.A.8., II.A.11., III.E.9.

Sears asks that paragraph III.E. be modified to expand the stated criterion that Sears can permissibly require a developer to following in selecting new or replacement tenants. See Alternative Proposal, Explanation of Amendments at 4, Proposed paragraphs III.E.1., III.E.7, III.E.8., and III.E.10. The Commission has concluded that such reopening and modification of the order is unnecessary. Paragraph III.E. was not intended to be a definitive list of standards and Sears has flexibility in drafting criteria necessary to protect its "legally cognizable interests" without modification so long as the standards are not a cover for price fixing. In *Tyson's Corner*, the Commission noted that the criteria set forth in paragraph III.E. were not intended to constitute an exhaustive listing of the factors which [respondent major tenant] may insist be considered by a shopping center landlord in the management of the center, as a condition of [the respondent major tenant]'s signing a shopping center lease.

Tyson's Corner, 85 F.T.C. at 1017 n.19.

The Commission, however, will reopen and modify paragraph III.E.3., which permits Sears to exercise limited approval rights for tenants within 150 feet of a Sears store. Sears has made a sufficient showing of an affirmative need for modification. Currently, Sears may prepare a list of acceptable tenant categories from which the developer can select tenants to be located next to Sears with certain limitations as to, for example, price ranges. Sears requests that the paragraph be modified to permit it to designate categories of retailers who are unacceptable rather than acceptable subject to the same limitations. Sears represents that it becomes nearly impossible under the current procedure to list all possible permissible uses. Thus, modification will facilitate operation of this paragraph without changing the substance of the prohibition.

become an autonomous unit. Sears argues, however, that both Sears units would benefit from using common corporate headquarters staff personnel for such matters as tax counseling, procurement assistance, computer expertise, personnel administration, insurance advice, legal advice, and accounting and general office management.

Sears fails to make the necessary showing of affirmative need to reopen paragraph III.C. in the public interest. Sears does not refer to any instances where it has forgone benefits from using common corporate headquarters staff or suffered competitive harm. In any event, the Commission recognizes the potential benefits that may arise through use of common corporate headquarters staff and does not interpret paragraph III.C. to prohibit Sears in its capacity as tenant and developer from drawing upon common staff expertise.

Sears as a Specialty Tenant

The order prohibitions against Sears in its capacity as a tenant apply broadly to Sears whether it is acting as a major tenant or as a satellite tenant in a shopping center. See paragraph I.(c), I.(d), II.A., II.B. At the time the order was issued, Sears, as a tenant, was generally involved in shopping centers only in the capacity of a major tenant, according to Sears. Sears has now begun to branch into specialty stores such as business systems stores, children's specialty stores, and eye care centers, and requests that the order be modified to exclude Sears as a specialty tenant.

Sears has made a satisfactory showing to warrant reopening of this aspect of the order in the public interest. In its capacity as a satellite tenant, Sears is unlikely to have the necessary leverage to obtain any unlawful restrictive covenants from developers. The Commission in *Tyson's Corner* only focused upon restrictive covenants held by major tenants and not covenants held by satellite tenants. The value of Sears as a satellite tenant being able to compete without the order outweighs the likelihood that Sears in that capacity could secure any anticompetitive restrictive covenants in negotiations with developers. Under the circumstances, the Commission will modify the order to exclude Sears as a satellite tenant.⁷ Previously, the Commission made this same distinction between a specialty store operation and

⁷ Paragraph I.(d) defines "major tenant" as a tenant providing primary drawing power in a shopping center. A tenant which occupies at least 50,000 square feet of floor area will be deemed to provide primary drawing power.

a major tenant operation in *Tyson's Corner* where the Commission modified the order in the public interest so as not to limit the ability of that respondent's specialty furniture store to secure exclusivity clauses in shopping center leases. See *Tyson's Corner*, 86 F.T.C. 921 (1975).⁸

Definition of "Developer"

Sears claims that the order prevents Sears from investing in some shopping center joint ventures. According to Sears, the order's strict requirements against radius and use clauses cause other investors to view Sears as a less attractive investment partner. Sears cites experiences where the order has impeded Sears' ability to participate in investment opportunities. See Petition at 42-43.

Similarly, Sears finds that the order frustrates its ability to compete for shopping center management services jobs in centers where it will have no ownership interest. According to Sears, shopping center owners prefer management firms who are not under prohibitions against radius and use clauses. Sears cites cases in which the order has placed Sears at a disadvantage in competing for such shopping center manager services positions. See Petition at 43-45.

Sears requests that the order's definition of developer be reopened and modified to exclude Sears when it holds a 30 percent or less ownership interest in a shopping center or is not the shopping center manager. See Alternative Proposal, Explanation at 1. Sears, however, has not made a satisfactory showing that this definition needs reopening. Central to Sears' claim is the order's prohibition against Sears' employment of radius and use clauses. However, the Commission has decided already to reopen and modify these prohibitions generally in the manner sought by Sears. Thus, Sears is no longer disadvantaged in relationship to competing investors or management services firms. Accordingly, the Commission denies Sears' request to reopen the order's definition of developer.⁹

⁸ Paragraph IV.B. imposes upon Sears as a tenant an obligation to send a copy of the order within 30 days after service of the order to each major tenant, shopping center joint venturer, and developer in every shopping center in which Sears is a major tenant. Sears asks that the requirement be set aside as obsolete. This paragraph is, indeed, obsolete because compliance was required and completed in 1977 and for that reason there is no affirmative need to set aside the paragraph.

⁹ Sears also asks the Commission to reopen the order for the purpose of exempting shopping center

Continued

V. Reopening and Modification

Accordingly, *it is ordered* That the order issued in this matter on April 20, 1977, be, and it hereby is, reopened and modified, as of the date of service of this order, as follows.

1. Paragraph III.A.3. shall be set aside.

2. Paragraph III.A.1. shall be modified by striking "price, or within any range of prices, or within any range of fashions, or within any range of quality, when such descriptions identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices" and adding "specific prices or specific ranges of prices".

3. Paragraph III.B.1. shall be modified by striking "prices, price ranges, fashion ranges, quality ranges, which identify tenants as members of a class of merchants which sell their merchandise within a generally identifiable range of prices" and adding "specific prices or specific ranges of prices of other tenants".

4. Paragraph II.A. and Paragraph II.B. shall be modified by substituting "major tenant" for "tenant" as that term is used to define the capacity in which Sears is acting.

5. Paragraph III.G.3. shall be modified by striking "price ranges, fashion ranges, quality ranges."

6. Paragraph III.E.3. shall be modified by inserting "not" following "landlord may."

By direction of the Commission.¹⁰

Donald S. Clark,

Secretary.

Issued: July 5, 1989.

agreements that Sears inherits when Sears acquires a shopping center in its capacity as a developer. See Alternative Proposal, Proposed paragraphs III.E.11., III.F.6., Explanation of Amendments at 6. Sears, however, shows no affirmative need for such a modification. Restrictive shopping center agreements pose the same problem whether or not Sears negotiates or inherits them. Moreover, in the future, Sears will likely inherit fewer shopping center leases that do not conform to the order in view of this order's modification of the prohibitions against radius and use clauses.

¹⁰ By letter dated June 29, 1989, Sears submitted to the Commission supplemental information in support of its request to reopen. The Commission generally will not consider additional information to support a request to reopen supplied after the date the request was filed unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented. See Statement of Policy Concerning Supplemental Information of Requests to Reopen, 53 FR 40867, 40868 (Oct. 19, 1988). Sears has made no such request in connection with its June 29, 1989, submission. Accordingly, the Commission has not considered this supplemental information in reaching its decision.

Statement of Chairman Daniel Oliver, Sears, Roebuck and Company, Docket No. C-2885 Petition to Reopen and Set Aside or Modify Consent Order

I concur in the decision to grant in part Sears' Petition to reopen and set aside the order in Docket No. C-2885; however, I would have set aside the order in its entirety. I concur wholly in the cogent antitrust analysis set forth in Commissioner Machol's separate statement. In my view, the procompetitive justifications for the restrictions prohibited by the order, as detailed by Commissioner Machol, warrant reopening and setting aside the order on public interest grounds.

In addition, I agree with the statement in today's order that a showing to require reopening is made when there are "significant changes in circumstances," that "eliminate the need for the order or make continued application of the order inequitable or harmful to competition." I cannot agree, however, with the further suggestion that for the Commission to reopen and set aside an order today, on the basis of a claim of change in law, Sears would have to show that it did not possess market power in 1977.

To answer whether there has been a change in law, we should look at the law.¹ In this case, the addition of the element of market power to the legal analysis is a significant change in law since the decision in *Tyson's Corner*, 85 F.T.C. 970 (1975). That being the case, a petitioner in Sears' position need only demonstrate that it has no market power today, and thus that there is no longer a need for the order. Otherwise, it is likely that there would be an absence of record evidence to address what was not an issue at the time an order was entered, and that such historical evidence would be nearly impossible to develop anew. When the law has changed as significantly as it has in this case, the petitioner's required factual showing should be limited to whether consumers today would be injured by the conduct that the order sought to prevent.

Issued: July 5, 1989.

Statement of Commissioner Margot E. Machol, Sears, Roebuck and Company, Docket No. C-2885 Petition to Reopen and Set Aside or Modify Consent Order

While I concur in the decision to grant in part and deny in part Sears' Petition to reopen and set aside, or in the alternative, modify the order in Docket No. C-2885, I would prefer to reopen additional portions of the order and grant further modifications on public interest grounds.

Sears, in its capacity as both a shopping center developer and tenant, requests that the order's prohibitions on certain restrictions in shopping center leases and operating agreements, such as prior approval clauses, be set aside. A shopping center is essentially a joint venture between a shopping center

¹ Such a construction will not open the floodgates to petitions to reopen every time a court or the Commission issues a new decision, because there is still the requirement that the change in law be significant.

developer (acting as landlord) and the retail tenant to operate a group of commercial establishments as a unit. See Clarkson & Muris, eds., *The Federal Trade Commission Since 1970: Economic Regulation and Bureaucratic Behavior* (1981) at 141. Shopping centers can provide significant efficiencies that are not available when retail establishments operate as stand-alone businesses or in downtown commercial areas. These efficiencies include lower search costs for consumers, and maximized traffic flow and lower operating costs for retailers.

Restrictions agreed upon by the joint venture participants that constrain tenant characteristics but do not fix the prices charged by any tenant may reasonably be related to the efficient operation and success of the shopping center. As such, these restrictions would generally be analyzed under the rule of reason. Such restraints are methods of controlling tenant mix and the character or marketing concept of a shopping center, which are important factors in the center's success. Shopping centers seek to provide a wide variety of stores that would appeal to particular groups of consumers. For example, some shopping centers cater to consumers who want high quality/high priced goods and services (e.g., Water Tower Place in Chicago; Trump Tower in New York City), some to consumers who want discount goods (e.g., Biggs Hypermarket in Cincinnati), and still others to consumers whose tastes fall between these extremes. While lease restrictions may reduce aspects of competition among stores within a particular shopping center, they may serve to stimulate competition among different shopping centers.

Sears explains that a major ("anchor") tenant makes a significant investment in a shopping center that is at risk for a considerable period of time. The ability to have a voice in the selection of other tenants is a way of protecting the investment of anchor tenants and encouraging their participation in shopping centers. In my view, Sears has shown that its inability to take a more active role in the selection of other tenants has caused it competitive injury, and may also have affected the ability of the shopping centers in which Sears participates to compete effectively with other shopping centers. Sears has also shown that it has been unable to protect its interests adequately by the means left available to it under the order. As a result, I conclude that Sears has made a showing sufficient to warrant reopening additional portions of the order.

Under a rule of reason analysis of the kinds of restraints at issue in the Sears order, the shopping centers in which Sears participates would at least need to possess market power before these restraints would be found to restrain trade unreasonably. See *Northwest Wholesale Stationers, Inc. v. Pacific Stationery and Printing Co.*, 472 U.S. 284 (1985); *Jefferson Parish Hospital District No. 2 v. Hyde*, 466 U.S. 2 (1984); *Broadcast Music, Inc. v. Columbia Broadcasting System, Inc.*,

441 U.S. 1 (1979); *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36 (1977). While Sears did not specifically address in its Petition whether the shopping centers with which it is associated may in fact possess market power, I believe that Sears provided sufficient evidence from which one could conclude that few, if any, of these shopping centers are likely to have market power. As a result, I believe we can properly conclude that the injury to Sears' ability to compete, and the potential for enhancing the competitive posture of those shopping centers in which Sears participates, outweigh any continuing need for certain of the order's remaining prohibitions. Accordingly, further modification of the order would be justified on public interest grounds.

I have a general observation about petitions to reopen and modify that assert public interest grounds as justification. Given the public interest in repose and finality of Commission orders, the burden is on the petitioner when public interest grounds are invoked to make a satisfactory showing in support of each specific aspect of an order for which the petitioner is requesting relief. Particularly in cases involving lengthy or complex orders, the Commission's review can be greatly facilitated if the petitioner identifies precisely the portion of the order to which a showing is meant to relate.

Finally, because the Commission decided to grant certain modifications requested by Sears on public interest grounds, we did not reach the issue of what showing would be required of Sears to mandate reopening on the ground of changed conditions of law. I disagree with the statement in the Modifying Order suggesting that Sears should be required to show that the shopping centers with which it was associated in 1977 did not then possess market power. In my view, the petitioner should not be required to demonstrate that the Commission's earlier decision was wrong in terms of modern-day law. Instead, the critical issue is whether the petitioner identifies significant changes in circumstances, and shows that those changes eliminate the need for the order or make continued application of the order inequitable or harmful to competition. See S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979); *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4. Moreover, to require a showing about market power that existed in the past would impose a nearly impossible burden on many petitioners, particularly those with orders that are more than ten years old. Accordingly, I believe reopening would be mandatory if Sears showed that the shopping centers with which it is associated today do not possess market power. If that is true, the existence of market power in 1977 is irrelevant.

Issued: July 5, 1989.

[FR Doc. 89-24997 Filed 10-23-89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0409]

Adeka Argus Chemical Co., Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Adeka Argus Chemical Co., Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium 2,2'-methylene bis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in propylene polymers intended for contact with food.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4165) has been filed by Adeka Argus Chemical Co., Ltd., 5-2-13, Shirahata, Urawa, Saitama, Japan, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of sodium 2,2'-methylene bis(4,6-di-*tert*-butylphenyl)phosphate as a clarifying agent in propylene polymers intended for contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 13, 1989.

Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-24995 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0400]

Sucrose Fatty Acid Esters; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the State of Nebraska, Department of Economic Development has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sucrose fatty acid esters in chewing gum and confections and frostings.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A4166) has been filed by the State of Nebraska, Department of Economic Development, proposing that the food additive regulations be amended to provide for the safe use of sucrose fatty acid esters in chewing gum and confections and frostings.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 13, 1989.

Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-24994 Filed 10-23-89; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Federal Council on the Aging; Meeting

Agency Holding the Meeting: Federal Council on the Aging.

Time and date: Meeting begins at 9 a.m. and ends at 5 p.m. on Wednesday, November 8, 1989, and begins at 9 a.m. and ends at 5 p.m. on Thursday, November 9, 1989.

Place: On Wednesday, November 8, Lewis Room, The Holiday Inn-Capitol, 550 C Street, SW., Washington, DC, from 9 a.m. to 5 p.m., and Thursday, November 9, Lewis Room, The Holiday Inn-Capitol, from 9 a.m. to 5 p.m.

Status: Meeting is open to the public.

Contact person: Kevin W. Parks, Room 4280, Wilbur Cohen Federal Building, 245-2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93-29, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (P. L. 92-453, 5 U.S.C App. 1, sec. 10, 1976) that the Council will hold its November quarterly meeting on November 8 & 9, 1989, from 9 a.m.-5 p.m. and from 9 a.m.-5 p.m. respectively, in the Lewis Meeting Room of the Holiday Inn-Capitol Hotel, 550 C Street, SW., Washington, DC 20024. On November 8, the Council will conduct its regular business meeting during the morning session. The afternoon session will include a presentation by the Women's Bureau of the U.S. Department of Labor.

The agenda is as follows: A presentation by the Women's Bureau, U.S. Department of Labor regarding the status of and difficulties encountered by older working women. This presentation will be the continuation of the focus of the August quarterly meeting.

On November 9th from 9 a.m.-12 Noon, the Council will continue and conclude its regular business meeting. From 2 p.m.-5 p.m., the Council will participate in a tour of its new offices. This tour will be followed by a reception and Open House for new Members and the newly appointed Executive Director.

Dated: October 16, 1989.

Ingrid Azvedo,

Chairperson, Federal Council on the Aging.

[FR Doc. 89-24952 Filed 10-23-89; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-89-2072]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development; HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to the Supplemental Assistance for Facilities to Assist the Homeless Program.

The information collection requirements in this package are the result of amendments to the Supplemental Assistance program contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Public Law 100-628 (approved November 7, 1988). The Department is requesting emergency review in order to be ready to announce the competition for the Supplemental Assistance for Facilities to Assist the Homeless Program at such a time that will give applicants maximum time to become familiar with the revised regulations and to prepare applications accordingly. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

To ensure that the public has an adequate opportunity to comment on these information collection requirements, HUD also intends to submit the Supplemental Assistance notice to OMB for regular paperwork

review. The public will then have an additional 60-day period in which to comment on the paperwork requirements.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 18, 1989.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

Proposal: Supplemental Assistance for Facilities to Assist the Homeless Program (FR-2585)

Office: Community Planning and Development

Description: The application and environmental impact statement are necessary to allow HUD to determine the eligibility of private non-profit organizations or governmental entities to receive funding under this program, to assess the relative capability of these organizations to operate innovative programs for the homeless population, and to determine whether any adverse impact for the environment will result

Form Number: None

Respondents: State or Local Governments, tribes, and Non-Profit Institutions

Frequency of Submission: On Occasion
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Comprehensive Application.....	250		1		100		25,000
Environmental Assessment.....	60		1		14		840
Supplemental Application.....	30		1		52		1,560
Recordkeeping.....	40		1		40		40

Total Estimated Burden Hours: 27,440

Status: Revision

Contact: James N. Forsberg, HUD, (202) 755-6300, John Allison, OMB, (202) 395-6660.

Dated: October 18, 1989.

[FR Doc. 89-25153 Filed 10-23-89; 8:45 am]
BILLING CODE 4210-01-M

Office of Housing

[Docket No. N-89-2071]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for

emergency processing an information collection package with respect to the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.

The purpose of the program is to provide rental assistance for homeless individuals in rehabilitated Single Room Occupancy housing. The information collected will assist the Department in selecting applicants which meet program requirements and demonstrate the greatest need for the Moderate Rehabilitation Single-Room Occupancy Program funds. The Department needs the information so that it can meet a November 7, 1989 statutory deadline established under the Stewart B. McKinney Homeless Assistance Amendment Act of 1988. Therefore, the Department has requested OMB to complete its paperwork review of the section 8 Moderate Rehabilitation Single Room Occupancy Dwelling for Homeless Individuals within (7) working days after publication of this Notice. Any control number issued by OMB to cover this emergency situation would be valid for no more than 90 days.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an

estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, or reinstatement, and (9) the telephone numbers of any agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 17, 1989.

Peter Monroe,

Acting General, Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Collecting Information under the Section 8 Moderate Rehabilitation Program for Single Room Occupancy Dwellings for Homeless Individuals.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: This program will enable the Department to provide rental assistance for homeless individuals in rehabilitated Single Room Occupancy housing. The information collected will assist the Department in selecting applicants which meet program requirements and demonstrate the greatest need for the Moderate Rehabilitation Single Room Occupancy Program funds.

Form Number: None.

Respondents: Non-profit institutions and State or local governments.

Frequency of Submission: Monthly.

Status: Revision.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden:	150		1		25.5		3,325

Contact: A.M. Bell, (202) 755-6650, John Allison, OMB (202) 395-6988.

Dated: October 17, 1989.

[FR Doc. 89-24967 Filed 10-23-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-00-4320-02]

Meeting for Safford District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District

announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, December 1, 1989; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92-463. The agenda for the meeting will include:

1. FY 90 Proposed Range Improvement Projects
2. FY 90 Proposed Allotment Management Plans

3. District Animal Damage Control Plan
4. Bureau Vegetation Environmental Impact Statement
5. Safford District Resource Management Plan
6. BLM Management Update
7. Business From the Floor

The meeting will be open to the public. Interested persons may make oral statements to the Board between 10:00 a.m. and 11:00 a.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, AZ 85546, by 4:15 p.m., Thursday, November 30, 1989.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during business hours) within thirty (30) days following the meeting.

Dated: October 13, 1989.

Ray A. Brady,

District Manager.

[FR Doc. 89-25026 Filed 10-23-89; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-00-4214-11; GPO-017, et al.]

Proposed Continuation of Withdrawals; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that all or portions of eight separate land withdrawals continue for an additional 20 years and requests that the lands involved remain closed to mining and, where closed, be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

The Forest Service proposes that the following identified land withdrawals be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following described lands and projects are involved:

Umpqua National Forest

1. ORE-02851, Public Land Order No. 3502 dated December 2, 1964. South Umpqua Experimental Forest, 4640 acres.

Located in Douglas County, 14 miles northeast of Tiller.

T. 29 S., R. 1 E., W.M., Secs. 15, 16, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, and 34.

2. ORE-06529, Public Land Order No. 2750 dated August 13, 1962. Roadside Zones, 3068 acres.

Located in Douglas County, 35 miles east of Roseburg.

T. 25½ S., R. 1 E., W.M., Secs. 31 and 32.

T. 26 S., R. 1 E., W.M., Secs. 3, 4, 5, 6, 9, 10, 13, 14, 15, 23, and 24.

T. 28 S., R. 1 E., W.M., Sec. 36.

T. 29 S., R. 1 E., W.M., Secs. 1, 2, 10, 11, 15, 16, 17, and 18.

T. 26 S., R. 2 E., W.M., Secs. 19 to 23, inclusive.

T. 28 S., R. 2 E., W.M., Secs. 28, 29, 31, and 32.

T. 26 S., R. 1 W., W.M., Secs. 1, 2, 8, 9, 10, 11, 16, 17, and 18.

T. 29 S., R. 1 W., W.M., Secs. 13, 14, 22, 23, 24, 27, 33, and 34.

T. 30 S., R. 1 W., W.M., Secs. 4, 5, and 8.

Umatilla National Forest

3. ORE-03102-B, Public Land Order No. 990 dated August 11, 1954. Buck Creek Forest Camp, 80 acres.

Located in Umatilla County, 18 miles northwest of Elgin.

T. 3 N., R. 37 E., W.M., Sec. 22.

Woodward Forest Camp, 40 acres.

Located in Umatilla County, 17 miles northwest of Elgin.

T. 4 N., R. 38 E., W.M., Sec. 32.

Olive Lake Forest Camp, 159.35 acres.

Located in Grant County, 30 miles northeast of John Day.

T. 9 S., R. 34 E., W.M., Secs. 14 and 22.

Rogue River National Forest

4. ORE-3587-C, Public Land Order No. 1144 dated May 4, 1955. Woodruff Meadows Bridge Recreation Area, 30 acres.

Located in Jackson County, 17 miles east of Tiller.

T. 31 S., R. 3 E., W.M., Sec. 19.

5. ORE-03588-A, Public Land Order No. 1867 dated May 28, 1959. Crater Lake Park Highway Zone and Rogue Riverside and Recreation Zone, 9182 acres.

Located in Douglas County, 35 miles northeast of Tiller.

T. 28 S., R. 4 E., W.M., Secs. 34, 35, and 26.

T. 29 S., R. 4 E., W.M., Secs. 1, 2, 3, 9, 10, 11, 15, 16, 20, 21, 29, 31, and 32.

T. 28 S., R. 5 E., W.M., Secs. 26, and 31 to 35, inclusive.

T. 29 S., R. 5 E., W.M., Secs. 4, 5, and 6.

6. ORE-016435, Public Land Order No. 3854 dated October 18, 1965. Crater Lake Park Highway Zone and Rogue Riverside and Recreation Zone Addition, 90 acres.

Located in Douglas County, 32 miles northeast of Tiller.

T. 29 S., R. 4 E., W.M., Sec. 16.

T. 28 S., R. 5 E., unsurveyed, W.M., Sec. 34.

7. OR-19339, Public Land Order No. 633 dated February 6, 1950. Rogue River Recreation and Scenic Areas, 9138.81 acres.

Located in Douglas and Jackson Counties, 30 miles east of Tiller.

T. 30 S., R. 3 E., W.M., Secs. 12, 13, 23, 24, 25, 26, 33, 34, 35, and 36.

T. 31 S., R. 3 E., W.M., Secs. 2, 3, 4, 8, 9, 10, 15, 16, 17, 19, 20, 21, and 28 to 32, inclusive.

T. 32 S., R. 3 E., W.M., Secs. 4, 5, 6, 8, 9, 16, 17, 19, 20, and 29.

T. 30 S., R. 4 E., W.M., Secs. 5, 6, 7, 18, and 29 to 35, inclusive.

T. 31 S., R. 4 E., W.M., Secs. 1 and 2.

8. OR-20586-B, Secretarial Order dated October 26, 1906. Union Creek Administrative Site, 60 acres.

Located in Jackson County, 24 miles east of Tiller.

T. 31 S., R. 3 E., W.M., Sec. 3.

The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest Service requests no changes in the purpose or segregative effect of the withdrawals except that the lands be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified 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 lands and their 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 on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: October 13, 1989.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-25027 Filed 10-23-89; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Shelf (OCS); Advisory Board Scientific Committee (SC); Plenary Session Meeting

This Notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92-463, 5 U.S.C., Appendix I, and the Office of Management and Budget Circular A-63, Revised.

The OCS Advisory Board Scientific Committee will meet in subcommittee meetings at the Heathman Hotel, SW Broadway at Salmon, Portland, Oregon (telephone 503-241-4100), on Wednesday, November 14, 1989, and Thursday, November 15, 1989, from 8 a.m. to 5 p.m.

The OCS Advisory Board Scientific Committee will then meet in plenary session at the Oregon Historical Society, 1230 SW Park Avenue, Portland, Oregon (telephone 503-222-1741), from 8 a.m. to 12 noon on Friday, November 17, 1989.

The purpose of the subcommittee meetings is to review draft Regional Study Plans for Fiscal Years 1991 and 1992. The agenda for the plenary session meeting will include the following subjects:

- Update on the Environmental Studies Program for the Regional and Headquarters Offices;
- Update on the Long-Range Studies Plan for the Environmental Studies Program.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-serve basis at the plenary session with lesser numbers at the subcommittee meetings. All inquiries concerning these meetings should be addressed to: Dr. Don Aurand, Chief, Branch of Environmental Studies, Offshore Environmental Assessment Division, Minerals Management Service, U.S. Department of the Interior, 381 Elden Street, Herndon, Virginia 22070, telephone (703) 787-1717.

Dated: October 19, 1989.

Thomas A. Readinger,

Acting Associate Director of Offshore Minerals Management.

[FR Doc. 89-25040 Filed 10-23-89; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Availability Proposed Notice of Sale; Central Gulf of Mexico, Oil and Gas Lease Sale 123

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of Proposed Notice of Sale, Central Gulf of Mexico, Oil and Gas Lease Sale 123.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale.

The proposed Notice of Sale for Sale 123, Central Gulf of Mexico, may be obtained by written request to the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New

Orleans, Louisiana 70123-2394, or by telephone (504) 736-2519.

The final Notice of Sale will be published in the *Federal Register* at least 30 days prior to the date of bid opening. Bid opening is scheduled for March 1990.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29(c) (1988), as a matter of information to the public.

Dated: October 16, 1989.

Ed Cassidy,

Acting Director, Minerals Management Service.

[FR Doc. 89-25041 Filed 10-23-89; 8:45 am]

BILLING CODE 4310-MK-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Avenue NW., Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Revision

Bureau/Office: Office of Proceedings

Title of Form: Ex Parte No. 179

Purchase, Merger, and Control of Motor Passenger and water carriers
OMB Form No.: 3120 0080 and 3120-0100
Agency Form No.: None (Previously OP-F-44 and OP-F-45)

Frequency: Non-Recurring

Respondents: Motor and Water Carriers

No. of Respondents: 25

Total Burden Hrs.: 1,500 (Average 60 hours per response)

Brief Description: Persons proposing to purchase, merge or acquire control of motor passenger and water carriers must seek approval of the proposed transaction. Sufficient information must be provided to justify approval of the proposed transaction.

Type of Clearance: Revision

Bureau/Office: Office of Proceedings

Title of Form: Application for temporary authority, under 49 U.S.C. 11349, to

operate motor carrier or water carrier authorities or properties

OMB Form No.: 3120-0079

Agency Form No.: OP-F-46

Frequency: Non-Recurring

Respondents: Motor and Water Carriers

No. of Respondents: 125

Total Burden Hrs.: 3,125 (Average 125 hours per response)

Brief Description: This form is used by applicants seeking approval of temporary authority pending permanent approval. The information is used to evaluate whether there is urgency in the transaction, requiring immediate action by the Commission.

Noreta R. McGee,

Secretary.

[FR Doc. 89-25011 Filed 10-23-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31498]

Southern Electric Generating Co.; Petition for Exemption for Construction of a Rail Line in Shelby County, AL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Availability of Environmental Assessment.

SUMMARY: By decision served September 19, 1989 in this proceeding, the Commission granted Southern Electric Generating Company's (Segco) petition for exemption from the requirements of 49 U.S.C. 10901 for the construction of 7.5 miles of rail line extending from CSX Transportation's main line near Westover, AL to the Ernest C. Gaston Electric Generating Plant near Wilsonville, AL. The effective date of the decision was postponed until completion of the Commission's environmental review and further decision. The Commission has completed its environmental assessment and concluded that the proposed action will not significantly affect the quality of the human environment provided the mitigation measures set forth in the environmental assessment are implemented by Segco. The Commission will consider any comments to the conclusions reached in the environmental assessment before rendering a final decision in this proceeding.

DATE: Written comments must be filed by November 23, 1989.

ADDRESSES: Send an original and 10 copies of comments referring to Finance Docket No. 31498 to:

(1) Section of Energy and Environment, Room 3219, Interstate Commerce Commission, Washington, DC 20423, and

one copy of the comments to: (2) Petitioner's representatives: John R. Molm, Troutman, Sanders, Lockerman and Ashmore, 1400 Peachtree Street NE., Atlanta, GA, 30303-1810, and Susan B. Beville, Balch & Bingham, 1710 North Sixth Avenue, Birmingham, AL 35203.

FOR FURTHER INFORMATION CONTACT: Harold M. McNulty, (202) 275-6875 or Elaine K. Kaiser, Section Chief, (202) 275-7684. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Copies of the Environmental Assessment may be obtained from the Section of Energy and Environment, Office of Transportation Analysis, Room 3219, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 275-7684. Assistance for the hearing impaired is available through TDD Services at (202) 275-1721.

By the Commission, John F. Hennigan, Jr., Director, Office of Transportation Analysis.
Noreta R. McGee,
Secretary.

[FR Doc. 89-25012 Filed 10-23-89; 8:45 am]
BILLING CODE 7035-01

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application by Cambridge Isotope Lab.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 14, 1989, Cambridge Isotope Lab., 20 Commerce Way, Woburn, MA 01801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Morphine (9300)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 24, 1989.

Dated: October 12, 1989.
Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.
[FR Doc. 89-24957 Filed 10-23-89; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application by Penick Corp.

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 27, 1989, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114 made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Methylphenidate (1724)	II
Cocaine (9041)	II
Egonine (Benzoylecognine) (9180).	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 24, 1989.

Dated: October 12, 1989.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-24958 Filed 10-23-89; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration of Penick Corp.

By Notice dated April 14, 1989, and published in the Federal Register on April 21, 1989, (54 FR 16174), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
Dihydromorphine (9145)	I
Pholcodine (9314)	I
Alphacetylmethadol (9603)	I
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Pethidine (meperidine) (9230).	II
Methadone (9250)	II
Methadone-intermediate, 4-cyano-2 dimethylamino-4,4-diphenyl butane (9254).	II
Morphine (9300)	II
Thebaine (9333)	II
Opium extracts (9610)	II
Opium fluid (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Mixed Alkaloids of opium (pantopon) (9648).	II
Concentrate of poppy straw (9670).	II
Phenazocine (9715)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 to the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby ordered that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 12, 1989.

Gene R. Haislip,

Deputy Assistant Administrator, Office of
Diversion Control, Drug Enforcement
Administration.

[FR Doc. 89-24959 Filed 10-23-89; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act Proposed Program Priorities

AGENCY: Office of Juvenile Justice and
Delinquency Prevention.

ACTION: Notice of Proposed FY 1990
Research, Demonstration, and Service
Program Priorities and Merit Selection
Criteria under the Missing Children's
Assistance Act.

SUMMARY: The Office of Juvenile Justice
and Delinquency Prevention (OJJPD) is
publishing, for comment, a Notice of FY
1990 proposed program priorities for
making grants and contracts under
Section 405 of the Missing Children's
Assistance Act, title IV, of the Juvenile
Justice and Delinquency Prevention Act
of 1974, as amended by the Juvenile
Justice and Delinquency Prevention
Amendments of 1988, subtitle F of title
VII of Pub. L. 100-690, November 18,
1988.

DATE: Comments are due on or before
December 22, 1989.

ADDRESS: Send comments to Terrence S.
Donahue, Acting Administrator, Office
of Juvenile Justice and Delinquency
Prevention, 633 Indiana Avenue, NW.,
Washington, DC 20531, (202) 724-5911.

FOR FURTHER INFORMATION CONTACT:
D. Duane Ragan, Acting Director,
Missing Children's Program, Office of
Juvenile Justice and Delinquency
Prevention, 633 Indiana Avenue, NW.,
Washington, DC 20531, (202) 724-7751.

SUPPLEMENTARY INFORMATION:
Responsibility for establishing annual
research, demonstration, and service
program priorities and criteria for
making grants and contracts pursuant to
section 405 of the Missing Children's
Assistance Act rests with the
Administration of the Office of Juvenile
Justice and Delinquency Prevention. For
FY 1990, one new program and the
continued funding of three programs
(provided that funds are available)
through assistance awards will
constitute all proposed section 405
priority funding areas. The Administrator
is hereby announcing these proposed
priorities, specifying merit and
performance criteria to be applied in

their review and inviting public
comment on them for sixty days..

Listed below are programs currently
funded under section 405 of the Missing
Children's Assistance Act that are
proposed as continuing program
priorities for FY 1990 under their
existing project period grants. These are
programs planned for their year third of
a three year project period.

**Families of Missing Children:
Psychological Consequences and
Promising Interventions** (\$500,000;
project period 10/1/87-5/15/91).

The purpose of this project is to
increase our knowledge of, and develop
effective treatment alternatives for, the
psychological consequences to families
with missing and exploited children
(405(a)(4) (A) and (B)).

Reunification of Missing Children
(\$100,000; project period 10/1/88-9/30/
91).

The purpose of this development
initiative is to identify promising or
effective strategies to assist families in
adjusting to the return of a missing child
(405(a)(7)).

**Missing and Exploited Children's
Comprehensive Action Program**
(\$400,000; project period 10/1/88-9/30/
91).

The purpose of this program is to
design and implement a community
organization and planning strategy to
guide comprehensive program
development focused on missing and
exploited children. The program would
promote specific programmatic and
procedural prototypes to serve this
youth population and suggest
organizational, planning and program
development strategies to coordinate
and concentrate the resources of the
juvenile justice system to address the
issue of missing and exploited youth
with emphasis on the family and
mobilizing volunteers (405(a) (1)-(3)).

The following criteria, based on merit,
will be considered in assessing the three
noncompeting continuation awards
listed above (a noncompeting
continuation grant is a grant made in
support of a new budget period within
an approved and existing project
period):

- (1) The results of title IV funding
under the recipient's current award
justify further program activity;
- (2) The recipient has promptly
submitted all required reports;
- (3) The recipient has shown
satisfactory progress in achieving the
objectives of the project and has met all
material terms and conditions of the
award;
- (4) The recipient's management
practices have provided adequate

stewardship of grantor agency funds;
and

One new grant for competitive review
will be announced in the **Federal
Register** for FY 1990 funding. The grant
will be for one year at \$90,000 as
authorized under section 405. It is:

Parent/Family Abductions

This program would address the complex
legal issues of child abductions by parents
and family members. The strengths and
weaknesses in current public and private
sector approaches to the problem would be
identified. Emphasis would be placed on
providing instructional assistance on legal
and jurisdictional difficulties in dealing with
the problem. (405(a) (1)-(3)).

The following merit-based general
selection criteria will be used to rate
applications submitted in response to
the program announcement:

- (1) The problem to be addressed by the
project is clearly stated;
- (2) The objectives of the proposed
project are clearly defined;
- (3) The project design is sound and
contains program elements directly
linked to the achievement of project
objectives;
- (4) The project management structure
is adequate to the successful conduct of
the project;
- (5) Organizational capability is
demonstrated at a level sufficient to
successfully support the project; and
- (6) Budgeted costs are reasonable,
allowable and cost effective for the
activities proposed to be undertaken.

Dated: October 18, 1989.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile
Justice and Delinquency Prevention.

[FR Doc. 89-25007 Filed 10-23-89; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of
Labor, in carrying out its responsibilities
under the Paperwork Reduction Act (44
U.S.C. chapter 35), considers comments
on the reporting and recordkeeping
requirements that will affect the public.

**List of recordkeeping/reporting
requirements under review:** As
necessary, the Department of Labor will
publish a list of the Agency
recordkeeping/reporting requirements
under review by the Office of

Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331.

Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of

Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503; Telephone (202) 395-6880.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management, Office of the Assistant Secretary for Policy
Farm Labor Supply Survey (FALS)
Other, one-time survey
Individuals or households

	Number of respondents	Average length	Burden
Family Heads.....	900	45 minutes	40,500 minutes.
Spouse.....			
Supplement.....	420	25 minutes	10,500 minutes.
Teenager.....			
Supplement.....	720	20 minutes	14,400 minutes.
Total Burden.....	2,040	32 minutes	65,400 minutes 1,090 hours.

The Immigration and Nationality Act (INA) requires the Department of Labor to adjust its estimates of available, able, willing, and qualified agricultural workers taking into account the effect of enhanced recruitment in traditional and expected areas of labor supply. This survey is required to perform this adjustment.

Revision

Employment and Training Administration

Contribution Operations

1205-0178; ETA 581

Quarterly

State or local governments

53 respondents; 1,060 total hours; 5 hours per response; 1 form Provides quarterly data on State agencies' volume and performance in wage processing, number and promptness of liable employer registration, number

delinquent in filing contribution reports, number and extent of tax delinquency and results of field audit program.

Employment and Training Administration

Program

Monitoring Report and Job Service Complaint Form

1205-0039; ETA 8429, 5148

Quarterly

State or local governments

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 8429 Recordkeeping.....	Local offices.....	168	15 minutes	25 minutes.
ETA 8429.....	Local offices.....	2,520	One-time	8 minutes.
ETA Outreach Log Recordkeeping.....	Local offices.....	150	130 times	12 minutes.
ETA 5148.....	State government.....	52	4 times	1 hr. 10 minutes.
5,530 total hours.				

Migrant and Seasonal Farmworker Agricultural Programs Job Service Forms are necessary as part of Federal Regulations at 20 CFR parts 651, 653, and 658 published as a result of the NAACP vs. Brock suit. The forms allow

us to track the services provided MSFW's by SESA's.

Extension

Mine Safety and Health Administration

Rock Burst Control Plan

1219-0097

On occasion

Businesses and other for profit; small businesses or organizations

2 respondents; 12 hours per response; 24 total burden hours

Requires metal and nonmetal mine operators to develop a rock burst control plan within 90 days after a rock burst has been experienced. Plans are required to be made available to MSHA inspectors and are used by the mine operator for work assignments to assure miner safety and to schedule correction work.

Operations Under Water

1219-0020

On occasion

Businesses or other for profit; small businesses or organizations

30 respondents; 5 hours per response; 150 total burden hours

Requires coal miners to obtain a permit to mine under a body of water if, in the judgment of the Secretary of Labor, it is sufficiently large enough to constitute a hazard to miners.

Fire Extinguishing and Abandonment Plans for Refuse Piles and Impoundments

1219-0074

On occasion

Businesses and other for profit; small businesses or organizations

Fire extinguishing plans: 5 responses; 4 hours per response; 20 total burden hours

Abandonment plans: 22 responses; 8 hours per response; 176 total burden hours

Requires coal mine operators to submit to MSHA for approval fire extinguishing plans and abandonment plans for refuse piles and impounding structures. MSHA reviews the plans to insure that they are in keeping with prudent engineering practices and, when implemented, would eliminate any hazardous conditions that may exist.

Gamma Radiation Exposure Records

1219-0039

Quarterly

Operators of metal and nonmetal underground mines

15 respondents; 4 hours per response; 240 total burden hours

Requires operators of metal and nonmetal underground mines, where radioactive ores are mined, to keep records of the results of annual gamma radiation surveys and individual miner's cumulative gamma radiation exposure.

Record of All Certified and Qualified Persons

1219-0049

Quarterly

Businesses and other for profit; small

businesses or organizations
4,867 respondents; 5 minutes per response; 1,616 hours

Requires coal mine operators to maintain a list of persons who are certified and those who are qualified to perform duties which require specialized expertise at underground and surface coal mines. The recorded information is necessary to ensure that only persons who are properly trained and have the required experience are permitted to perform these duties.

Radiation Sampling and Exposure Records

1219-0003

Weekly; annually

Undeground uranium mine operators and metal and nonmetal mine operators where radon daughter concentrations exceed 0.3 WL

35 respondents; 7.75 hours per response; 13,563 total burden hours

Requires operators of uranium mines and metal and nonmetal mines, where concentrations of radon daughters exceeds 0.3 WL, to calculate, record, and report to MSHA individual miner's exposures to concentrations of radon daughters. Records are maintained by the mine operators and are submitted to MSHA annually.

Noise Data Report Form and Calibration Records

1219-0037

Semi-annually; annually

Businesses and other for profit; small businesses or organizations

Periodic surveys: 163,232 responses; 10 minutes per response; 54,519 burden hours

Supplemental surveys: 330 responses; 34 minutes per response; 188 burden hours

Calibration records: 5,400 responses; 1 hour and 47 minutes per response; 9,628 burden hours

Total burden: 64,335 hours

Requires coal mine operators to report to MSHA when noise exposure surveys show noncompliance with permissible levels. Records are also required to be kept at the mine of when and by whom noise dosimeters and acoustical calibrators are recalibrated.

Employment Standards Administration

Request to be Selected as Payee

1215-0166; CM-910

On occasion

Individuals or households; Businesses or other for-profit; Non-profit

institutions: Small businesses or organizations

3,600 respondents; 1,200 total hours; 1/2 hr. per response; 1 form

If a beneficiary is incapable of handling his/her own affairs, the legal guardian or other responsible party may apply to receive the benefits on behalf of the beneficiary as a representative payee. The CM-910 is the form the potential representative payee must submit to DCMWC's staff for review to determine if the request can be approved.

Occupational Safety and Health Administration

Formaldehyde (Labeling Provisions (m)(1)(i))

1218-0145

No recordkeeping burden

Business or other for profit; Small Businesses or organizations

112,217 respondents; 0 burden hours; 0 minutes per response; 0 forms

Currently OMB has cleared all paperwork provisions in the Formaldehyde standard until 1991 with the exception of section (m)(1)(i) which defines when formaldehyde shall be considered a health hazard. OSHA is requesting an extension for (m)(1)(i) to 10/07/91 to coincide with the expiration date for the other paperwork provisions.

Signed at Washington, DC this 19th day of October, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-25017 Filed 10-23-89; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

[TA-W-23,105]

Dotronix, Inc., Elk River, MN; Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Correction

This notice corrects the month in the impact date for the subject petition published on October 3, 1989 in the Federal Register on page 40755 of FR Document 89-23310.

Under Affirmative Determination, in column 3 line 7 on page 40755 the impact date is corrected to read "June 21, 1988" instead of July 21, 1988.

Signed at Washington, DC, this 16th day of October 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-25016 Filed 10-23-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 735]

Iberia Petroleum Co.; Negative Determination on Reconsideration

On July 14, 1989, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers at Iberia Petroleum Company, Houston, Texas. This notice was published in the *Federal Register* on July 25, 1989 (54 FR 30960).

The Department's denial was based on the fact that the preponderance of activities performed by workers of Iberia Petroleum are not related to oil and gas drilling and exploration, therefore, the workers of Iberia Petroleum are not eligible for adjustment assistance. Investigation findings show that Iberia is engaged in managing crude oil and natural gas properties. This activity does not provide a basis for certification. Section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act (OTCA) of 1988 applies only to workers of service firms who are engaged in the exploration or drilling for crude oil or natural gas for unaffiliated clients in the oil and gas industry.

The company submitted additional information indicating that a substantial amount of its business was devoted to exploration for oil and gas in 1988.

The Department found, on reconsideration, that Iberia generates oil and natural gas exploration activities. No evidence was found that Iberia had a substantial amount of its income in 1988 originating directly from actual oil and gas exploration for unaffiliated companies in the petroleum industry.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Iberia Petroleum Company, Houston, Texas.

Signed at Washington, DC, this 13th day of October 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-25015 Filed 10-23-89; 8:45am]

BILLING CODE 4510-30-M

Agricultural Prevailing Wage Surveys (ET Handbook No. 385)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor (DOL) is in the process of revising its procedures for conducting surveys of wages paid to domestic agricultural workers. These surveys, which are conducted by State Employment Security Agencies (SESAs), are used to determine the prevailing wages being paid to domestic workers in particular areas and crop activities. Such prevailing wage information is used by ETA in reviewing the adequacy of wages being offered by agricultural employers who utilize the SESA intra/interstate agricultural clearance job order system to recruit non-local workers for agricultural jobs. Utilization of the clearance system is required for employers who apply to ETA for the purpose of obtaining labor certification for the temporary employment of aliens in agriculture and logging in the U.S. under the provisions of the H-2A and H-2B programs. The current prevailing wage survey procedures are contained in ET Handbook No. 385, August 1981.

In drafting revisions to the existing procedures, ETA has consulted with other DOL agencies, the U.S. Department of Agriculture and selected SESA technical experts. A draft of the revised ET Handbook No. 385 section covering prevailing wage surveys is currently being circulated officially throughout DOL for review and comment. The Office of Management and Budget also is involved in the review process.

Because of the interest in the revision process made known to ETA by non-governmental individuals and entities, ETA is publishing for the information of all interested parties the major component of the draft Handbook currently being circulated for review within DOL. Certain forms and instructions to SESAs for completing the forms have been omitted in the reproduction below.

DATE: Written comments on the draft revision to the prevailing wage survey procedures are invited from interested parties. Comments must be received on or before November 24, 1989.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration, United States Department of Labor, Room N4456, 200 Constitution Avenue, NW., Washington,

DC 20210; Attention: Director, United States Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, United States Employment Service, Employment and Training Administration; Telephone: 202-535-0163 (this is not a toll-free Number).

Roberts T. Jones,

Assistant Secretary of Labor.

ET HANDBOOK NO. 385—WAGE FINDING PROCESS

Outline

I. General Procedures

- A. Purpose of Survey
- B. Who is Responsible for the Survey and Wage Determinations
- C. Under What Circumstances and When Should Survey be Conducted
- D. Scope of Survey

II. Specific Survey Planning and Performance

- A. Standards for Planning Prevailing Wage Surveys
 1. Planning surveys
 2. Representativeness of wage rates (Sampling)
 3. Coverage of employers, workers, and kinds of remuneration
- B. Methods of Collection and Sources of Wage Survey Information
- C. Special Procedures for Unexpected Situations

III. Prevailing Wage Findings and Determinations

- A. Arraying Collected Data
 1. Overtime and piece rate earnings
 2. Atypical rates
 3. Bonuses
 4. Collectively-bargained rates
 5. Rate schedules
 6. Task rates
- B. Conversion of Different Units of Payment to a Common Base
- C. Procedure for Making a Prevailing Wage Finding
 1. One or more units of payment
 2. Local and intra/interstate rates
 3. The 40/51 percent rules
- D. Report Submittal and Prevailing Wage Determination

IV. Prevailing Wage Applicability to Employer Job Order

- A. General
- B. Alternative Piece Rates
- C. Bonuses
- D. Establishment of Special Hourly Rates Under Certain Circumstances

Appendices

- A. Plan for Agricultural Wage Survey (Detailed Instructions)
- B. Wage Survey Interview Record: ETA 232A (Detailed Instructions)
- C. Domestic Agricultural Inseason Wage Report: ETA 232 (Detailed Instructions)
- D. Explanation of Special Terms

I. General Procedures

A. Purpose of Survey

An agricultural prevailing wage survey is a survey conducted by State Employment Security agencies (SESAs) to determine the prevailing wages paid to a group of workers in a specific agricultural activity performed in a geographic area predetermined by the SESA. The survey is an important tool in implementing DOL's regulations on the intra/interstate recruitment of agricultural workers (20 CFR 653.501).

Major components of this process are the planning of surveys, the actual collection and compilation of data, and the determination of prevailing wage rates which are acceptable for agricultural clearance job order purposes.

B. Who Is Responsible for the Survey and Wage Determinations

1. SESA is responsible for planning and conducting the surveys; for assuring quality control; and for making preliminary prevailing wage determinations.

2. ETA Regional Office is responsible for revising and approving SESA survey plans, and for monitoring entire survey process to assure quality control and conformance with Handbook procedures.

3. ETA National Office is responsible for reviewing SESA preliminary wage findings and making official prevailing wage determinations.

C. Under What Circumstances and When Should Survey be Conducted

State agencies shall make surveys at least once per season in any crop activity in a wage reporting area in which:

1. Fifty (50) or more domestic workers (interstate or intrastate) recruited by the Employment Service were employed in the previous season, or may reasonably be expected to be recruited in the current season; or

2. Fifty (50) or more H-2A workers were employed in the previous season, or employers have requested or may be expected to request fifty (50) or more H-2A workers in the current season; or

3. The crop or crop activity has been designated by ETA as important because of its status in the national economy, large numbers of workers not recruited through the Job Service are employed, or for other reasons.

If possible, the survey should be conducted during the active work season. However, a survey may be conducted at any time of the year provided it reflects conditions at the peak of the season for the specific crop

activity. Collected data should cover one week at the peak period, except that for an unusual crop situation the data may cover up to two weeks at the peak period. (Special provisions for conducting an emergency survey are discussed in Section II C.)

D. Scope of Survey

The following factors must be given threshold consideration by SESAs in conducting prevailing wage surveys:

- The wage survey covers "domestic" workers only; this means a worker who is legally qualified to work in the U.S., i.e., a worker, other than a H-2A worker, for whom the employer has completed an I-9, INS's Employment Eligibility Verification form. If H-2A employers are included in the survey, information should be collected from them only on the wage rates paid their domestic workers.

- A specific crop or task activity is the type of work actually performed in relation to a general crop or task. The specific activity may include different stages of harvesting such as 1st pick, 2nd pick or strip. It may also include different use of the product such as picking for the fresh market, for processing into juice or for canning. The specific activity may also be based on varying wage levels or the method of operation such as moving 3-inch pipe, 4-inch pipe or wheelines in irrigation work.

- A wage reporting area is the agricultural reporting area as defined for the purpose of ETA-223 reports (Handbook pages I-102 to I-105) which will normally be the geographic entity for wage survey purposes. However, in some instances, subareas of the reporting area may be more appropriate for wage survey purposes because of substantial dissimilarities in crop or related conditions within the agricultural reporting area.

- The wage survey should include domestic workers of small, medium and large employers from the entire area being surveyed, and should be selected by probability sampling methods. While most survey information may be obtained by telephone or mail contacts, attempts should be made to include a representative number of personal employer interviews in all wage surveys in order to supplement and verify survey information obtained by telephone or mail. The State agency must assure itself that information gathered is representative of the rates being paid in the crop activity.

II. Specific Survey Planning and Performance

A. Standards for Planning Prevailing Wage Surveys

1. *Planning surveys.* An assessment of prospective seasonal agricultural activity should be made by the State agency well in advance of anticipated farm labor needs in those crops and activities which meet, or are expected to meet, the conditions specified in Section I-C. Written plans shall be prepared for scheduled surveys and sent to the Regional Office for approval. (See page I-)

2. *Representativeness of wage rates (sampling).* Before conducting a survey, the State agency should assure that the planned sample will yield data which will be representative of the wage rates paid in the crop activity in the area of intended employment. The wage survey sample should include domestic workers of small, medium and large employers from the entire area being surveyed, and should be selected by probability sampling methods.

In determining the appropriate universe and in planning sampling procedures, the State should rely upon its established Research and Analysis (R & A) unit. Usually, this unit is already involved in planning and conducting surveys in other areas, and its expertise in surveying has been refined over many years.

In constructing a sample of workers, the following general guide should be observed:

Number of domestic workers in the crop activity in area	Sample size (percent of workers)
50-299.....	55
300-499.....	50
500-699.....	45
700-999.....	40
1000-1299.....	35
1300-1599.....	30
1600-2999.....	20
3000 or more.....	15

If the initial survey results in a low response rate, the State should follow-up with employers in an effort to increase the response rate. No determination shall be made based on a sample of less than three employers.

3. *Coverage of employers, workers and kinds of remuneration.* (a.) In determining the appropriate universe of employers and workers to survey, the State should use available sources such as the ETA 202 file, employer organizations, universities and State agricultural offices.

(b.) When conducting surveys SESAs must inform employers that they are seeking information on the actual wage rate paid to domestic workers only; i.e., workers for whom the employer has completed an I-9, INS's Employment of Eligibility Verification form. H-2A workers are excluded.

(c.) A wage rate means actual cash remuneration to a worker by an employer in payment for services rendered. It does not mean an hourly rate which has been calculated from piece rate earnings. Fringe benefits such as free housing and free meals must not be counted as part of the wage rate. A wage rate may be a piece rate or an hourly, weekly, bi-weekly or monthly rate. A bonus component may be part of a wage rate. For example, an apple picking rate may be \$.70 per bushel plus \$.05 end of season bonus; the \$.05 bonus must be shown separately.

B. Methods of Collection and Sources of Wage Survey Information

While most survey information may be obtained by telephone or mail contacts, attempts should be made to include a representative number of personal employer interviews in all wage surveys in order to supplement and verify survey information obtained by telephone or mail. (See form ETA 232A). The State agency must assure itself that information gathered is representative of the rates being paid in the crop activity.

C. Special Procedures for Unexpected Situations

There may be situations where surveys have not been required in the past and employers will unexpectedly submit requests to the Job Service for workers. Although the timing of unanticipated requests may preclude the application of standard survey procedures, the State agency is still responsible for advising the Regional Office on the acceptability of wage rates offered in job orders. In such situations, where time constraints require a rapid determination regarding prevailing wage rates, the following procedures will apply:

1. Depending on the amount of time available, attempt to collect survey data solely by telephone after determining the appropriate universe. In determining the universe, refer to the ETA 202 file or other sources which are readily available.
2. Examine open and closed local job orders involving the same or similar occupation, activity, and crop.
3. Obtain information from local agricultural employers who do not use

the Employment Service to obtain workers.

4. Consult U.S. Department of Agriculture agencies and affiliates such as Cooperative Extension Services and the National Agricultural Statistics Service's State statistician. Also contact colleges and universities with staff conversant in the agricultural sciences.

5. Consult farmworker organizations (include JTPA 402 grantees) and agricultural employer organizations, such as the Farm Bureau.

6. Consider whatever documentation the requesting employer or employers have to submit.

III. Prevailing Wage Findings and Determinations

A. Arraying Collected Data

Rates paid to workers covered in the survey should be listed in descending order and grouped by unit of pay, such as by the bushel or by the hour. Handling of special kinds of pay is addressed in the following paragraphs.

1. **Overtime and piece rate earnings.** Prevailing wage rate findings are based upon actual wage rates paid by employers. Average earnings data which may show overtime or piece-rate wages converted to hourly rates are excluded.

2. **Atypical rates.** The collected wage rates arrayed in section 4 of the final 232 report and used in determining the prevailing rate should be unaffected by unique or unusual factors. An example of such a factor is an earthquake, flood, hurricane, tornado or other Act of God resulting in employer escalated rates referred to as "hardship" rates by some employers. (These rates are set in emergencies to compensate for expected big decrease in workers' earnings.) Although the "hardship" rate is not used, it should be shown as part of the array and footnoted with an explanation of why it was judged to be atypical.

3. **Collective-bargained rates.** In areas where agricultural employees are members of collective bargaining units, the unions will sometimes specify wage rates to be paid in their contracts with agricultural employers. For the purpose of determining prevailing wage rates, collective bargaining rates should not be given special treatment. These rates, if actually paid to workers, should be included in the normal array of wages from the survey.

4. **Bonuses.** For wage rates that include bonus rates in the same units as the base rates (e.g., 25 cents per box plus a 5 cent bonus per box), add the bonus to the base rate, in each case, to determine the gross rate. Array the gross rates including the piece rates within each gross rate in descending order.

Each base rate and bonus combination and each piece rate without bonus will be considered separate rates for purposes of determining the prevailing rate. For wage rates that include bonus rates in units different from the base unit (e.g., \$1.10 per hour plus 40 cents per box), treat each such rate and bonus arrangement as a different unit of payment.

Following is an example of how bonuses should be arrayed in completing the final ETA-232 report.

Rate (per box)	Gross rate	Number of workers Total: 1,000
\$0.20 + \$0.02 bonus	\$0.22	100
.17 + \$0.04 bonus .....	.21	50
.20 + (no bonus) .....	.20	150
.18 + \$0.02 bonus .....	.20	250
.17 + \$0.03 bonus .....	.20	300
.16 + \$0.04 bonus .....	.20	100
.19 + (no bonus) .....	.19	50

In any situation where a base rate bonus combination becomes prevailing, the base rate continues to be shown separately from the bonus such as \$0.18 + \$0.02 quality bonus.

5. **Rate Schedule.** A rate schedule (also referred to as a schedule-of-rates) which is prepared by an employer prior to the start of the work season, is a list of rates to be paid based on varying conditions affecting a product when it is harvested. Varying conditions may involve size, estimated yield or other factors. Following is an example of how an employer may prepare a pre-season rate schedule for harvesting cucumbers:

Rate to be paid per bushel	Size in diameter
\$0.80	½ inch.
.70	1 inch.
.60	1½ inches.
.50	2 inches.

Such a schedule should be entered in the array as if it were a separate rate. Contingent on the number of workers covered by the schedule and related collected wage data, the schedule could be determined to be prevailing.

6. **Task Rates.** A task rate is a method of payment which is based upon a measure of production which is not amenable to being quantified, such as per field of beets weeded or per row of sugar cane cut. Task rates normally vary from day-to-day, depending upon such factors as complexity and difficulty of the "task" involved at a specific point in time, such as density of weeds to be removed, and precise wage rates are not

set ahead of time. In situations where task rates are used, it will not be possible to establish a prevailing wage finding. SESAs should collect information on the range of task rates paid, which may vary from field to field depending upon circumstances, and report them, noting that a task rate situation does not lend itself to a prevailing wage determination.

B. Conversion of Different Units of Payment to a Common Base

When possible, different units of production in a crop activity must be converted to a common base. For example, collected data for a specific activity such as fruit picking may include several proportional units of a bushel such as $\frac{1}{8}$'s of a bushel, 1 bushel, 1-and- $\frac{1}{8}$ bushels and a 15-bushel bin. All of these rates can be converted into a single standardized rate such as 1 bushel.

As another example, in some situations different methods of pay for irrigation work can be converted to a common base. For example, if there is a proportional mile line in a survey area consisting of a standard number of pipes or joints then the collected pay data for lines, pipes and joints can be converted to the *single dominant unit of payment*.

In all cases, the converted single unit would be shown in item 4 of the ETA 232 report while the collected raw data information would be attached to the report. The general process for converting these rates is illustrated below.

Conversion of proportional bushel units

- Convert 1-and- $\frac{1}{8}$ bushels rate to a 1 bushel rate when the 1-and- $\frac{1}{8}$ bushels rate is \$.70.

$$1\text{-and-}\frac{1}{8}\text{ bushels} = .70$$

$$\frac{1}{8} = 0.125$$

$$1\text{-and-}\frac{1}{8}\text{ bushels} = 1.125\text{ bushels}$$

$$1.000\text{ bu divided by }1.125\text{ bushels} = .889$$

$$.889 \times \$0.70 = \$0.62\text{ p/bushel}$$

- Convert a 1 bushel rate to a 1-and- $\frac{1}{8}$ bushels rate when the bushel rate is .62.

$$1\text{ bushel} = \$0.62$$

$$\frac{1}{8}\text{ of a bushel} = 0.125\text{ increase}$$

$$\$0.62 \times 1.125 = \$0.70\text{ p/1-and-}\frac{1}{8}\text{ bushels}$$

$$\text{Note: } 1\text{ bushel} = 2,150.40\text{ cu.in.}$$

$$1\text{-and-}\frac{1}{8}\text{ bushels} = 2,419.22\text{ cu.in.}$$

- Convert a $\frac{1}{8}$ bushel rate to a 1 bushel rate when the $\frac{1}{8}$ bushel rate is \$.45.

$$\frac{1}{8}\text{ bushel} = \$0.45$$

$$1\text{ bu} = (8/8)$$

$$\frac{1}{8}\text{ bu} = \$0.45\text{ divided by } \frac{1}{8} = .45\text{ divided by } 8 = .09\text{ (}\frac{1}{8}\text{ bu)}$$

$$1\text{ bushel } (8/8) = .09\text{ (}\frac{1}{8}\text{ bu)} \times 8 = \$0.72\text{ p/bushel}$$

- Convert a 15-bushel bin rate to a bushel rate when the bin rate is \$10.50. \$10.50 divided by 15 bushels = \$.70 p/bushel

C. Procedure for Making a Prevailing Wage Finding

1. *One or more units of payment.* If the report consists of a single unit of payment (e.g., by the hour or by the bushel) the finding can be determined by application of the 40/51 percent rules which are explained below. If more than one unit of payment is shown in the report, follow the table below in determining which units of payment are subject to wage findings. For example, if the sample size is 150 workers and at least 30 percent are paid by the hour and at least 30 percent are paid by the bushel, then a wage finding shall be determined for both groups (those paid hourly and those paid by the bushel), by applying the 40/51 percent rules within each group.

Sample size ¹	Percent- age of workers needed in a pay unit to make a wage finding
10-99	35
100-299	30
300-699	25
700-1299	20
1300-2999	15
3000 and over	10

¹ Sample size means the total number of workers shown on each separate ETA 232 report.

2. *Local and intra/interstate rates.* When arraying is completed, determine if "local" and "intra/interstate" totals under section 4 of the 232 report each constitute at least 25 percent of the "total" workers. If below 25 percent, no separate wage determination is required. Workers in these categories will be subject to the determination applicable to the larger group.

3. *The 40/51 percent rules.* The 40/51 percent rules are applied to each of the units determined to be subject to a wage finding. If within the unit of payment a single wage rate, or schedule of rates, covers at least 40 percent of total workers in the unit, that single rate or schedule is the prevailing rate, and no further action is needed for that unit. If no single rate in the unit covers at least 40 percent of the workers, then the 51 percent rule is applied to determine the prevailing rate. The procedure is to start at the bottom of the rates arrayed in descending order. Begin counting the number of workers covered and count upward until 51 percent of the workers

in the unit are included. The rate reached at this point is the prevailing rate. Both the 40 and 51 percent rules are applied to all three columns under Section 4 of the 232 report: Total workers, local and intra/inter-state. The highest rate determined among the three columns is the prevailing rate.

Example: 40 percent rule

U.S. WORKERS

Rate (per bushel)	Total	Local	Intra/ interstate
\$0.75	300	170	130
.70	18	18	0
.62	26	22	4
.60	53	28	25
.56	* 123	22	* 101
.55	47	47	0
.50	13	13	0
.50	20	20	0

* Prevailing rate per 40% rule. 40% of 300 total is 120, 40% of 170 total is 68, and 40% of 130 total is 52.

Example: 51 percent rule.

U.S. WORKERS

Rate (per bushel)	Total	Local	Intra/ interstate
\$0.72	200	160	* 40
.60	19	19	0
.55	25	25	0
.52	49	9	40
.50	* 50	* 50	0
.48	27	27	0
.45	20	20	0
.45	10	10	0

* No finding required since 40 is less than 25% of total workers (200).

* Prevailing rate per 51% rule. 51% of 200 total is 102 and 51% of 160 total is 82.

D. Report Submittal and Prevailing Wage Determination

When the survey is completed and the data have been properly grouped and arrayed, a separate ETA 232 report is prepared for each specific activity covered. It is not unusual for a single survey to result in the preparation of several Reports. The ETA-232 report showing survey findings must be prepared and submitted within five weeks to the ETA Regional Office and the National Office. (See page regarding distribution).

A report must be submitted for each survey, whether or not it results in a finding. The reason for not making a finding should be explained. (When for any reason a wage finding cannot be made, the National Office will examine other approaches for deriving an acceptable minimum wage for agricultural clearance order purposes).

The wage findings in the report are preliminary until reviewed by the

National Office. The findings become final when the State is notified by ETA. This will always occur when temporary foreign workers are employed or have been requested. When temporary aliens are not involved, it is possible that the State will not be notified of review results unless there are incorrect findings. In this situation, the submitted report becomes final 40 working days after being mailed to the National Office. (The State may request an expedited review and/or notification of review results on any submitted report).

IV. Prevailing Wage Applicability to Employer Job Orders

A. General

The wage rate which must be offered by employers on clearance orders shall be at least as high as the highest of the "all workers" rate, the "local" rate, or the "intra/interstate" rate, provided such rates are no lower than the legal State or Federal minimum wage or the AEW (where applicable).

Normally, the wage finding from a survey is applied during the next year. For example, a finding from an October 1989 apple harvest survey will be applied in evaluating job orders submitted for the 1990 apple harvest in the same area. (See page 10 regarding emergency situations.)

Special situations are addressed in the following paragraphs.

B. Alternative Piece Rates

For activities paid on a piece-rate basis, the State agency may accept job orders which offer piece rates that differ from those specified in the prevailing wage findings, if the employer making such an offer can demonstrate that the proposed piece rate or schedule-of-rates are necessary because of the employer's specific type of operation and that they can reasonably be expected to produce earnings for the average worker, which are no less than those received under the rate or rates determined to be prevailing. (See 20 CFR part 653, subpart F for further requirements). For example, although the established prevailing wage rate for picking cucumbers may be \$0.50 per bushel, a particular grower may desire to pick by varying sizes and pay the workers accordingly. Therefore, upon request the grower may be allowed to offer several rates based on the diameter or length of the cucumbers picked. The burden of proof in this situation is on the employer who would be requested to provide supporting payroll information relating to productivity, earnings and other factors.

C. Bonuses

Wage offers on intra/interstate clearance orders must include a base rate component not less than the base rate component of the prevailing wage. The following example is illustrative:

Rate (per box)	Gross rate	Number of workers
Total.....		1,000
\$0.20 + \$0.02 bonus ¹	\$0.22	10
.17 + \$0.04 bonus ¹.....	.21	50
.20 + no bonus.....	.20	150
.18 + \$0.02 bonus ¹.....	.20	250
.17 + \$0.03 bonus ¹.....	.20	300
.16 + \$0.04 bonus ¹.....	.20	100
.19 + no bonus.....	.19	50

¹ End of season bonus.

Using the 51-percent rule (since no single rate accounts for 40 percent of the workers), the prevailing wage rate is a base rate of 18 cents plus 2 cents bonus. The rates of 17 cents plus 3 cents bonus and 16 cents plus 4 cents bonus equal the 18-cent plus 2 cents bonus prevailing gross rate, and the rate of 17 cents plus 4 cents bonus exceeds it, but they are not acceptable for clearance orders because the base rates are less than the prevailing base rate of 18 cents.

D. Establishment of Special Hourly Rates Under Certain Circumstances

In rare situations where only a prevailing piece rate finding has been made by the National Office based on a SESA prevailing wage survey and an employer wishes to pay on an hourly basis, the following procedure applies:

(1) Calculate the average hourly earnings figure (weighted by the number of hours worked) for piece-rate-paid domestic workers in the area, crop activity, and occupation, using previous years' earnings data—preferably three years. The earnings data are obtained either from applicable SESA prevailing wage surveys, or by special surveys of employers' domestic worker payroll records. Calculate this average for each year for which earnings data are available, up to a maximum of three years.

(2) Discount the average hourly earnings figure for each year by 20 percent. Add the discounted yearly rates and divide by the total number of years to obtain the prevailing hourly rate which the employer must offer.

(3) Where hourly-paid domestic workers are also working in the area and activity and are included in the SESA surveys, their earnings also have to be factored into the calculation of the prevailing hourly rate as follows:

(a) Weight the hourly rates paid by the number of hours worked to obtain a

single weighted hourly average. Then calculate a combined weighted average of average earnings figures of both hourly-paid and piece-rate-paid workers, weighting by total number of hours worked.

(b) When the number of hours worked is not available for hourly-paid workers, use the number of workers to obtain the weighted average hourly figure. Similarly, use the total number of workers rather than hours worked when calculating the combined weighted average of hourly-paid and piece-rate-paid workers.

The annual rates obtained by method (a) or (b) are then added together and divided by the number of years to obtain the prevailing hourly rate.

The National Office is to be consulted in *all* instances where such a determination is required. National Office staff will provide guidance on specifics, including selection of the base years and the factoring in of hourly wages, to insure correct application of this procedure to each individual circumstance.

Example: The tables below are illustrative:

Apple Pickers (Fresh Market), 1989

I. Piece Rate Workers

Number of workers	Hours worked	x	Average hourly earnings ¹	=	Total earnings
5	77		\$12.04		\$927.08
4	64		3.83		245.12
2	8		6.75		54.00
12	252		4.14		1,043.28
1	10		2.80		28.00
3	116		5.54		642.64
2	108		6.75		729.00
29	635				3,669.12

\$3,669.12 divided by 635 hrs. = \$5.78 (weighted) × .80 (20% discount).

¹ To obtain, multiply rate of pay by units of production and divide results by hours worked.

II. Hourly Workers

Number of workers	Hours worked	x	Hourly pay	=	Total earnings
1	12		\$5.75		\$69.00
2	1		5.00		5.00
4	47		4.50		211.50
2	60		4.35		261.00
6	48		4.00		192.00
2	15		3.75		56.25
1	1		3.50		3.50
18	184				798.25

Number of workers	Hours worked	Hourly pay	Total earnings
$\$798.25 \text{ divided by } 184 \text{ hrs.} = \4.34 (weighted)			

III. Final Computation for 1989

Number of workers	Hours worked	Computed rates
29 (piece rates).....	635	$\times \$4.62 = \$2,933.70$
18 (hourly rates).....	184	$\times 4.34 = \$798.56$
	819	3,732.26
$\$3,732.26/819 \text{ hrs.} = \$4.56 \text{ (rate for 1989)}$		

Appendix A: Plan for Agricultural Wage Survey

Title: PLAN FOR AGRICULTURAL WAGE SURVEY

Form Number: N/A—Narrative Plan

Frequency: Once each season by the State for each crop activity in which:

- Fifty (50) or more domestic workers recruited by the Employment Service were employed in the previous season, or may reasonably be expected to be employed in the current season; or
- Fifty (50) or more H-2A workers were employed in the previous season, or employers have requested or may be expected to request fifty (50) or more H-2A workers in the current season; or
- The crop or crop activity has been designated by the ETA as an important crop or crop activity, because of its status in the national economy, because large numbers of workers not recruited through the Job Service are employed, or for other reasons.

Purpose and Content: To provide to ETA Regional Offices, for review and approval, State agency Plans for the conduct of agricultural wage surveys. Each Plan identifies the agricultural areas covered and the specific crop activity, sampling criteria to be used on the survey, and any special information deemed necessary for Regional Office use.

Prepared by: State Central Office staff.

Distribution: The original and one copy to the Regional Office at least 90 calendar days prior to the week of the survey. If more than one survey is scheduled for the year, Plans for all may be submitted at the same time.

Completion Instructions: Line-by-line instructions appear on the pages following this summary.

I. Special Instructions

A. Each State agency which expects workers to be employed in agriculture in that State under one or more of the conditions specified in paragraph one of page 1, is to prepare and submit to the ETA Regional Office one or more Plans for performing agricultural wage surveys. If the initial Plan does not meet the approval of the Regional Office, the State will be notified without delay. Discussion of problem areas will

continue until the Plan is properly amended and approved.

B. The Plan for a survey need be submitted only once a year. Partial changes in a Plan may be made through an amendment; comprehensive changes should be submitted through a new Plan.

C. Normally, the boundaries of the wage reporting area will be the same as those of the agricultural reporting area (ETA-223) and no additional information will be required. However, where a State agency wishes to establish a wage reporting area which is not the same as an agricultural reporting area, the following information is required:

1. The boundary description which would be in terms of counties, where applicable.

Where the boundaries are not county lines:

a. Give a more detailed description; e.g., "All of the Southern half of Finster County bounded on the northeast by Interstate Highway 72, on the north central by Army installation, and on the northwest by Neuse River."

b. Attached to each copy of the Plan a map showing the boundaries. If a map showing the same geographic area has been submitted for another wage reporting area, a cross reference can be substituted for the map.

2. The local offices in the area.

3. Identification of the agricultural reporting area(s) in which the wage reporting area is located.

D. The Plan should be amended when previously reported conditions or procedures change. Each amendment would be identified by a current date and a reference to the Plan number to which it applies; e.g., "April 15, 1989, amendment to Plan No. 2."

II. Preparation of Plan

A. **Heading of Plan.** At the top of the first page of each Plan or amendment enter the following identifying information:

1. **Number and title of the report;** i.e., "Plan for Agricultural Wage Surveys (of the ETA 232 report)", and "Amended" as necessary.

2. **Name of State.**

3. **Date of preparation.**

4. **Plan number.** All Plans should be numbered consecutively in the order of submittal during a calendar year; e.g., Plan No. 1, Plan No. 2. If a State agency submits several Plans in a package, each Plan should be numbered according to the time of the scheduled survey. Each amendment should be identified with the number of the Plan to which it relates.

B. **Items to Be Included in Plan for Each Wage Reporting Area.** Give the following information for each area which the plan covers:

1. **Name.** The area name is assigned by the State agency. It should be short and descriptive and should identify both the area and the crop (e.g., Maricopa lemons).

3. **Crop activity.** The terms used should adequately describe the activity and should be consistent with those in section A of the ETA-223 reports. If the activity will be surveyed during different phases of harvesting such as 1st pick, 2nd pick and strip this should be stated. For each activity give the following information:

a. The estimated beginning and ending dates for the crop activity and the period of peak activity.

b. The estimated number of workers required to work in the crop activity during the peak period.

C. Sampling Information

1. Specify the criteria to be used in selection of the sample to make sure that the survey will yield representative results. Indicate the size of the sample which will be used under varying conditions and the major area characteristics which will have a bearing on the wage rates paid in the crop activity. If the sampling criteria will vary under different conditions or for different crops, identify the wage reporting areas and crop activities to which these variations apply. As suggested in section 1.1, the State R&A unit should have a key role in planning and implementing sampling criteria.

2. Describe the sources and methods to be used in collecting the sample data from employers.

D. Comments

1. Explain any special situations or conditions not otherwise accounted for in the Plan which will be helpful in interpreting the data reported.

2. Explain any instances where the reporting instructions have not been followed in completing the items in the Plan.

3. Request assistance in training survey staff, if needed.

4. Discuss expected budgetary problems or other expected problems. If there is an obvious monetary shortfall, specify in the Plan the amount needed to overcome the shortfall. Without delay, the Regional Office will take steps to resolve this.

Appendix D: Explanation of Special Terms

1. **Adverse Effect Wage Rate (AEWR):** The hourly wage rate DOL requires an employer to offer and guarantee when requesting certification to employ temporary foreign agricultural workers under the H-2A program. The purpose of the AEWR is to prevent the employment of foreign workers from adversely affecting U.S. workers.

2. **Base rate:** The rate paid by an employer minus any type of added bonus, other incentive or perquisite.

3. **Bonus:** Generally, an added increment of pay above the base rate which is paid on a conditional basis for such factors as high quality work or successful completion of a season.

4. **Contract foreign worker:** A nonimmigrant alien admitted to the U.S. for agricultural labor or services of a temporary or seasonal nature under provisions of the INA, as amended by the IRCA, also H-2A worker.

5. **Crop:** Cultivated produce, usually of the earth, produced for marketing purposes which is normally planted, grown and harvested. May include livestock and fish.

6. **Crop or task activity:** The type of work actually performed in relation to a specific crop or task. The specific activity may include different stages of harvesting such as 1st pick, 2nd pick or strip. It may also include different use of the product such as picking

for the fresh market, for processing into juice or for canning. In irrigation work, the specific activity may be based on the method of operation such as moving 3-inch pipe, 4-inch pipe or wheellines. When the survey is completed and the data have been properly grouped and arrayed, a separate ETA 232 Report is prepared for each specific activity covered. It is not unusual for a single survey to result in the preparation of several Reports.

7. *Domestic worker*: A worker who is legally authorized to work in the United States, but not an H-2A worker.

8. *Employer*: A person, firm, corporation or other association or organization which suffers or permits a person (employee) to work as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of any such employee.

9. *Gross rate*: A combination of a base rate and a bonus rate when a bonus is paid. Does not include perquisites.

10. *H-2A worker*: See *contract foreign worker*.

11. *Hardship rate*: A compensatory rate paid when an Act of God, such as a tornado, flood, or earthquake, results in reduced yields and earning capabilities for workers.

12. *Hired worker*: An agricultural worker hired in exchange for the payment of wages, as differentiated from a family member who is not working for wages.

13. *Hourly rate*: A rate of pay per hour.

14. *I-9 Form*: The Immigration and Naturalization Service (INS) form which is used for purposes of verifying the employment eligibility of American citizens and aliens authorized to work in the U.S. Employers must complete and retain the I-9 for all employees.

15. *In-season*: The active period for a crop when it is being planted, cultivated or harvested.

16. *Instate worker*: A domestic worker whose permanent residence is within the same state as the agricultural job being performed. Can be an intrastate or local worker.

17. *Interstate worker*: A domestic worker whose permanent residence is not within the same state as the agricultural job, and who cannot reasonably commute from his/her permanent residence to and from the job site in the same day.

18. *Intrastate worker*: A domestic worker whose permanent residence is within the same state as the agricultural job opportunity, but not within the jurisdiction of the SESA local office nearest to the job site, and who cannot reasonably commute from his/her permanent residence to and from the job site in the same day.

19. *Intra/interstate worker*: A domestic worker who is not a local worker.

20. *Local worker*: A domestic worker whose permanent residence is within the jurisdiction of the SESA local office nearest to the job site, and who can reasonably commute from his/her residence to and from the job site in the same day.

21. *Method of payment*: The general means or measure used in paying workers for services rendered. For example, payment may be by a piece rate based on a quantity of produce harvested such as a bushel or some

proportion of a bushel. Also, payment may be a schedule of different rates or by the measure of time, such as by the hour or the month.

22. *Peak season*: The point in a work season for a particular agricultural activity when most workers employed are actually working full-time.

23. *Perquisite*: An item provided to a worker in addition to regular wages, such as free food, free housing, or free medical insurance.

24. *Piece rate*: A form of remuneration paid to a worker in relation to an identifiable unit of production being produced, harvested or processed: e.g., \$0.50 for picking a bushel of apples.

25. *Prevailing wage rate finding*: The wage rate (or rates) determined to be prevailing in a crop activity, or related activity such as irrigating, based on the collection of adequate wage data and compilation of form ETA 232 (page I-). The wage rate finding is not effective until the ETA 232 Report has been submitted to the Regional and National Offices, and the National Office has verified the finding determination.

26. *Schedule-of-rates*: A predetermined list of rates which will be paid during the work season, based upon varying conditions such as estimated yield or the size of a harvested product.

27. *Standard agricultural reporting area*: The specific geographic areas which States have established for collecting data used to complete the ETA-223 In-Season Farm Labor Report.

28. *Task rate*: A method or unit of payment which is based upon a measure of production such as per field of beets weeded or per row of sugar cane cut. A task rate, which will normally vary from field to field or from day-to-day, is not usually established until the worker actually begins work. It normally depends upon the difficulty and complexity levels of the daily task to be performed, such as density of weeds to be pulled or density of sugar cane to be cut.

29. *Unit of payment*: The specific manner in which a group of workers are paid. For example, under the piece rate method, workers may be paid by the bag, basket, bin, bucket, bushel, crate or hamper. If a certain group is paid by the crate, that is their unit of payment while the method of pay is by a piece rate. Under the measure of time, payment by the hour to a certain group would be the unit of payment.

30. *Unit of production*: The basic measure of production in a specific crop activity; e.g., per bushel, per bin, per pallet, per row, per 1/4-mile wheelline.

31. *Universe*: The total number of employers in a specific geographic area who are hiring workers for a specific crop activity. A sample of the universe of employers is surveyed to compile wage data used to determine a prevailing wage in a crop activity. The term is also used to describe the total number of workers involved in a wage survey.

32. *Wage finding report*: The ETA 232 report which is the final summary of collected wage data submitted to the ETA National Office and Regional Office.

33. *Wage Survey Interview Record*: The ETA 232A form. This form is used by local

SESA offices to identify, by crop area and crop activity, wage rates paid to, and number of, domestic and foreign workers.

34. *Wage reporting area*: The agricultural reporting area as defined for the purpose of ETA-223 reports (Handbook pages 1-102 to 1-105) will normally be the geographic entity for wage survey purposes. However, in some instances, subareas of the reporting area are more appropriate for wage survey purposes because of substantial dissimilarities in crop of related conditions within the agricultural reporting area. Upon approval by the Regional Office, an area, smaller or larger, which is not congruent with a standard agricultural reporting area may be designated as a wage reporting area.

35. *Wages*: Cash remuneration to a worker by an employer in payment for personal services. Does not include perquisites.

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BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The annual list of labor surplus areas is effective October 1, 1989 through September 30, 1990.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas, which includes civil jurisdictions with a population of twenty-five thousand or more as required by Pub. L. 99-272.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., Room N4470, Attention: TEES, Washington, DC 20210. Telephone: 202-535-0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial

unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor is publishing the annual list of labor surplus areas.

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615, April 12, 1983) and are effective October 1, 1989 through September 30, 1990.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on September 29, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Alabama	
Anniston City	Anniston City in Calhoun County.
Baldwin County	Baldwin County.
Barbour County	Barbour County.
Bessemer City	Bessemer City in Jefferson County.
Bibb County	Bibb County.
Birmingham City	Birmingham City in Jefferson County.
Blount County	Blount County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Bullock County	Bullock County.
Butler County	Butler County.
Cherokee County	Cherokee County.
Chilton County	Chilton County.
Choctaw County	Choctaw County.
Clarke County	Clarke County.
Clay County	Clay County.
Colbert County	Colbert County.
Conecuh County	Conecuh County.
Covington County	Covington County.
Crenshaw County	Crenshaw County.
Cullman County	Cullman County.
Dale County	Dale County.
Balance of Dallas County.	Dallas County less Selma City.
De Kalb County	De Kalb County.
Decatur City	Decatur City in Morgan County.
Escambia County	Escambia County.
Fayette County	Fayette County.
Florence City	Florence City in Lauderdale County.
Franklin County	Franklin County.
Gadsden City	Gadsden City in Etowah County.
Greene County	Greene County.
Hale County	Hale County.
Jackson County	Jackson County.
Lawrence County	Lawrence County.
Lowndes County	Lowndes County.
Macon County	Macon County.
Marengo County	Marengo County.
Marion County	Marion County.
Marshall County	Marshall County.
Mobile City	Mobile City in Mobile County.
Balance of Mobile County.	Mobile County less Mobile City, Prichard City.
Monroe County	Monroe County.
Balance of Morgan County.	Morgan County less Decatur City.
Perry County	Perry County.
Phenix City	Phenix City in Lee County, Russell County.
Pickens County	Pickens County.
Prichard City	Prichard City in Mobile County.
Selma City	Selma City in Dallas County.
Sumter County	Sumter County.
Talladega County	Talladega County.
Walker County	Walker County.
Washington County	Washington County.
Wilcox County	Wilcox County.
Winston County	Winston County.

Alaska

Anchorage City	Anchorage City in Anchorage Borough.
Bethel Census Area	Bethel Census Area.
Bristol Bay Borough Div.	Bristol Bay Borough Div.
Dillingham Census Area	Dillingham Census Area.
Fairbanks City	Fairbanks City in Fairbanks North Star Borough.
Balance of Fairbanks North Star Borough.	Fairbanks North Star Borough less Fairbanks City.
Haines Borough	Haines Borough.
Kenai Peninsula Borough	Kenai Peninsula Borough.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Ketchikan Gateway Borough.	Ketchikan Gateway Borough.
Matanuska-Susitna Borough.	Matanuska-Susitna Borough.
Nome Census area	Nome Census area.
Northwest Arctic Borough.	Northwest Arctic Borough.
Prince of Wales Outer Ketchikan.	Prince of Wales Outer Ketchikan.
Sitka Borough	Sitka Borough.
Skagway Yakutat Anagoon Census area.	Skagway Yakutat Anagoon Census area.
Southeast Fairbanks Census area.	Southeast Fairbanks Census area.
Valdez Cordova Census area.	Valdez Cordova Census area.
Wade Hampton Census area.	Wade Hampton Census area.
Wrangell-Petersburg Census area.	Wrangell-Petersburg Census area.
Yukon-Koyukuk Census area.	Yukon-Koyukuk Census area.

Arizona

Apache County	Apache County.
Balance of Cochise County.	Cochise County less Sierra Vista City.
Balance of Coconino County.	Coconino County less Flagstaff City in Coconino County.
Gila County	Gila County.
Graham County	Graham County.
Greenlee County	Greenlee County.
La Paz County	La Paz County.
Navajo County	Navajo County.
Pinal County	Pinal County.
Santa Cruz County	Santa Cruz County.
Sierra Vista City	Sierra Vista City in Cochise County.
Yuma City	Yuma City in Yuma County.
Balance of Yuma County	Yuma County less Yuma City.

Arkansas

Ashley County	Ashley County.
Baxter County	Baxter County.
Bradley County	Bradley County.
Chicot County	Chicot County.
Clark County	Clark County.
Clay County	Clay County.
Cleburne County	Cleburne County.
Cleveland County	Cleveland County.
Columbia County	Columbia County.
Conway County	Conway County.
Balance of Crittenden County.	Crittenden County less West Memphis City.
Cross County	Cross County.
Dallas County	Dallas County.
Desha County	Desha County.
Drew County	Drew County.
El Dorado City	El Dorado City in Union County.
Faulkner County	Faulkner County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Balance of Garland County.	Garland County less Ft Springs City.
Grant County	Grant County.
Greene County	Greene County.
Hempstead County	Hempstead County.
Hot Spring County	Hot Spring County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Hot Springs City	Hot Springs City in Garland County.
Independence County	Independence County.
Jackson County	Jackson County.
Jacksonville City	Jacksonville City in Pulaski County.
Balance of Jefferson County	Jefferson County less Pine Bluff City.
Johnson County	Johnson County.
Lafayette County	Lafayette County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Lincoln County	Lincoln County.
Little River County	Little River County.
Logan County	Logan County.
Madison County	Madison County.
Balance of Miller County	Miller County less Texarkana City, Ark.
Mississippi County	Mississippi County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Nevada County	Nevada County.
Newton County	Newton County.
Ouachita County	Ouachita County.
Perry County	Perry County.
Phillips County	Phillips County.
Pike County	Pike County.
Pine Bluff City	Pine Bluff City in Jefferson County.
Poinsett County	Poinsett County.
Polk County	Polk County.
Prairie County	Prairie County.
Randolph County	Randolph County.
Saline County	Saline County.
Searcy County	Searcy County.
Balance of Sebastian County	Sebastian County less Fort Smith City.
Sevier County	Sevier County.
Sharp County	Sharp County.
St. Francis County	St. Francis County.
Stone County	Stone County.
Texarkana City, Ark.	Texarkana City, Ark. in Miller County.
Balance of Union County	Union County less El Dorado City.
Van Buren County	Van Buren County.
West Memphis City	West Memphis City in Crittenden County.
White County	White County.
Woodruff County	Woodruff County.

California

Bell Gardens City	Bell Gardens City in Los Angeles County.
Balance of Butte County	Butte County less Chico City.
Calaveras County	Calaveras County.
Clovis City	Clovis City in Fresno County.
Colusa County	Colusa County.
Compton City	Compton City in Los Angeles County.
Del Norte County	Del Norte County.
El Centro City	El Centro City in Imperial County.
El Monte City	El Monte City in Los Angeles County.
Fairfield City	Fairfield City in Solano County.
Fontana City	Fontana City in San Bernardino County.
Fresno City	Fresno City in Fresno County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Fresno County	Fresno County less Clovis City, Fresno City.
Gilroy City	Gilroy City in Santa Clara County.
Glenn County	Glenn County.
Humboldt County	Humboldt County.
Huntington Park City	Huntington Park City in Los Angeles County.
Balance of Imperial County	Imperial County less El Centro City.
Indio City	Indio City in Riverside County.
Balance of Kern County	Kern County less Bakersfield City.
Kings County	Kings County.
Lake County	Lake County.
Lassen County	Lassen County.
Lodi City	Lodi City in San Joaquin County.
Lompoc City	Lompoc City in Santa Barbara County.
Lynwood City	Lynwood City in Los Angeles County.
Madera County	Madera County.
Manteca City	Manteca City in San Joaquin County.
Marina City	Marina City in Monterey County.
Mendocino County	Mendocino County.
Merced City	Merced City in Merced County.
Balance of Merced County	Merced County less Merced City.
Modesto City	Modesto City in Stanislaus County.
Modoc County	Modoc County.
Balance of Monterey County	Monterey County less Marina City, Monterey City, Salinas City, Seaside City.
Oxnard City	Oxnard City in Ventura County.
Paramount City	Paramount City in Los Angeles County.
Plumas County	Plumas County.
Redding City	Redding City in Shasta County.
Richmond City	Richmond City in Contra Costa County.
Salinas City	Salinas City in Monterey County.
San Benito County	San Benito County.
Balance of San Joaquin County	San Joaquin County less Lodi City, Manteca City, Stockton City.
Santa Maria City	Santa Maria City in Santa Barbara County.
Seaside City	Seaside City in Monterey County.
Balance of Shasta County	Shasta County less Redding City.
Sierra County	Sierra County.
Siskiyou County	Siskiyou County.
Balance of Stanislaus County	Stanislaus County less Modesto City, Turlock City.
Stockton City	Stockton City in San Joaquin County.
Sutter County	Sutter County.
Tehama County	Tehama County.
Trinity County	Trinity County.
Tulare City	Tulare City in Tulare County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Tulare County	Tulare County less Tulare City, Visalia City.
Tuolumne County	Tuolumne County.
Turlock City	Turlock City in Stanislaus County.
Vacaville City	Vacaville City in Solano County.
Visalia City	Visalia City in Tulare County.
Watsonville City	Watsonville City in Santa Cruz County.
Woodland City	Woodland City in Yolo County.
Balance of Yolo County	Yolo County less Davis City, Woodland City.
Yuba County	Yuba County.

Colorado

Balance of Adams County	Adams County less Arvada City, Aurora City, Northglenn City, Thornton City, Westminster City.
Alamosa County	Alamosa County.
Archuleta County	Archuleta County.
Chafee County	Chafee County.
Clear Creek County	Clear Creek County.
Colorado Springs City	Colorado Springs City in El Paso County.
Conejos County	Conejos County.
Costilla County	Costilla County.
Custer County	Custer County.
Delta County	Delta County.
Denver City	Denver City on Denver County.
Balance of El Paso County	El Paso County less Colorado Springs City.
Elbert County	Elbert County.
Fremont County	Fremont County.
Garfield County	Garfield County.
Grand Junction City	Grand Junction City in Mesa County.
Greeley City	Greeley City in Weld County.
Huerfano County	Huerfano County.
La Plata County	La Plata County.
Lake County	Lake County.
Las Animas County	Las Animas County.
Loveland City	Loveland City in Larimer County.
Balance of Mesa County	Mesa County less Grand Junction City.
Mineral County	Mineral County.
Moffat County	Moffat County.
Montezuma County	Montezuma County.
Montrose County	Montrose County.
Morgan County	Morgan County.
Otero County	Otero County.
Park County	Park County.
Prowers County	Prowers County.
Pueblo City	Pueblo City in Pueblo County.
Balance of Pueblo County	Pueblo County less Pueblo City.
Rio Blanco County	Rio Blanco County.
Rio Grande County	Rio Grande County.
Routt County	Routt County.
Saguache County	Saguache County.
San Juan County	San Juan County.
San Miguel County	San Miguel County.
Teller County	Teller County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Thornton City.....	Thornton City in Adams County.
Florida	
Balance of Bay County.....	Bay County less Panama City.
Calhoun County.....	Calhoun County.
Columbia County.....	Columbia County.
Fort Pierce City.....	Fort Pierce City in St. Lucie County.
Glades County.....	Glades County.
Gulf County.....	Gulf County.
Hamilton County.....	Hamilton County.
Hardee County.....	Hardee County.
Hendry County.....	Hendry County.
Holmes County.....	Holmes County.
Indian River County.....	Indian River County.
Lakeland City.....	Lakeland City in Polk County.
Okeechobee County.....	Okeechobee County.
Panama City.....	Panama City in Bay County.
Balance of Polk County.....	Polk County less Lakeland City.
Putnam County.....	Putnam County.
Balance of St. Lucie County.....	St. Lucie County less Fort Pierce City, Port St. Lucie City.
Sumter County.....	Sumter County.
Taylor County.....	Taylor County.
Walton County.....	Walton County.
Washington County.....	Washington County.

Georgia

Albany City.....	Albany City in Dougherty County.
Appling County.....	Appling County.
Atlanta City.....	Atlanta City in Appling County, Bacon County, De Kalb County, Fulton County.
Augusta City.....	Augusta City in Richmond County.
Baker County.....	Baker County.
Bartow County.....	Bartow County.
Ben Hill County.....	Ben Hill County.
Brantley County.....	Brantley County.
Burke County.....	Burke County.
Butts County.....	Butts County.
Calhoun County.....	Calhoun County.
Charlton County.....	Charlton County.
Chattahoochee County.....	Chattahoochee County.
Chattooga County.....	Chattooga County.
Clay County.....	Clay County.
Clinch County.....	Clinch County.
Coffee County.....	Coffee County.
College Park City.....	College Park City in Clayton County, Fulton County.
Colquitt County.....	Colquitt County.
Crisp County.....	Crisp County.
Dawson County.....	Dawson County.
Dodge County.....	Dodge County.
Balance of Dougherty County.....	Dougherty County less Albany City.
Early County.....	Early County.
Echols County.....	Echols County.
Elbert County.....	Elbert County.
Emanuel County.....	Emanuel County.
Fannin County.....	Fannin County.
Greene County.....	Greene County.
Hancock County.....	Hancock County.
Jefferson County.....	Jefferson County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Jenkins County.....	Jenkins County.
La Grange City.....	La Grange City in Troup County.
Laurens County.....	Laurens County.
Lincoln County.....	Lincoln County.
Macon County.....	Macon County.
McIntosh County.....	McIntosh County.
Meriwether County.....	Meriwether County.
Mitchell County.....	Mitchell County.
Morgan County.....	Morgan County.
Pierce County.....	Pierce County.
Polk County.....	Polk County.
Putnam County.....	Putnam County.
Quitman County.....	Quitman County.
Randolph County.....	Randolph County.
Rome City.....	Rome City in Floyd County.
Schley County.....	Schley County.
Screven County.....	Screven County.
Stewart County.....	Stewart County.
Sumter County.....	Sumter County.
Talbot County.....	Talbot County.
Taliaferro County.....	Taliaferro County.
Taylor County.....	Taylor County.
Telfair County.....	Telfair County.
Terrell County.....	Terrell County.
Toombs County.....	Toombs County.
Treutlen County.....	Treutlen County.
Turner County.....	Turner County.
Twiggs County.....	Twiggs County.
Ware County.....	Ware County.
Warren County.....	Warren County.
Wayne County.....	Wayne County.
Webster County.....	Webster County.
Worth County.....	Worth County.

Idaho

Adams County.....	Adams County.
Balance of Bannock County.....	Bannock County less Pocatello City.
Bear Lake County.....	Bear Lake County.
Benewah County.....	Benewah County.
Bingham County.....	Bingham County.
Boise County.....	Boise County.
Bonner County.....	Bonner County.
Camas County.....	Camas County.
Balance of Canyon County.....	Canyon County less Nampa City.
Caribou County.....	Caribou County.
Cassia County.....	Cassia County.
Clearwater County.....	Clearwater County.
Fremont County.....	Fremont County.
Gem County.....	Gem County.
Idaho County.....	Idaho County.
Jefferson County.....	Jefferson County.
Jerome County.....	Jerome County.
Kootenai County.....	Kootenai County.
Lemhi County.....	Lemhi County.
Lewis County.....	Lewis County.
Minidoka County.....	Minidoka County.
Nampa City.....	Nampa City in Canyon County.
Balance of Nez Perce County.....	Nez Perce County less Lewiston City.
Payette County.....	Payette County.
Pocatello City.....	Pocatello City in Bannock County.
Power County.....	Power County.
Shoshone County.....	Shoshone County.
Twins Falls City.....	Twins Falls City in Twin Falls County.
Valley County.....	Valley County.
Washington County.....	Washington County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Illinois	
Alexander County.....	Alexander County.
Alton City.....	Alton City in Madison County.
Aurora City.....	Aurora City in Du Page County, Kane County.
Belleville City.....	Belleville City in St. Clair County.
Bond County.....	Bond County.
Boone County.....	Boone County.
Brown County.....	Brown County.
Burbank City.....	Burbank City in Cook County.
Bureau County.....	Bureau County.
Calhoun County.....	Calhoun County.
Carroll County.....	Carroll County.
Cass County.....	Cass County.
Chicago City.....	Chicago City in Cook County.
Christian County.....	Christian County.
Cicero City.....	Cicero City in Cook County.
Clark County.....	Clark County.
Clay County.....	Clay County.
Clinton County.....	Clinton County.
Crawford County.....	Crawford County.
Cumberland County.....	Cumberland County.
Danville City.....	Danville City in Vermilion County.
De Witt.....	De Witt County.
Decatur City.....	Decatur City in Macon County.
East St. Louis City.....	East St. Louis City in St. Clair County.
Edgar County.....	Edgar County.
Edwards County.....	Edwards County.
Fayette County.....	Fayette County.
Franklin County.....	Franklin County.
Freeport City.....	Freeport City in Stephenson County.
Fulton County.....	Fulton County.
Galesburg City.....	Galesburg City in Knox County.
Gallatin County.....	Gallatin County.
Granite City.....	Granite City in Madison County.
Greene County.....	Greene County.
Grundy County.....	Grundy County.
Hamilton County.....	Hamilton County.
Hancock County.....	Hancock County.
Hardin County.....	Hardin County.
Harvey City.....	Harvey City in Cook County.
Henderson County.....	Henderson County.
Henry County.....	Henry County.
Iroquois County.....	Iroquois County.
Balance of Jackson County.....	Jackson County less Carbondale City.
Jasper County.....	Jasper County.
Jefferson County.....	Jefferson County.
Jersey County.....	Jersey County.
Johnson County.....	Johnson County.
Joliet City.....	Joliet City in Will County.
Kankakee City.....	Kankakee City in Kankakee County.
Balance of Kankakee County.....	Kankakee County less Kankakee City.
Balance of Knox County.....	Knox County less Galesburg City.
La Salle County.....	La Salle County.
Lawrence County.....	Lawrence County.
Lee County.....	Lee County.
Macoupin County.....	Macoupin County.
Marion County.....	Marion County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Mason County	Mason County.
Massac County	Massac County.
Maywood Village	Maywood Village in Cook County.
Mercer County	Mercer County.
Moline City	Moline City in Rock Island County.
Montgomery County	Montgomery County.
Moultrie County	Moultrie County.
North Chicago City	North Chicago City in Lake County.
Ogle County	Ogle County.
Pekin City	Pekin City in Tazewell County.
Peoria City	Peoria City in Peoria County.
Perry County	Perry County.
Platt County	Platt County.
Pike County	Pike County.
Pope County	Pope County.
Pulaski County	Pulaski County.
Putnam County	Putnam County.
Quincy City	Quincy City in Adams County.
Randolph County	Randolph County.
Richland County	Richland County.
Rock Island City	Rock Island City in Rock Island County.
Balance of Rock Island County	Rock Island County less Moline City, Rock Island City.
Rockford City	Rockford City in Winnebago County.
Saline County	Saline County.
Schuyler County	Schuyler County.
Scott County	Scott County.
Shelby County	Shelby County.
Balance of St. Clair County	St. Clair County less Belleville City, East St. Louis City.
Stark County	Stark County.
Balance of Tazewell County	Tazewell County less Perkin City.
Union County	Union County.
Balance of Vermilion County	Vermilion County less Danville City.
Wabash County	Wabash County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
White County	White County.
Whiteside County	Whiteside County.
Williamson County	Williamson County.

Indiana

Anderson City	Anderson City in Madison County.
Blackford County	Blackford County.
Crawford County	Crawford County.
East Chicago City	East Chicago City in Lake County.
Fayette County	Fayette County.
Fountain County	Fountain County.
Franklin County	Franklin County.
Gary City	Gary City in Lake County.
Greene County	Greene County.
Hammond City	Hammond City in Lake County.
Henry County	Henry County.
Jackson County	Jackson County.
Jay County	Jay County.
Kokomo City	Kokomo City in Howard County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Lawrence County	Lawrence County.
Marion City	Marion City in Grant County.
Miami County	Miami County.
Michigan City	Michigan City in La Porte County.
Muncie City	Muncie City in Delaware County.
Ohio County	Ohio County.
Orange County	Orange County.
Perry County	Perry County.
Pike County	Pike County.
Portage City	Portage City in Porter County.
Randolph County	Randolph County.
Richmond City	Richmond City in Wayne County.
Rush County	Rush County.
Scott County	Scott County.
Shelby County	Shelby County.
Starke County	Starke County.
Sullivan County	Sullivan County.
Switzerland County	Switzerland County.
Terre Haute City	Terre Haute City in Vigo County.
Vermillion County	Vermillion County.
Balance of Wayne County	Wayne County less Richmond City.

Iowa

Clinton City	Clinton City in Clinton County.
Davenport City	Davenport City in Scott County.
Davis County	Davis County.
Emmet County	Emmet County.
Jackson County	Jackson County.
Lee County	Lee County.
Monroe County	Monroe County.
Ottumwa City	Ottumwa City in Wapello County.
Van Buren County	Van Buren County.
Balance of Wapello County	Wapello County less Ottumwa City.
Waterloo City	Waterloo City in Black Hawk County.

Kansas

Cherokee County	Cherokee County.
Franklin County	Franklin County.
Jackson County	Jackson County.
Kansas City, KN County	Kansas City, KN in Wyandotte County.
Linn County	Linn County.
Neosho County	Neosho County.

Kentucky

Adair County	Adair County.
Allen County	Allen County.
Ashland City	Ashland City in Boyd County.
Ballard County	Ballard County.
Barren County	Barren County.
Bath County	Bath County.
Bell County	Bell County.
Balance of Boyd County	Boyd County less Ashland City.
Boyle County	Boyle County.
Bracken County	Bracken County.
Breathitt County	Breathitt County.
Breckinridge County	Breckinridge County.
Butler County	Butler County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Caldwell County	Caldwell County.
Carlisle County	Carlisle County.
Carter County	Carter County.
Casey County	Casey County.
Balance of Christian County	Christian County less Hopkinsville City.
Clark County	Clark County.
Clay County	Clay County.
Clinton County	Clinton County.
Covington City	Covington City in Kenton County.
Crittenden County	Crittenden County.
Cumberland County	Cumberland County.
Balance of Daviess County	Daviess County less Owensboro City.
Edmonson County	Edmonson County.
Elliott County	Elliott County.
Estill County	Estill County.
Fleming County	Fleming County.
Floyd County	Floyd County.
Fulton County	Fulton County.
Gallatin County	Gallatin County.
Garrard County	Garrard County.
Grant County	Grant County.
Graves County	Graves County.
Grayson County	Grayson County.
Green County	Green County.
Greenup County	Greenup County.
Hancock County	Hancock County.
Harlan County	Harlan County.
Harrison County	Harrison County.
Hart County	Hart County.
Henderson City	Henderson City in Henderson County.
Balance of Henderson County	Henderson County less Henderson City.
Hickman County	Hickman County.
Hopkins County	Hopkins County.
Hopkinsville City	Hopkinsville City in Christian County.
Jackson County	Jackson County.
Johnson County	Johnson County.
Knott County	Knott County.
Knox County	Knox County.
Larue County	Larue County.
Laurel County	Laurel County.
Lawrence County	Lawrence County.
Lee County	Lee County.
Leslie County	Leslie County.
Letcher County	Letcher County.
Lewis County	Lewis County.
Lincoln County	Lincoln County.
Livingston County	Livingston County.
Logan County	Logan County.
Louisville City	Louisville City in Jefferson County.
Lyon County	Lyon County.
Magoffin County	Magoffin County.
Marion County	Marion County.
Marshall County	Marshall County.
Martin County	Martin County.
Mason County	Mason County.
Balance of Mc Cracken County	Mc Cracken County less Paducah City.
Mc Creary County	Mc Creary County.
Mc Lean County	Mc Lean County.
Meade County	Meade County.
Menifee County	Menifee County.
Mercer County	Mercer County.
Metcalf County	Metcalf County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Morgan County	Morgan County.
Muhlenberg County	Muhlenberg County.
Nelson County	Nelson County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
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[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Nicholas County	Nicholas County.
Ohio County	Ohio County.
Owensboro City	Owensboro City in Daviess County.
Owsley County	Owsley County.
Pendleton County	Pendleton County.
Perry County	Perry County.
Pike County	Pike County.
Powell County	Powell County.
Pulaski County	Pulaski County.
Robertson County	Robertson County.
Rockcastle County	Rockcastle County.
Rowan County	Rowan County.
Scott County	Scott County.
Simpson County	Simpson County.
Todd County	Todd County.
Trigg County	Trigg County.
Union County	Union County.
Balance of Warren County	Warren County less Bowling Green City.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.
Whitley County	Whitley County.
Wolfe County	Wolfe County.

Louisiana

Acadia Parish	Acadia Parish.
Alexandria City	Alexandria City in Rapides Parish.
Allen Parish	Allen Parish.
Ascension Parish	Ascension Parish.
Assumption Parish	Assumption Parish.
Avoyelles Parish	Avoyelles Parish.
Baton Rouge City	Baton Rouge City in East Baton Rouge Parish.
Beauregard Parish	Beauregard Parish.
Bienville Parish	Bienville Parish.
Bossier City	Bossier City in Bossier Parish.
Balance of Bossier Parish	Bossier Parish less Bossier City, Shreveport City.
Balance of Caddo Parish	Caddo Parish less Shreveport City.
Balance of Calcasieu Parish	Calcasieu Parish less Lake Charles City.
Caldwell Parish	Caldwell Parish.
Cameron Parish	Cameron Parish.
Catahoula Parish	Catahoula Parish.
Claiborne Parish	Claiborne Parish.
Concordia Parish	Concordia Parish.
De Soto Parish	De Soto Parish.
Balance of East Baton Rouge Parish	East Baton Rouge Parish less Baton Rouge City.
East Carroll Parish	East Carroll Parish.
East Feliciana Parish	East Feliciana Parish.
Evangeline Parish	Evangeline Parish.
Franklin Parish	Franklin Parish.
Grant Parish	Grant Parish.
Balance of Iberia Parish	Iberia Parish less New Iberia City.
Iberville Parish	Iberville Parish.
Jackson Parish	Jackson Parish.
Jefferson Davis Parish	Jefferson Davis Parish.
Balance of Jefferson Parish	Jefferson Parish less Kenner City.
Kenner City	Kenner City in Jefferson Parish.
La Salle Parish	La Salle Parish.
Lafayette City	Lafayette City in Lafayette Parish.
Balance of Lafayette Parish	Lafayette Parish less Lafayette City.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
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[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Lafourche Parish	Lafourche Parish.
Lake Charles City	Lake Charles City in Calcasieu Parish.
Livingston Parish	Livingston Parish.
Madison Parish	Madison Parish.
Monroe City	Monroe City in Ouachita Parish.
Morehouse Parish	Morehouse Parish.
Natchitoches Parish	Natchitoches Parish.
New Iberia City	New Iberia City in Iberia Parish.
New Orleans City	New Orleans City in Orleans Parish.
Balance of Ouachita Parish	Quachita Parish less Monroe City.
Plaquemines Parish	Plaquemines Parish.
Pointe Coupee Parish	Pointe Coupee Parish.
Balance of Rapides Parish	Rapides Parish less Alexandria City.
Red River Parish	Red River Parish.
Richland Parish	Richland Parish.
Sabine Parish	Sabine Parish.
Shreveport City	Shreveport City in Bossier Parish, Caddo Parish.
Slidell City	Slidell City in St. Tammany Parish.
St. Bernard Parish	St. Bernard Parish.
St. Charles Parish	St. Charles Parish.
St. Helena Parish	St. Helena Parish.
St. James Parish	St. James Parish.
St. John Baptist Parish	St. John Baptist Parish.
St. Landry Parish	St. Landry Parish.
St. Martin Parish	St. Martin Parish.
St. Mary Parish	St. Mary Parish.
Balance of St. Tammany Parish	St. Tammany Parish less Slidell City.
Tangipahoa Parish	Tangipahoa Parish.
Tensas Parish	Tensas Parish.
Terrebonne Parish	Terrebonne Parish.
Union Parish	Union Parish.
Vermilion Parish	Vermilion Parish.
Vernon Parish	Vernon Parish.
Washington Parish	Washington Parish.
Webster Parish	Webster Parish.
West Baton Rouge Parish	West Baton Rouge Parish.
West Carroll Parish	West Carroll Parish.
West Feliciana Parish	West Feliciana Parish.
Winn Parish	Winn Parish.

Maine

Aroostook County	Aroostook County.
Waldo County	Waldo County.
Washington County	Washington County.

Maryland

Allegany County	Allegany County.
Baltimore City	Baltimore City in Allegany County.
Dorchester County	Dorchester County.
Garrett County	Garrett County.
Hagerstown City	Hagerstown City in Washington County.
Somerset County	Somerset County.

Massachusetts

Gloucester City	Gloucester City in Essex County.
Monroe Town	Monroe Town in Franklin County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
New Salem Town	New Salem Town in Franklin County.
Otis Town	Otis Town in Berkshire County.
Plainville Town	Plainville town in Norfolk County.
Provincetown Town	Provincetown Town in Barnstable County.
Savoy Town	Savoy Town in Berkshire County.
Truro Town	Truro Town in Barnstable County.

Michigan

Alcona County	Alcona County.
Alger County	Alger County.
Alpena County	Alpena County.
Antrim County	Antrim County.
Arenac County	Arenac County.
Baraga County	Baraga County.
Barry County	Barry County.
Battle Creek City	Battle Creek City in Calhoun County.
Bay City	Bay City in Bay County.
Balance of Bay County	Bay County less Bay City, Midland City.
Benzie County	Benzie County.
Berrien County	Berrien County.
Branch County	Branch County.
Burton City	Burton City in Genesee County.
Balance of Calhoun County	Calhoun County less Battle Creek City.
Charlevoix County	Charlevoix County.
Cheboygan County	Cheboygan County.
Chippewa County	Chippewa County.
Clare County	Clare County.
Clinton Township	Clinton Township in Macomb County.
Crawford County	Crawford County.
Delta County	Delta County.
Detroit City	Detroit City in Wayne County.
Dickinson County	Dickinson County.
East Detroit City	East Detroit City in Macomb County.
Emmet County	Emmet County.
Ferndale City	Ferndale City in Oakland County.
Flint City	Flint City in Genesee County.
Flint Township	Flint Township in Genesee County.
Balance of Genesee County	Genesee County less Burton City, Flint City, Flint Township, Mount Morris Township.
Gladwin County	Gladwin County.
Gogebic County	Gogebic County.
Grand Rapids City	Grand Rapids City in Kent County.
Grand Traverse County	Grand Traverse County.
Gratiot County	Gratiot County.
Highland Park City	Highland Park City in Wayne County.
Hillsdale County	Hillsdale County.
Houghton County	Houghton County.
Huron County	Huron County.
Inkster City	Inkster City in Wayne County.
Ionia County	Ionia County.
Iosco County	Iosco County.
Iron County	Iron County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Jackson City	Jackson City in Jackson County.
Balance of Jackson County.	Jackson County less Jackson City.
Kalkaska County	Kalkaska County.
Keweenaw County	Keweenaw County.
Lake County	Lake County.
Lansing City	Lansing City in Eaton County, Ingham County.
Lapeer County	Lapeer County.
Leelanau County	Leelanau County.
Lenawee County	Lenawee County.
Lincoln Park City	Lincoln Park City in Wayne County.
Luce County	Luce County.
Mackinac County	Mackinac County.
Balance of Macomb County.	Macomb County less Clinton Township, East Detroit City, Roseville City, Shelby Township, St. Clair Shores City, Sterling Heights City, Warren City.
Madison Heights City	Madison heights City in Oakland County.
Manistee County	Manistee County.
Marquette County	Marquette County.
Mason County	Mason County.
Mecosta County	Mecosta County.
Menominee County	Menominee County.
Balance of Midland County.	Midland County less Midland City.
Missaukee County	Missaukee County.
Monroe County	Monroe County.
Montcalm County	Montcalm County.
Montmorency County	Montmorency County.
Mount Morris Township	Mount Morris Township in Genesee County.
Muskegon City	Muskegon City in Muskegon County.
Balance of Muskegon County.	Muskegon County less Muskegon City.
Newaygo County	Newaygo County.
Oceana County	Oceana County.
Ogemaw County	Ogemaw County.
Ontonagon County	Ontonagon County.
Osceola County	Osceola County.
Oscoda County	Oscoda County.
Otsego County	Otsego County.
Pontiac City	Pontiac City in Oakland County.
Port Huron City	Port Huron City in St. Clair County.
Presque Isle County	Presque Isle County.
Roscommon County	Roscommon County.
Roseville City	Roseville City in Macomb County.
Saginaw City	Saginaw City in Saginaw County.
Balance of Saginaw County.	Saginaw County less Saginaw City, Saginaw Township.
Sanilac County	Sanilac County.
Schoolcraft County	Schoolcraft County.
Shiawassee County	Shiawassee County.
Balance of St. Clair County.	St. Clair County less Port Huron City.
St. Joseph County	St. Joseph County.
Taylor City	Taylor City in Wayne County.
Tuscola County	Tucola County.
Van Buren County	Van Buren County.
Warren City	Warren City in Macomb County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Waterford Township	Waterford Township in Oakland County.
Wexford County	Wexford County.
Wyandotte City	Wyandotte City in Wayne County.
Ypsilanti Township	Ypsilanti Township in Washtenaw County.
Minnesota	
Aitkin County	Aitkin County.
Becker County	Becker County.
Carlton County	Carlton County.
Cass County	Cass County.
Clearwater County	Clearwater County.
Hubbard County	Hubbard County.
Itasca County	Itasca County.
Jackson County	Jackson County.
Kanabec County	Kanabec County.
Kittson County	Kittson County.
Lake County	Lake County.
Le Sueur County	Le Sueur County.
Mahnomen County	Mahnomen County.
Marshall County	Marshall County.
Martin County	Martin County.
Meeker County	Meeker County.
Morrison County	Morrison County.
Norman County	Norman County.
Pennington County	Pennington County.
Pine County	Pine County.
Polk County	Polk County.
Red Lake County	Red Lake County.
Balance of St. Louis County.	St. Louis County less Duluth City.
Todd County	Todd County.
Mississippi	
Adams County	Adams County.
Alcorn County	Alcorn County.
Amite County	Amite County.
Attala County	Attala County.
Benton County	Benton County.
Biloxi City	Biloxi City in Harrison County.
Bolivar County	Bolivar County.
Carroll County	Carroll County.
Chickasaw County	Chickasaw County.
Choctaw County	Choctaw County.
Claiborne County	Claiborne County.
Clarke County	Clarke County.
Clay County	Clay County.
Coahoma County	Coahoma County.
Columbus City	Columbus City in Lowndes County.
Copiah County	Copiah County.
Covington County	Covington County.
Franklin County	Franklin County.
George County	George County.
Greene County	Greene County.
Greenville City	Greenville City in Washington County.
Grenada County	Grenada County.
Gulfport City	Gulfport City in Harrison County.
Hancock County	Hancock County.
Hattiesburg City	Hattiesburg City in Forrest County, Lamar County.
Balance of Hinds County	Hinds County less Jackson City.
Holmes County	Holmes County.
Humphreys County	Humphreys County.
Issaquena County	Issaquena County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Jackson County.	Jackson County less Pascagoula City.
Jasper County	Jasper County.
Jefferson County	Jefferson County.
Jefferson Davis County	Jefferson Davis County.
Jones County	Jones County.
Kemper County	Kemper County.
Balance of Lauderdale County.	Lauderdale County less Meridian City.
Lawrence County	Lawrence County.
Leake County	Leake County.
Leflore County	Leflore County.
Lincoln County	Lincoln County.
Balance of Lowndes County.	Lowndes County less Columbus City.
Madison County	Madison County.
Marion County	Marion County.
Marshall County	Marshall County.
Monroe County	Monroe County.
Montgomery County	Montgomery County.
Neshoba County	Neshoba County.
Newton County	Newton County.
Noxubee County	Noxubee County.
Panola County	Panola County.
Pascagoula City	Pascagoula City in Jackson County.
Pearl River County	Pearl River County.
Perry County	Perry County.
Pike County	Pike County.
Prentiss County	Prentiss County.
Quitman County	Quitman County.
Scott County	Scott County.
Sharkey County	Sharkey County.
Simpson County	Simpson County.
Smith County	Smith County.
Stone County	Stone County.
Sunflower County	Sunflower County.
Tallahatchie County	Tallahatchie County.
Tate County	Tate County.
Tippah County	Tippah County.
Tishomingo County	Tishomingo County.
Tunica County	Tunica County.
Union County	Union County.
Vicksburg City	Vicksburg City in Warren County.
Walthall County	Walthall County.
Balance of Warren County.	Warren County less Vicksburg City.
Balance of Washington County.	Washington County less Greenville City.
Wayne County	Wayne County.
Webster County	Webster County.
Wilkinson County	Wilkinson County.
Winston County	Winston County.
Yalobusha County	Yalobusha County.
Yazoo County	Yazoo County.
Missouri	
Bates County	Bates County.
Benton County	Benton County.
Bollinger County	Bollinger County.
Butler County	Butler County.
Carroll County	Carroll County.
Carter County	Carter County.
Cedar County	Cedar County.
Clinton County	Clinton County.
Crawford County	Crawford County.
Dallas County	Dallas County.
Dent County	Dent County.
Douglas County	Douglas County.
Dunklin County	Dunklin County.
Franklin County	Franklin County.
Henry County	Henry County.
Hickory County	Hickory County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Howell County	Howell County.
Iron County	Iron County.
Jefferson County	Jefferson County.
Lincoln County	Lincoln County.
Madison County	Madison County.
Maries County	Maries County.
Miller County	Miller County.
Mississippi County	Mississippi County.
Morgan County	Morgan County.
New Madrid County	New Madrid County.
Oregon County	Oregon County.
Ozark County	Ozark County.
Pemiscot County	Pemiscot County.
Pike County	Pike County.
Reynolds County	Reynolds County.
Ripley County	Ripley County.
Scott County	Scott County.
Shannon County	Shannon County.
St. Joseph City	St. Joseph City in Buchanan County.
St. Louis City	St. Louis City.
St. Clair County	St. Clair County.
St. Francois County	St. Francois County.
Ste. Genevieve County	Ste. Genevieve County.
Stoddard County	Stoddard County.
Stone County	Stone County.
Taney County	Taney County.
Texas County	Texas County.
Warren County	Warren County.
Washington County	Washington County.
Wayne County	Wayne County.
Webster County	Webster County.

Montana

Big Horn County	Big Horn County.
Blaine County	Blaine County.
Broadwater County	Broadwater County.
Butte—Silver Bow City	Butte—Silver Bow City in Silver Bow County.
Balance of Cascade County	Cascade County less Great Falls City.
Deer Lodge County	Deer Lodge County.
Fergus County	Fergus County.
Flathead County	Flathead County.
Glacier County	Glacier County.
Golden Valley County	Golden Valley County.
Granite County	Granite County.
Lake County	Lake County.
Lincoln County	Lincoln County.
Meagher County	Meagher County.
Mineral County	Mineral County.
Musselshell County	Musselshell County.
Park County	Park County.
Ravalli County	Ravalli County.
Richland County	Richland County.
Roosevelt County	Roosevelt County.
Rosebud County	Rosebud County.
Sanders County	Sanders County.
Balance of Silver Bow County	Silver Bow County less Butte—Silver Bow City.
Wheatland County	Wheatland County.
Wibaux County	Wibaux County.

Nebraska

Scotts Bluff County	Scotts Bluff County.
Thurston County	Thurston County.

Nevada

North Las Vegas City	North Las Vegas City in Clark County.
White Pine County	White Pine County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
New Jersey	
Camden City	Camden City in Camden County.
Balance of Cumberland County	Cumberland County less Millville City, Vineland City.
Hoboken City	Hoboken City in Hudson County.
Jersey City	Jersey City in Hudson County.
Newark City	Newark City in Essex County.

New Mexico

Alamogordo City	Alamogordo City in Otero County.
Balance of Bernalillo County	Bernalillo County less Albuquerque City.
Carlsbad City	Carlsbad City in Eddy County.
Catron County	Catron County.
Cibola County	Cibola County.
Clovis City	Clovis City in Curry County.
Colfax County	Colfax County.
De Baca County	De Baca County.
Balance of Dona Ana County	Dona Ana County less Las Cruces City.
Balance of Eddy County	Eddy County less Carlsbad City.
Farmington City	Farmington City in San Juan County.
Grant County	Grant County.
Guadalupe County	Guadalupe County.
Harding County	Harding County.
Hobbs City	Hobbs City in Lea County.
Balance of Lea County	Lea County less Hobbs City.
Lincoln County	Lincoln County.
Luna County	Luna County.
McKinley County	McKinley County.
Mora County	Mora County.
Balance of Otero County	Otero County less Alamogordo City.
Quay County	Quay County.
Rio Arriba County	Rio Arriba County.
Roswell City	Roswell City in Chaves County.
Balance of San Juan County	San Juan County less Farmington City.
San Miguel County	San Miguel County.
Sandoval County	Sandoval County.
Socorro County	Socorro County.
Taos County	Taos County.
Torrance County	Torrance County.
Union County	Union County.
Valencia County	Valencia County.

New York

Buffalo City	Buffalo City in Erie County.
Franklin County	Franklin County.
Fulton County	Fulton County.
Hamilton County	Hamilton County.
Balance of Jefferson County	Jefferson County less Watertown City.
Lewis County	Lewis County.
Montgomery County	Montgomery County.
Orleans County	Orleans County.
Oswego County	Oswego County.
St. Lawrence County	St. Lawrence County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
North Carolina	
Bladen County	Bladen County.
Brunswick County	Brunswick County.
Graham County	Graham County.
Hyde County	Hyde County.
Person County	Person County.
Robeson County	Robeson County.
Swain County	Swain County.
Tyrrell County	Tyrrell County.
Vance County	Vance County.
Wilson City	Wilson City in Wilson County.

North Dakota

Benson County	Benson County.
Dunn County	Dunn County.
Eddy County	Eddy County.
Kidder County	Kidder County.
McHenry County	McHenry County.
Mountrail County	Mountrail County.
Pembina County	Pembina County.
Rolette County	Rolette County.
Sioux County	Sioux County.
Slope County	Slope County.

Ohio

Adams County	Adams County.
Akron City	Akron City in Summit County.
Ashtabula County	Ashtabula County.
Barberton City	Barberton City in Summit County.
Belmont County	Belmont County.
Brown County	Brown County.
Canton City	Canton City in Stark County.
Carroll County	Carroll County.
Cleveland City	Cleveland City in Cuyahoga County.
Columbiana County	Columbiana County.
Coshocton County	Coshocton County.
Crawford County	Crawford County.
Darke County	Darke County.
Dayton City	Dayton City in Montgomery County.
Defiance County	Defiance County.
East Cleveland City	East Cleveland City in Cuyahoga County.
Elyria City	Elyria City in Lorain County.
Fayette County	Fayette County.
Fulton County	Fulton County.
Gallia County	Gallia County.
Guernsey County	Guernsey County.
Hamilton City	Hamilton City in Butler County.
Hardin County	Hardin County.
Harrison County	Harrison County.
Henry County	Henry County.
Highland County	Highland County.
Hocking County	Hocking County.
Huron County	Huron County.
Jackson County	Jackson County.
Jefferson County	Jefferson County.
Knox County	Knox County.
Lancaster City	Lancaster City in Fairfield County.
Lawrence County	Lawrence County.
Lima City	Lima City in Allen County.
Lorain City	Lorain City in Lorain County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Mansfield City.....	Mansfield City in Richland County.
Marion City.....	Marion City in Marion County.
Massillon City.....	Massillon City in Stark County.
Meigs County.....	Meigs County.
Mercer County.....	Mercer County.
Middletown City.....	Middletown City in Butler County.
Monroe County.....	Monroe County.
Morgan County.....	Morgan County.
Morrow County.....	Morrow County.
Balance of Muskingum County.	Muskingum County less Zanesville City.
Newark City.....	Newark City in Licking County.
Noble County.....	Noble County.
Ottawa County.....	Ottawa County.
Perry County.....	Perry County.
Pike County.....	Pike County.
Putnam County.....	Putnam County.
Ross County.....	Ross County.
Sandusky County.....	Sandusky County.
Scioto County.....	Scioto County.
Seneca County.....	Seneca County.
Toledo City.....	Toledo City in Lucas County.
Balance of Trumbull County.	Trumbull County less Warren City.
Tuscarawas County.....	Tuscarawas County.
Vinton County.....	Vinton County.
Warren City.....	Warren City in Trumbull County.
Washington County.....	Washington County.
Youngstown City.....	Youngstown City in Mahoning County.
Zanesville City.....	Zanesville City in Muskingum County.

Oklahoma

Adair County.....	Adair County.
Atoka County.....	Atoka County.
Beckham County.....	Beckham County.
Broken Arrow City.....	Broken Arrow City in Tulsa County, Wagoner County.
Caddo County.....	Caddo County.
Carter County.....	Carter County.
Cherokee County.....	Cherokee County.
Choctaw County.....	Choctaw County.
Coal County.....	Coal County.
Craig County.....	Craig County.
Creek County.....	Creek County.
Delaware County.....	Delaware County.
Garvin County.....	Garvin County.
Grady County.....	Grady County.
Harmon County.....	Harmon County.
Haskell County.....	Haskell County.
Hughes County.....	Hughes County.
Jefferson County.....	Jefferson County.
Latimer County.....	Latimer County.
Le Flore County.....	Le Flore County.
Lincoln County.....	Lincoln County.
Mayes County.....	Mayes County.
McCurain County.....	McCurain County.
Murray County.....	Murray County.
Muskogee City.....	Muskogee City in Muskogee County, Muskogee County less Muskogee City.
Balance of Muskogee County.	Muskogee County less Muskogee City.
Nowata County.....	Nowata County.
Okfuskee County.....	Okfuskee County.
Okmulgee County.....	Okmulgee County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Ottawa County.....	Ottawa County.
Pawnee County.....	Pawnee County.
Pittsburg County.....	Pittsburg County.
Pushmataha County.....	Pushmataha County.
Roger Mills County.....	Roger Mills County.
Rogers County.....	Rogers County.
Seminole County.....	Seminole County.
Shawnee City.....	Shawnee City in Pottawatomie County.
Stephens County.....	Stephens County.
Tulsa City.....	Tulsa City in Osage County, Tulsa County.
Balance of Tulsa County.....	Tulsa County less Broken Arrow City, Tulsa City.
Balance of Wagoner County.	Wagoner County less Broken Arrow City.
Washita County.....	Washita County.
Woodward County.....	Woodward County.

Oregon

Baker County.....	Baker County.
Columbia County.....	Columbia County.
Coos County.....	Coos County.
Crook County.....	Crook County.
Deschutes County.....	Deschutes County.
Douglas County.....	Douglas County.
Grant County.....	Grant County.
Harney County.....	Harney County.
Hood River County.....	Hood River County.
Josephine County.....	Josephine County.
Klamath County.....	Klamath County.
Lake County.....	Lake County.
Balance of Linn County.....	Linn County less Albany City.
Malheur County.....	Malheur County.
Morrow County.....	Morrow County.
Sherman County.....	Sherman County.
Springfield City.....	Springfield City in Lane County.
Tillamook County.....	Tillamook County.
Umatilla County.....	Umatilla County.
Union County.....	Union County.
Wallowa County.....	Wallowa County.
Wasco County.....	Wasco County.
Wheeler County.....	Wheeler County.

Pennsylvania

Altoona City.....	Altoona City in Blair County.
Armstrong County.....	Armstrong County.
Beaver County.....	Beaver County.
Bedford County.....	Bedford County.
Balance of Cambria County.	Cambria County less Johnstown City.
Clarion County.....	Clarion County.
Clearfield County.....	Clearfield County.
Clinton County.....	Clinton County.
Crawford County.....	Crawford County.
Balance of Erie County.....	Erie County less Erie City, Millcreek Township.
Fayette County.....	Fayette County.
Forest County.....	Forest County.
Fulton County.....	Fulton County.
Greene County.....	Greene County.
Huntingdon County.....	Huntingdon County.
Indiana County.....	Indiana County.
Jefferson County.....	Jefferson County.
Johnstown City.....	Johnstown City in Cambria County.
Juniata County.....	Juniata County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Balance of Luzerne County.	Luzerne County less Hazleton City, Wilkes-Barre City.
McKeesport City.....	McKeesport City in Allegheny County.
Mifflin County.....	Mifflin County.
North Huntingdon Township.	North Huntingdon Township in Westmoreland County.
Northumberland County.....	Northumberland County.
Somerset County.....	Somerset County.
Venango County.....	Venango County.
Washington County.....	Washington County.
Balance of Westmoreland County.	Westmoreland County less Hempfield Township, North Huntingdon Township.
Wilkes-Barre City.....	Wilkes-Barre City in Luzerne County.

Puerto Rico

Adjuntas Municipio.....	Adjuntas Municipio.
Aguada Municipio.....	Aguada Municipio.
Aguadilla Municipio.....	Aguadilla Municipio.
Aguas Buenas Municipio.....	Aguas Buenas Municipio.
Aibonito Municipio.....	Aibonito Municipio.
Anasco Municipio.....	Anasco Municipio.
Arecibo Municipio.....	Arecibo Municipio.
Arroyo Municipio.....	Arroyo Municipio.
Barceloneta Municipio.....	Barceloneta Municipio.
Barranquitas Municipio.....	Barranquitas Municipio.
Bayamon Municipio.....	Bayamon Municipio.
Cabo Rojo Municipio.....	Cabo Rojo Municipio.
Caguas Municipio.....	Caguas Municipio.
Camuy Municipio.....	Camuy Municipio.
Canovanas Municipio.....	canovanas Municipio.
Carolina Municipio.....	Carolina Municipio.
Catano Municipio.....	Catano Municipio.
Cayey Municipio.....	Cayey Municipio.
Ceiba Municipio.....	Ceiba Municipio.
Ciales Municipio.....	Ciales Municipio.
Cidra Municipio.....	Cidra Municipio.
Coamo Municipio.....	Coamo Municipio.
Comerio Municipio.....	Comerio Municipio.
Corozal Municipio.....	Corozal Municipio.
Culebra Municipio.....	Culebra Municipio.
Dorado Municipio.....	Dorado Municipio.
Fajardo Municipio.....	Fajardo Municipio.
Florida Municipio.....	Florida Municipio.
Guanica Municipio.....	Guanica Municipio.
Guayanilla Municipio.....	Guayanilla Municipio.
Gurabo Municipio.....	Gurabo Municipio.
Hatillo Municipio.....	Hatillo Municipio.
Hormigueros Municipio.....	Hormigueros Municipio.
Humacao Municipio.....	Humacao Municipio.
Isabela Municipio.....	Isabela Municipio.
Jayuya Municipio.....	Jayuya Municipio.
Juana Diaz Municipio.....	Juana Diaz Municipio.
Juncos Municipio.....	Juncos Municipio.
Lajas Municipio.....	Lajas Municipio.
Lares Municipio.....	Lares Municipio.
Las Marias Municipio.....	Las Marias Municipio.
Las Piedras Municipio.....	Las Piedras Municipio.
Loiza Municipio.....	Loiza Municipio.
Luquillo Municipio.....	Luquillo Municipio.
Manati Municipio.....	Manati Municipio.
Maricao Municipio.....	Maricao Municipio.
Maunabo Municipio.....	Maunabo Municipio.
Mayaguez Municipio.....	Mayaguez Municipio.
Moca Municipio.....	Moca Municipio.
Morovis Municipio.....	Morovis Municipio.
Naguabo Municipio.....	Naguabo Municipio.
Naranjito Municipio.....	Naranjito Municipio.
Orocovis Municipio.....	Orocovis Municipio.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Patillas Municipio.....	Patillas Municipio.
Penueles Municipio.....	Penueles Municipio.
Ponce Municipio.....	Ponce Municipio.
Quebradillas Municipio.....	Quebradillas Municipio.
Rincon Municipio.....	Rincon Municipio.
Rio Grande Municipio.....	Rio Grande Municipio.
Sabana Grande Municipio.....	Sabana Grande Municipio.
Salinas Municipio.....	Salinas Municipio.
San German Municipio.....	San German Municipio.
San Juan Municipio.....	San Juan Municipio.
San Lorenzo Municipio.....	San Lorenzo Municipio.
San Sebastian Municipio.....	San Sebastian Municipio.
Santa Isabel Municipio.....	Santa Isabel Municipio.
Toa Alta Municipio.....	Toa Alta Municipio.
Toa Baja Municipio.....	Toa Baja Municipio.
Trujillo Alto Municipio.....	Trujillo Alto Municipio.
Utua Municipio.....	Utua Municipio.
Vega Alta Municipio.....	Vega Alta Municipio.
Vega Baja Municipio.....	Vega Baja Municipio.
Vieques Municipio.....	Vieques Municipio.
Villalba Municipio.....	Villalba Municipio.
Yabucoa Municipio.....	Yabucoa Municipio.
Yauco Municipio.....	Yauco Municipio.

South Carolina

Allendale County.....	Allendale County.
Bamberg County.....	Bamberg County.
Barnwell County.....	Barnwell County.
Chester County.....	Chester County.
Clarendon County.....	Clarendon County.
Darlington County.....	Darlington County.
Georgetown County.....	Georgetown County.
Balance of Horry County.....	Horry County less Myrtle Beach City.
Marion County.....	Marion County.
Marlboro County.....	Marlboro County.
McCormick County.....	McCormick County.
North Charleston City.....	North Charleston City in Charleston County.
Orangeburg County.....	Orangeburg County.
Williamsburg County.....	Williamsburg County.

South Dakota

Buffalo County.....	Buffalo County.
Dewey County.....	Dewey County.
Shannon County.....	Shannon County.

Tennessee

Benton County.....	Benton County.
Campbell County.....	Campbell County.
Cannon County.....	Cannon County.
Carroll County.....	Carroll County.
Balance of Carter County.....	Carter County less Johnson City.
Claiborne County.....	Claiborne County.
Clarksville City.....	Clarksville City in Montgomery County.
Cocke County.....	Cocke County.
Coffee County.....	Coffee County.
Crockett County.....	Crockett County.
Cumberland County.....	Cumberland County.
De Kalb County.....	De Kalb County.
Decatur County.....	Decatur County.
Dyer County.....	Dyer County.
Fayette County.....	Fayette County.
Fentress County.....	Fentress County.
Gibson County.....	Gibson County.
Giles County.....	Giles County.
Grainger County.....	Grainger County.
Greene County.....	Greene County.
Grundy County.....	Grundy County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Hamblen County.....	Hamblen County.
Hardeman County.....	Hardeman County.
Hardin County.....	Hardin County.
Haywood County.....	Haywood County.
Henderson County.....	Henderson County.
Henry County.....	Henry County.
Hickman County.....	Hickman County.
Houston County.....	Houston County.
Humphreys County.....	Humphreys County.
Jackson City.....	Jackson City in Madison County.
Jackson County.....	Jackson County.*
Jefferson County.....	Jefferson County.
Johnson County.....	Johnson County.
Lake County.....	Lake County.
Lauderdale County.....	Lauderdale County.
Lawrence County.....	Lawrence County.
Lewis County.....	Lewis County.
Macon County.....	Macon County.
Marion County.....	Marion County.
McMinn County.....	McMinn County.
McNairy County.....	McNairy County.
Meigs County.....	Meigs County.
Monroe County.....	Monroe County.
Morgan County.....	Morgan County.
Overton County.....	Overton County.
Perry County.....	Perry County.
Pickett County.....	Pickett County.
Polk County.....	Polk County.
Rhea County.....	Rhea County.
Scott County.....	Scott County.
Sequatchie County.....	Sequatchie County.
Sevier County.....	Sevier County.
Stewart County.....	Stewart County.
Unicoi County.....	Unicoi County.
Union County.....	Union County.
Van Buren County.....	Van Buren County.
Warren County.....	Warren County.
Wayne County.....	Wayne County.
White County.....	White County.

Texas

Abilene City.....	Abilene City in Jones County, Taylor County.
Anderson County.....	Anderson County.
Balance of Angelina County.....	Angelina County less Lufkin City.
Arkansas County.....	Arkansas County.
Atascosa County.....	Atascosa County.
Bastrop County.....	Bastrop County.
Baytown City.....	Baytown City in Harris County.
Beaumont City.....	Beaumont City in Jefferson County.
Bee County.....	Bee County.
Balance of Bell County.....	Bell County less Killeen City, Temple City.
Big Spring City.....	Big Spring City in Howard County.
Borden County.....	Borden County.
Balance of Bowie County.....	Bowie County less Texarkana City Tex.
Brazoria County.....	Brazoria County.
Brooks County.....	Brooks County.
Brown County.....	Brown County.
Brownsville City.....	Brownsville City in Cameron County.
Burleson County.....	Burleson County.
Caldwell County.....	Caldwell County.
Calhoun County.....	Calhoun County.
Balance of Cameron County.....	Cameron County less Brownsville City, Harlingen City.
Camp County.....	Camp County.

LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Cass County.....	Cass County.
Chambers County.....	Chambers County.
Childress County.....	Childress County.
Coleman County.....	Coleman County.
Corpus Christi City.....	Corpus Christi City in Nueces County.
Coryell County.....	Coryell County.
Crane County.....	Crane County.
Crockett County.....	Crockett County.
Culberson County.....	Culberson County.
Dawson County.....	Dawson County.
Deaf Smith County.....	Deaf Smith County.
Del Rio City.....	Del Rio City in Val Verde County.
Denton City.....	Denton City in Denton County.
Dickens County.....	Dickens County.
Dimmit County.....	Dimmit County.
Duval County.....	Duval County.
Eastland County.....	Eastland County.
Balance of Ector County.....	Ector County less Odessa City.
Edinburg City.....	Edinburg City in Hidalgo County.
Edwards County.....	Edwards County.
El Paso City.....	El Paso City in El Paso County.
Balance of El Paso County.....	El Paso County less El Paso City.
Ellis County.....	Ellis County.
Eules City.....	Eules City in Tarrant County.
Fannin County.....	Fannin County.
Franklin County.....	Franklin County.
Freestone County.....	Freestone County.
Frio County.....	Frio County.
Ft Worth City.....	Ft Worth City in Tarrant County.
Gaines County.....	Gaines County.
Galveston City.....	Galveston City in Galveston County.
Balance of Galveston County.....	Galveston County less Galveston City, Texas City.
Garza County.....	Garza County.
Gonzales County.....	Gonzales County.
Balance of Grayson County.....	Grayson County less Sherman City.
Balance of Gregg County.....	Gregg County less Longview City.
Hall County.....	Hall County.
Hardin County.....	Hardin County.
Harlingen City.....	Harlingen City in Cameron County.
Balance of Harrison County.....	Harrison County less Longview City.
Henderson County.....	Henderson County.
Balance of Hidalgo County.....	Hidalgo County less Edinburg City, McAllen City, Mission City.
Hill County.....	Hill County.
Hopkins County.....	Hopkins County.
Houston City.....	Houston City in Fort Bend County, Harris County.
Hunt County.....	Hunt County.
Jack County.....	Jack County.
Jasper County.....	Jasper County.
Jim Hogg County.....	Jim Hogg County.
Jim Wells County.....	Jim Wells County.
Balance of Jones County.....	Jones County less Abilene City.
Karnes County.....	Karnes County.
Killeen City.....	Killeen City in Bell County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Kingsville City	Kingsville City in Kleberg County.
Kinney County	Kinney County.
La Salle County	La Salle County.
Laredo City	Laredo City in Webb County.
Leon County	Leon County.
Liberty County	Liberty County.
Live Oak County	Live Oak County.
Longview City	Longview City in Gregg County, Harrison County.
Loving County	Loving County.
Lufkin City	Lufkin City in Angelina County.
Marion County	Marion County.
Matagorda County	Matagorda County.
Maverick County	Maverick County.
McAllen City	McAllen City in Hidalgo County.
Midland City	Midland City in Midland County.
Milam County	Milam County.
Mission City	Mission City in Hidalgo County.
Mitchell County	Mitchell County.
Montgomery County	Montgomery County.
Morris County	Morris County.
Nacogdoches City	Nacogdoches City in Nacogdoches County.
Navarro County	Navarro County.
Newton County	Newton County.
Nolan County	Nolan County.
Balance of Nueces County	Nueces County less Corpus Christi City.
Odessa City	Odessa City in Ector County.
Orange City	Orange City in Orange County.
Balance of Orange County	Orange County less Orange City.
Palo Pinto County	Palo Pinto County.
Paris City	Paris City in Lamar County.
Pasadena City	Pasadena City in Harris County.
Pecos County	Pecos County.
Polk County	Polk County.
Port Arthur City	Port Arthur City in Jefferson County.
Presidio County	Presidio County.
Rains County	Rains County.
Balance of Randall County	Randall County less Amarillo City.
Red River County	Red River County.
Reeves County	Reeves County.
Robertson County	Robertson County.
Rusk County	Rusk County.
Sabine County	Sabine County.
San Antonio City	San Antonio City in Bexar County.
San Jacinto County	San Jacinto County.
San Marcos City	San Marcos city in Hays County.
San Patricio County	San Patricio County.
Schleicher County	Schleicher County.
Scurry County	Scurry County.
Shelby County	Shelby County.
Balance of Smith County	Smith County less Tyler City.
Starr County	Starr County.
Stephens County	Stephens County.
Sutton County	Sutton County.
Terry County	Terry County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Texarkana City Tex.	Texarkana City Tex in Bowie County.
Texas City	Texas City in Galveston County.
Titus County	Titus County.
Trinity County	Trinity County.
Tyler City	Tyler City in Smith County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Uvalde County	Uvalde County.
Van Zandt County	Van Zandt County.
Victoria City	Victoria City in Victoria County.
Waco City	Waco City in McLennan County.
Waller County	Waller County.
Ward County	Ward County.
Wharton County	Wharton County.
Wichita Falls City	Wichita Falls City in Wichita County.
Wilacy County	Willacy County.
Winkler County	Winkler County.
Wood County	Wood County.
Zapata County	Zapata County.
Zavala County	Zavala County.
Utah	
Carbon County	Crbon County.
Duchesne County	Duchesne County.
Emery County	Emery County.
Garfield County	Garfield County.
Grand County	Grand Cunty.
Juab County	Juab County.
Morgan County	Morgan County.
Ogden City	Ogden City in Weber County.
Piute County	Piute County.
San Juan County	San Juan County.
Sanpete County	Sanpete County.
Summit County	Summit County.
Uintah County	Uintah County.
Wasatch County	Wasatch County.
Wayne County	Wayne County.
Virginia	
Alleghany County	Alleghany County.
Bath County	Bath County.
Bristol City	Bristol City.
Buchanan County	Buchanan County.
Buena Vista City	Buena Vista City.
Charlotte County	Charlotte County.
Clifton Forge City	Clifton Forge City.
Covington City	Covington City.
Danville City	Danville City.
Dickenson County	Dickenson County.
Dinwiddie County	Dinwiddie County.
Emporia City	Emporia City.
Franklin City	Franklin City.
Giles County	Giles County.
Halifax County	Halifax County.
Highland County	Highland County.
Lancaster County	Lancaster County.
Lee County	Lee County.
Lunenburg County	Lunenburg County.
Martinsville City	Martinsville City.
Northumberland County	Northumberland County.
Norton City	Norton City.
Prince Edward County	Prince Edward County.
Russell County	Russell County.
Smyth County	Smyth County.
Surry County	Surry County.
Tazewell County	Tazewell County.
Westmoreland County	Westmoreland County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Wise County	Wise County.
Washington	
Adams County	Adams County.
Bellingham City	Bellingham City in Whatcom County.
Balance of Benton County	Benton County less Kennewick City, Richland City.
Chelan County	Chelan County.
Clallam County	Clallam County.
Columbia County	Columbia County.
Balance of Cowlitz County	Cowlitz County less Longview City.
Douglas County	Douglas County.
Ferry County	Ferry County.
Franklin County	Franklin County.
Grant County	Grant County.
Grays Harbor County	Grays Harbor County.
Kennewick City	Kennewick City in Benton County.
Kittitas County	Kittitas County.
Klickitat County	Klickitat County.
Lewis County	Lewis County.
Longview City	Longview City in Cowlitz County.
Mason County	Mason County.
Okanogan County	Okanogan County.
Pacific County	Pacific County.
Pend Oreille County	Pend Oreille County.
Skagit County	Skagit County.
Skamania County	Skamania County.
Stevens County	Stevens County.
Tacoma City	Tacoma City in Pierce County.
Vancouver City	Vancouver City in Clark County.
Wahkiakum County	Wahkiakum County.
Walla Walla City	Walla Walla City in Walla Walla County.
Balance of Walla Walla County	Walla Walla County less Walla Walla City.
Balance of Whatcom County	Whatcom County less Bellingham City.
Yakima City	Yakima City in Yakima County.
Balance of Yakima County	Yakima County less Yakima City.
West Virginia	
Barbour County	Barbour County.
Boone County	Boone County.
Braxton County	Braxton County.
Brooke County	Brooke County.
Balance of Cabell County	Cabell County less Huntington City.
Calhoun County	Calhoun County.
Clay County	Clay County.
Doddridge County	Doddridge County.
Fayette County	Fayette County.
Gilmer County	Gilmer County.
Grant County	Grant County.
Greenbrier County	Greenbrier County.
Hampshire County	Hampshire County.
Harrison County	Harrison County.
Huntington City	Huntington City in Cabell County, Wayne County.
Jackson County	Jackson County.
Balance of Kanawha County	Kanawha County less Charleston City.
Lewis County	Lewis County.
Lincoln County	Lincoln County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued**

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Logan County	Logan County.
Marion County	Marion County.
Balance of Marshall County	Marshall County less Wheeling City.
Mason County	Mason County.
McDowell County	McDowell County.
Mercer County	Mercer County.
Mineral County	Mineral County.
Mingo County	Mingo County.
Monroe County	Monroe County.
Morgan County	Morgan County.
Nicholas County	Nicholas County.
Balance of Ohio County	Ohio County less Wheeling City.
Parkersburg City	Parkersburg City in Wood County.
Pleasants County	Pleasants County.
Pocahontas County	Pocahontas County.
Preston County	Preston County.
Putnam County	Putnam County.
Raleigh County	Raleigh County.
Randolph County	Randolph County.
Ritchie County	Ritchie County.
Roane County	Roane County.
Summers County	Summers County.
Taylor County	Taylor County.
Tucker County	Tucker County.
Tyler County	Tyler County.
Upshur County	Upshur County.
Balance of Wayne County	Wayne County less Huntington City.
Webster County	Webster County.
Wetzel County	Wetzel County.
Wirt County	Wirt County.
Balance of Wood County	Wood County less Parkersburg City.
Wyoming County	Wyoming County.

Wisconsin

Ashland County	Ashland County.
Bayfield County	Bayfield County.
Clark County	Clark County.
Columbia County	Columbia County.
Door County	Door County.
Balance of Douglas County	Douglas County less Superior City.
Forest County	Forest County.
Green Bay City	Green Bay City in Brown County.

**LABOR SURPLUS AREAS ELIGIBLE FOR
FEDERAL PROCUREMENT PREFER-
ENCE—Continued**

[October 1, 1989 Through September 30, 1990]

Eligible labor surplus areas	Civil jurisdictions included
Green Lake County	Green Lake County.
Iron County	Iron County.
Jackson County	Jackson County.
Janesville City	Janesville City in Rock County.
Kenosha City	Kenosha City in Kenosha County.
Kewaunee County	Kewaunee County.
Manitowoc City	Manitowoc City in Manitowoc County.
Marinette County	Marinette County.
Marquette County	Marquette County.
Menominee County	Menominee County.
Racine City	Racine City in Racine County.
Rusk County	Rusk County.
Sawyer County	Sawyer County.
Taylor County	Taylor County.
Trempealeau County	Trempealeau County.
Washburn County	Washburn County.

Wyoming

Big Horn County	Big Horn County.
Campbell County	Campbell County.
Carbon County	Carbon County.
Casper City	Casper City in Natrona County.
Converse County	Converse County.
Crook County	Crook County.
Fremont County	Fremont County.
Johnson County	Johnson County.
Lincoln County	Lincoln County.
Balance of Natrona County	Natrona County less Casper City.
Niobrara County	Niobrara County.
Platte County	Platte County.
Sublette County	Sublette County.
Sweetwater County	Sweetwater County.
Uinta County	Uinta County.
Washakie County	Washakie County.
Weston County	Weston County.

[General Administration Letter No. 10-84;
Change 1]
**Revised Standard for Determining the
Temporary or Permanent Nature of a
Job Offer Made in Conjunction with an
Application for Nonagricultural
Temporary Labor Certification**
AGENCY: Employment and Training
Administration, Labor.**ACTION:** Notice.

SUMMARY: The Employment and Training Administration (ETA), Department of Labor, has issued the following change to General Administration Letter No. 10-84, setting forth revised standards for determining the temporary or permanent nature of an employer's job offer contained in GAL 10-84, Subject: *Procedures for Temporary Labor Certifications in Nonagricultural Occupations.*

The revised standards are published below for the information of all interested parties.

DATE: The procedures set forth below were effective beginning on August 21, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Chief, Division of Foreign Labor Certifications, Employment and Training Administration, Suite N-4456, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 535-0165 (this is not toll-free number).

Signed at Washington, DC, this 6th day of October, 1989.

Roberts T. Jones,*Assistant Secretary of Labor.***BILLING CODE 4510-30-M**

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION
	ES/Immigration
	CORRESPONDENCE SYMBOL
	TEELN
	DATE
	August 21, 1989

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 10-84, CHANGE 1

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : DONALD J. KULICK *Donald J. Kulick*
 Administrator
 for Regional Management

SUBJECT : Revised Standard for Determining the Temporary or
 Permanent Nature of a Job Offer Made in Conjunction
 With An Application for Nonagricultural
 Temporary Labor Certification

1. Purpose. To transmit revised standards for determining the temporary or permanent nature of an employer's job offer contained in GAL 10-84, subject: Procedures for Temporary Labor Certifications in Nonagricultural Occupations.

2. References. 20 CFR Parts 621 and 655; GAL 10-84.

3. Background. The regulations at 20 CFR Part 621 governing the certification of temporary foreign labor require, for occupations other than agriculture or logging, in relevant part, that in making the required finding regarding availability and adverse effect of temporary labor certifications, "(t)he policies of the United States Employment Service set forth in Part . . . 655 . . . shall be followed" The regulations at 20 CFR Part 655 (H-2A Program) were revised in 1987 in order to comply with the Immigration Reform and Control Act of 1986 (IRCA) and new interim final regulations were promulgated on June 1, 1987. These regulations contain a description and definition of "temporary" which differ from what had previously been in effect. The standards promulgated in Part 655 are consistent with the standards used by the Immigration and Naturalization Service in making determinations regarding the temporary or permanent nature of an employer's job opportunity in processing visa petitions.

4. Action Required. Administrators are requested to:

A. Provide attached standards to appropriate staff.

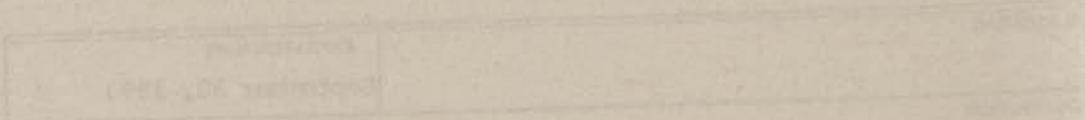
REVISIONS	EXPIRATION DATE
	September 30, 1990

DISTRIBUTION

B. Instruct staff to use these standards in processing temporary nonagricultural labor certification requests in accordance with GAL 10-84.

5. Inquiries. Direct questions to the appropriate Regional Office.

6. Attachment. Standards for determining temporary or permanent nature of an employer's nonagricultural job offer.



Attachment to GAL 10-84, Ch. 1

Standards for Determining the Temporary or Permanent
Nature of An Employer's Job Offer

The definition of "temporary" to be used in processing nonagricultural H-2B applications for alien employment certification is the same as provided in Section 20 CFR 655.101(g) of the regulations governing the labor certification process for agricultural H-2A workers. Job opportunities of 12 months or more are presumed to be permanent in nature. Certifying Officers shall not grant a temporary labor certification where the job opportunity has been or would be filled by an H-2B worker for a cumulative period, including previous temporary labor certifications, of 12 months or more, except in extraordinary circumstances.

To determine whether a particular job opportunity is "temporary" within the meaning of section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act, Department of Labor (DOL) Certifying Officers must focus upon the employer's need for an individual to perform a job, not the nature of the job itself. In some situations the employer's need may create a temporary job opportunity in an employment situation that may otherwise be permanent in nature. This interpretation is in accordance with the leading decision of the Immigration and Naturalization Service, Matter of Artee Corporation (18 I. & N. Dec. 366 (1982)). This decision reversed the long-standing rule that the functional nature of the duties of the job controlled its characterization. In Artee it was stated that:

It is not the nature of the duties of the position which must be examined to determine the temporary need. It is the nature of the need for the duties to be performed which determines the temporariness of the position.

The position taken in Artee has been affirmed by the courts. Volt Technical Services Corporation v. Immigration and Naturalization Service (648 f. Supp. 578, 581 (S.D.N.Y. 1986)), North American Industries Inc. v. Feldman (722 f. 2D 893 (1st cir. 1983)). As indicated in Artee, this is an objective, not a subjective, standard.

Where the employer can clearly show that the need for the H-2B worker's services or labor is of a short, identified length, limited by an identified event located in time, the job opportunity is temporary. (Of course, where the nature of the duties of the job are temporary, the employer's need will also be temporary.)

- 2 -

The criteria set forth below should be used in determining whether or not an employer has demonstrated temporary need for an H-2B worker.

First, it should be determined whether or not the job duties which are the subject of the temporary application are permanent or temporary in nature. If the duties are temporary in nature, the employer's need is also temporary and further analysis is not necessary. An example would be a temporary employment agency with a one-time, short-term need for a worker to be placed in an occupation for which it does not normally supply workers.

Second, where the duties can be characterized as permanent in nature, further inquiry must be made to determine whether or not the employer has clearly shown that the need for the H-2B worker's services or labor is of a short, identified length, limited by an identified event located in time. An example would be a job that is vacant because the incumbent has fallen ill or is otherwise unavailable for a short, identified period of less than one year.

Since job opportunities of 12 months or more are presumed to be permanent in nature, requests for temporary labor certifications should not exceed 364 days. However, it is contemplated that in extraordinary circumstances a certified job opportunity could be filled by an H-2B worker for a cumulative period of 12 months or more. A new application submitted by an employer on behalf of a previously certified job opportunity that would result in a job opportunity being filled by an H-2B worker for a cumulative period of 12 months or more should not be rejected by the local office, if the employer insists on filing such an application. Such an application should be processed and forwarded to the Regional Office for a determination. Before certifying any application which would result in a job opportunity being filled by an H-2B worker for a cumulative period of 12 months or more, the Regional Office should consult with the Division of Foreign Labor Certifications in the National Office.

Any questions that arise involving situations where the employer is basing its application for temporary labor certification on peak load or seasonal factors should be directed to ETA Regional Offices.

Mine Safety and Health Administration [Docket No. M-89-156-C]

[Docket No. M-89-153-C]

BethEnergy Mines, Inc.; Petition for Modification of Application of Mandatory Safety Standard

BethEnergy Mines, Inc., P.O. Box 143, Eighty-Four, Pennsylvania 15330 has filed a petition to modify the application of 30 CFR 75.1107 (fire suppression devices) to its 84 Complex, Livingston Portal (I.D. No. 36-00958) located in Washington County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that fire suppression devices meeting specifications prescribed by the Secretary be installed on unattended underground equipment and suitable fire-resistant hydraulic fluids approved by the Secretary be used in the hydraulic systems of such equipment.

2. As an alternate method, petitioner proposes to use remote video monitoring at the 4 Butt bunker hydraulic installation in lieu of fire-resistant fluid.

3. In support of this request, petitioner states that—

(a) The use of fire-resistant fluid in the bunker hydraulic unit would create severe maintenance problems; and

(b) The 4 Butt dump is manned continually by two employees whenever the bunker unit is in operation.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 24, 1989. Copies of the petition are available for inspection at that address.

Dated: October 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-25013 Filed 10-23-89; 8:45 am]

BILLING CODE 4510-43-M

F & S Coal; Petition for Modification of Application of Mandatory Safety Standard

F & S Coal, 840 Mahanoy Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment) to its Slope No. 1 (I.D. No. 36-07702) located in Northumberland County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices were installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 24, 1989. Copies of the petition are available for inspection at that address.

Dated: October 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-25014 Filed 10-23-89; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment*Identification of Proposed Action*

The proposed amendments would revise the provisions in the Technical Specifications (TS) to allow handling of a spent fuel transfer cask in the spent fuel pool and to allow storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI).

The proposed action is in accordance with the licensee's application for amendments dated March 31, 1988.

The Need for The Proposed Action

The proposed changes to the TS are required to permit the licensee to operate an ISFSI that it is constructing at the Oconee Nuclear Station. The ISFSI is necessary in order to maintain a prudent operating reserve spent fuel storage capacity and to maintain the ability to off-load an entire reactor core. The ISFSI would allow this capacity until a permanent disposal facility is available.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would allow handling of a spent fuel transfer cask in the spent fuel pool after specified conditions in the pool were met. In addition, the ISFSI would be added as an authorized storage location for spent fuel. While the spent fuel transfer cask is larger and heavier than the currently approved spent fuel shipping casks for Oconee, the licensee has performed calculations which show

that, by imposing more restrictive limits on the decay time for the spent fuel in the respective Oconee spent fuel pool, offsite dose release resulting from a cask drop in the spent fuel pool are well within the 10 CFR part 100 limits. These new restrictions would require, for Oconee Units 1 and 2 spent fuel pool, spent fuel stored in the first 64 hours of the storage racks closest to the cask handling area to have decayed for a minimum of 65 days prior to transfer cask operations. For Oconee Unit 3 spent fuel pool, all of the spent fuel in the pool must have decayed a minimum of 57 days prior to transfer cask operations. The current TS require, for Oconee Units 1 and 2, that spent fuel in the first 36 rows closest to the shipping cask handling area be decayed a minimum of 55 days, and for Unit 3, spent fuel stored in the first 33 rows closest to the shipping cask handling area be decayed a minimum of 70 days. The staff has reviewed and concurs in the licensee's calculations. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

An Environmental Assessment and Finding of No Significant Impact for the construction and operation of the Oconee ISFSI was previously published in the *Federal Register* on November 1, 1988 (53 FR 44133). This Environmental Assessment covers all aspects of ISFSI construction and operation occurring outside the Oconee reactor building.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would prevent implementation of the ISFSI, eventually resulting in insufficient spent fuel storage reserve to allow uninterrupted operation of Oconee Units 1, 2 and 3.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the Operation of Oconee Nuclear Station, Units 1, 2 and 3, dated March 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated March 31, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 10th day of October 1989.

For the Nuclear Regulatory Commission.

Darl S. Hood,

*Acting Director, Project Directorate II-3,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 89-25003 Filed 10-23-89; 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 November 8 and 9, 1989, at the San Francisco Airport Hilton, Terrace Room, San Francisco, CA.

A portion of the meeting will be closed to discuss information deemed proprietary by the General Electric Company.

The agenda for the subject meeting shall be as follows:

Wednesday, November 8, 1989—8:00 a.m. until the conclusion of business
Thursday, November 9, 1989—8:00 a.m. until the conclusion of business

The Subcommittee will discuss: (1) The capability of the thermal hydraulic codes to model BWR core power instability, and (2) the key thermal hydraulic design aspects of the GE

ABWR related to the ECCS, and LOA analyses.

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, the BWR Owners Group, its 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.

Dated: October 18, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-24999 Filed 10-23-89; 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 November 14, 1989, Room P-422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, November 14, 1989—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss selected topics related to the NRC-RES thermal hydraulic research program, including future research needs and the recent ACRS letter commenting on thermal hydraulic research.

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, the BWR Owners Group, its 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 Boehner (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.

Dated: October 17, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-25000 Filed 10-23-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a closed meeting on November 1 and 2, 1989 in

Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland with members of the Canadian Atomic Energy Control Board's Advisory Committee on Nuclear Safety (ACNS) to discuss safety-related matters applicable to nuclear power plants.

Wednesday, November 1, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

Morning Session—The attendees will discuss the following topics:

- Institutional quality assurance and attitude
- Software quality assurance

Afternoon Session—The attendees will discuss the following topics:

- Nuclear Power plant personnel selection and training
- Severe accident analysis
- Containment performance criteria
- Use of the "as low as reasonably achievable (ALARA)" concept

Thursday, November 2, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

Morning Session—The attendees will discuss the following topic:

- Emergency Planning

I have determined in accordance with Subsection 19(d) P.L. 92-463 that it is necessary to close this meeting to discuss information provided in confidence by a foreign source consistent with 5 U.S.C. 552b(c)(4). See 10 CFR 9.104(a)(4) and 2.790(d).

Less than 15 days notice for this meeting has resulted from difficulties associated with obtaining final coordinated approval of the topics for discussion and the meeting date do to the infrequent meetings of the two full committees.

Dated: October 19, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-25002 Filed 10-23-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-17172; 811-2940]

Capital Preservation Treasury Note Trust; Notice of Application

October 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Capital Preservation Treasury Note Trust.

Relevant 1940 Act Section: 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 July 28, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 13, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicant, 755 Page Mill Road, Palo Alto, CA 94304.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Max Berueffy, 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 (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. On July 13, 1979, Applicant filed Form N-8A to register under the 1940 Act as an open-end, diversified management investment company. On July 13, 1979, Applicant also filed Form N-1 pursuant to the Securities Act of 1933. The registration statement became effective on May 16, 1980, and the initial public offering commenced immediately thereafter. Applicant was organized as a California grantor trust until its status was terminated by trustee action on April 28, 1989.

2. On July 26, 1988, Applicant's Board of Trustees approved its Agreement and Plan of Reorganization (the "Plan") and recommended its submission to Applicant's shareholders. Proxy materials relating to the Plan were mailed to shareholders of record as of September 22, 1988, on or about October 3, 1988. On November 22, 1988, at a meeting called for that purpose,

Applicant's shareholders approved the Plan.

3. Pursuant to the Plan, on April 1, 1989, Applicant transferred all of its assets to Benham Government Income Trust ("Trust") which is organized as a Massachusetts business trust. The Trust is registered as a management investment company under the 1940 Act (File No. 811-4363). In exchange for their interests in Applicant, the shareholders of Applicant received equivalent interests ("New Shares") in a new series of shares of the Trust known as the Benham Treasury Note Fund ("Series"). The exchange of shares of Applicant for New Shares took place at net asset value as of April 1, 1989, the closing date. Applicant distributed in complete liquidation pro rata to its shareholders of record as of March 31, 1989, the New Shares received by Applicant. Each shareholder of record received one New Share for each share of Applicant on the closing date. The voting rights of the New Shares are identical to those of Applicant's shares.

4. At the time of the reorganization, there were 7,440,875 shares of beneficial interest of Applicant outstanding, having an aggregate net asset value of \$71,655,616 and a per share net asset value of \$9.63. No brokerage commissions were paid in connection with the reorganization. The expenses applicable to the reorganization, consisting of accounting, printing, proxy solicitation, administrative and certain legal expenses, were approximately \$26,895. Expenses incurred during the reorganization were borne by Applicant; expenses incurred following the reorganization will be borne by the Series.

5. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage in any business activities other than those necessary to wind up its affairs.

For the SEC, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24975 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17173; 811-1649]

Industrial Index Fund; Deregistration

October 17, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal of deregistration under the Investment Company Act of 1940 (the "1940 Act").

Registrant: Industrial Index Fund ("Registrant").

Relevant 1940 Act Section: Section 8(f).

Summary of Proposed Action: The SEC proposes to declare on its own motion that Registrant has ceased to be an investment company.

Hearing or Notification of Hearing: If no hearing is ordered, the motion will be granted. Interested persons may request a hearing on the deregistration of Registrant, or asked to be notified if a hearing is ordered. Hearing requests should be received by the SEC by 5:30 p.m., on November 13, 1989. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Serve the Registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Registrant, Industrial Index Fund, c/o David W. Stevenson, CPA, Inc., 2630 Canyon Road, Escondido, California 92025-7415.

FOR FURTHER INFORMATION CONTACT: Patricia Copeland, Legal Technician, (202) 272-3009, or Stephanie M. Monaco, Branch Chief, (202) 272-3030 (Office of Investment Company Regulation).

Applicant's Representations

1. Registrant filed Forms N-8A and N-8B to register under the 1940 Act on May 3, 1968, but no additional 1940 Act filings have been made with the SEC since that date. Registrant was organized under the laws of the State of California.

2. Information contained in the records of the SEC indicate that on April 15, 1986, Registrant's directors decided to liquidate Registrant due to the death of Registrant's administrator, the inability to find a merger partner, and a high level of costs compared to the Registrant's assets of approximately \$38,500. On October 22, 1986, checks representing net asset value per share as of June 1, 1986, were sent to shareholders who could be located and the remainder was escheated to the State of California with a list of the shareholders who had no known address. Registrant has been inactive since the spring of 1986.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24976 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17168; 812-7291]

Prudential-Bache Special Situations Fund, L.P., MGP Limited Partnership; Notice of Application

October 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940, as amended (the "Act").

Applicants: Prudential-Bache Special Situations Fund, L.P. (the "Fund") and MGP Limited Partnership (the "Adviser")

Relevant 1940 Act Section: Exemptions requested under section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D).

Summary of Application: Applicants seek an order determining: (i) that the Independent General Partners (as hereinafter defined) of the Fund and any persons who may become successor or additional Independent General Partners will not be deemed "interested persons" of the Fund and the Adviser solely by reason of serving as general partners of the Fund (the "General Partners"); and (ii) that persons who become limited partners of the Fund (the "Limited Partners") who own less than five percent (5%) of the units representing the Fund's limited partnership interests (the "Units") will not be deemed "affiliated persons" of the Fund or of its other partners solely by reason of their status as Limited Partners.

Filing Dates: The application was filed on April 11, 1989 and amended on September 8, 1989 and October 4, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested.

Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549.

Applicants, c/o Hertzog, Calamari and Gleason, 100 Park Avenue, New York, New York, 10017, Attention: David B. Hertzog, Esq.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, (202) 272-3035, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Fund is a limited partnership organized on March 31, 1989 under Delaware law. The Fund has registered as an investment company and will file, as an exhibit to its Registration Statement on Form N-2, an Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"). The Fund is to terminate on December 31, 1994, unless terminated earlier or extended for up to two years. The Units will be sold to qualified investors in a private placement transaction pursuant to Regulation D under the Securities Act of 1933, as amended. Prudential-Bache Securities Inc. ("Prudential-Bache"), a wholly-owned subsidiary of Prudential Securities Group Inc. ("Prudential Group"), will act as the exclusive placement agent of the Units.

2. The investment objective of the Fund is to maximize long-term capital appreciation by investing primarily in equity securities and other securities with equity features of companies traded publicly "over-the-counter" or listed on national securities exchanges, which possess some technological, market or product niche, which may be, for various reasons, undervalued, or with prospects of going private or being acquired.

3. The Adviser, the general partner of which is Special Situations Management, Inc., a wholly-owned subsidiary of Prudential Group, serves as the Fund's investment adviser and will be primarily responsible for the selection of the Fund's investments and the selection of brokers and dealers through which the Fund's portfolio transactions will be executed. The Adviser is an investment adviser

registered under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). An affiliate of Prudential-Bache will serve as the Fund's administrator.

4. The Fund was structured as a partnership, rather than a corporation or business trust, to afford the Fund flexibility to meet its investment objective, while enabling the Fund and its partners to receive, in effect, the "pass-through" tax treatment typically available to mutual funds and their shareholders. As a partnership, the Fund will not be subject to the requirements of the Internal Revenue Code of 1986, as amended (the "Code") which a corporation must satisfy in order to qualify as a regulated investment company ("RIC") under section 851 *et seq.* of the Code. Moreover, the partnership structure enables the Fund to provide certain tax benefits to investors which are not available to RICs. First, short-term capital gains earned by the Fund will be passed through to investors as such, rather than being characterized as dividend income, as would be the case if the Fund were structured as a RIC. In addition, the partnership structure enables the Fund to structure the compensation payable to the Adviser as an allocation of partnership income, rather than as a fee. In this way, the partnership structure should permit investors to deduct a greater portion of the compensation payable to the Adviser.

5. The Fund has two classes of Partners: General Partners and Limited Partners. The General Partners are expected to include five natural persons (the "Managing General Partners") and the Adviser as the corporate General Partner (the "Corporate General Partner"). A majority of the Managing General Partners will be unaffiliated with Prudential-Bache, Prudential Group and the Adviser (the "Independent General Partners"). In accordance with Delaware law, the General Partners will be in a fiduciary relationship with the Limited Partners similar to that of the directors of a corporation with its shareholders.

6. If at any time the number of Independent General Partners is less than a majority of the Managing General Partners, the Managing General Partners shall, subject to compliance with the Act, designate one or more additional or successor Independent General Partners to be a majority of the Managing General Partners. An initial meeting of the Partners (the "Initial Meeting") shall be held within one year after the Fund commences its operations. At the Initial Meeting, the Partners will vote upon the approval and election of the Managing

General Partners. Each Managing General Partner elected at the Initial Meeting, and any successor or additional Managing General Partner, will serve until the termination of the Fund unless such Managing General Partner earlier withdraws or resigns or is earlier removed.

7. The General Partners will not be personally liable to any holder of the Units or to the Fund for losses suffered by the Fund, so long as the General Partners' conduct does not constitute willful misfeasance, bad faith, gross negligence or reckless disregard of their duties. The General Partners will not be liable to any holder of the Units or to the Fund by reason of any change in any federal or state income tax laws applicable to the Fund or to any holder of the Units. A General Partner will be entitled to indemnification from the Fund against liabilities and expenses to which it may be subject in its capacity as a General Partner, so long as the expenses are not the result of willful misfeasance, bad faith, gross negligence or reckless disregard of its duties.

8. In addition to the foregoing indemnification of the Managing General Partners, Prudential-Bache has agreed to indemnify the Managing General Partners against the same liabilities and expenses (specifically including any claims made by general creditors of the Fund), so long as the Managing General Partners have not engaged in willful misfeasance, bad faith, gross negligence or reckless disregard of their duties. The Fund will carry insurance in such amounts as the Managing General Partners consider reasonable to cover the potential liabilities of the Fund. The Fund does not at present plan to carry an errors and omissions insurance policy. The Independent General Partners will review periodically the appropriateness of obtaining an errors and omissions insurance policy for the Fund.

9. Each Independent General Partner will receive an annual fee for his services and each Managing General Partner will be reimbursed by the Fund for reasonable out-of-pocket expenses incurred by them in performing their duties. Such compensation shall be in the form of an allocation of 20 percent of the Profit of the Fund for each year in which the Corporate General Partner serves as the Fund's investment adviser. The Corporate General Partner will receive performance-based investment advisory compensation in accordance with Rule 205-3 under the Advisers Act. An affiliate of Prudential-Bache will serve as the Fund's administrator and will be paid an annual fee for its

services equal to 0.25% of the Fund's average net assets.

10. The Limited Partners will not be personally liable for obligations of the Fund unless they take part in the control of the Fund's business. The Limited Partners will not have the unrestricted right to transfer or assign their Units to other persons.

The Applicants' Legal Conclusions

1. Each of the Managing General Partners will be a partner of the Fund and a co-partner of the Adviser and, thus, under section 2(a)(3)(D), each may be deemed an affiliated person of the Fund and the Adviser. As an affiliated person of the Fund and the Adviser, each of the Managing General Partners, including each Independent General Partner, will be an interested person of the Fund and the Adviser under sections 2(a)(19)(A) and 2(a)(19)(B) of the Act. If the Independent General Partners were deemed interested persons of the Fund and the Adviser, the Fund would be precluded from meeting a number of requirements imposed on a registered investment company by the Act and various rules under the Act. The Fund would be unable to comply, for example, with section 10(a) of the Act, which requires a registered investment company to have a board of directors at least forty percent (40%) of the members of who are not interested persons of the company.

2. Each person who becomes a Limited Partner will be a partner of the Fund and therefore a co-partner with each other Partner, including the Adviser. Section 2(a)(3)(D) of the Act provides that an "affiliated person" of an entity such as the Fund includes, among others, any partner or co-partner thereof. Thus, each Limited Partner might be deemed to be an "affiliated person" of the Fund, the Adviser and each other Partner, merely by virtue of such Limited Partner having purchased a Unit and having become a Limited Partner.

3. The Applicants believe that the exemptions are consistent with the policies of sections 2(a)(19) and 2(a)(3)(D). The Managing General Partners, including the Independent General Partners, will perform the same functions for the Fund as do the directors of a mutual fund organized as a corporation. Similarly, the application of section 2(a)(3)(D) of the Limited Partners would result in their being treated differently from shareholders of a registered investment company that was organized as a corporation. The Applicants assert that the questions of affiliation and corresponding prohibitions should not turn on the form

of organization of the investment vehicle. The Limited Partners, for purposes of the Act, should generally be accorded the same treatment as corporate shareholders, and, therefore, the Limited Partners who hold less than five percent (5%) of the Fund's voting securities should not be deemed "affiliated persons" of the Fund, the Adviser or the other Partners under section 2(a)(3)(D) solely by virtue of their being Limited Partners.

4. The Applicants submit that granting the Exemptions is not only consistent with the policies underlying the Act, but is also in the interests of the Fund and the Partners. The Exemptions will enable the Fund to operate as a limited partnership and thereby afford the Fund flexibility to meet its investment objective, while permitting the Fund and the Partners to receive pass-through tax treatment similar to that typically available to registered investment companies organized as corporations or business trusts and also to receive certain other tax treatment which is more favorable to partnerships than to corporations.

The Applicants' Conditions

If the requested orders are granted, the Applicants agree to the following conditions:

1. The Managing General Partners will perform the same functions as the directors of incorporated investment companies registered under the Act. The Independent General Partners, all of whom are Managing General Partners, will perform the same functions as the non-interested directors of registered incorporated investment companies. The Managing General Partners will have complete and exclusive control over the management, conduct and operation of the Fund's business. The Corporate General Partner will have no authority to manage or control the Fund's business, except if no Managing General Partner remains. In that event, the Corporate General Partner may continue the business of the Fund for up to sixty days in order to convene a meeting of the Limited Partners so that the Limited Partners can select new Managing General Partners.

2. While serving as a non-managing General Partner or of investment adviser to the Fund, the Corporate General Partner will, to preserve the Fund's tax status as a partnership, own sufficient Units to insure that the General Partners together own at least one percent of the outstanding Units. The Corporate General Partner will not withdraw as a non-managing General Partner of the Fund except on two years notice or upon the appointment of a successor, whichever is earlier. If the Fund terminates the advisory agreement with the Corporate General Partner, it will remain as a non-managing General Partner and continue its obligation to own sufficient Units for 180 days or until a successor non-managing

General Partner is appointed, whichever is earlier.

3. The Limited Partners will not have the right to control the Fund's business, but they will have the right to vote on all matters requiring their approval under the Act were they shareholders of an incorporated registered investment company, including the right to elect or remove General Partners, the right to approve any new or amended investment advisory contract, the right to approve proposed changes in the Fund's fundamental policies or basic structure, and the right to ratify or reject the appointment of auditors. If a Limited Partner seeks to transfer his interest in the Fund, and the proposed transfer is otherwise in accordance with the Partnership Agreement, applicable Federal and State law and the tax considerations set forth in the Partnership Agreement, the Managing General Partners may not unreasonably withhold their consent to such transfer. If a Limited Partner transfers his Units in a manner which is effective under the Partnership Agreement, and the consent of the Managing General Partners to the substitution of such Limited Partner's transferee as a substituted Limited Partner is obtained and any other actions required under the Partnership Agreement are taken, the General Partners will promptly take all necessary actions to insure that such transferee or successor becomes a substituted Limited Partner. All Units will participate equally in the profits and losses of the Fund, and each Unit will have one vote on all matters to be voted upon by the Partners.

4. In the event of the dissolution of the Fund, the Partnership Agreement specifies that both the General and Limited Partners share pro rata in accordance with the respective capital accounts of such Partners. The capital accounts of the Partners may not be proportionate to their ownership of Units because (i) Partners may elect to reinvest differing portions of any distributions that they receive in additional units and (ii) any investment advisory compensation which has been allocated to the Corporate General Partner will be reflected in the Corporate General Partner's capital account, but will not result in the issuance to the Corporate General Partner of a proportionate number of additional Units unless there has been a corresponding cash distribution reinvested in Units. No priority between the General and Limited Partners exists upon dissolution, and hence, in the view of the Fund, neither class of Partners holds a senior security as defined under the Act.

5. The Fund will, prior to the closing of the sale of Units, obtain an opinion of counsel stating that the voting rights provided the Limited Partners do not subject the Limited Partners to liability as general partners under Delaware law. In addition, the General Partners will take all actions which may be necessary or appropriate to protect the limited liability of the Limited Partners (e.g., requiring the General Partners to use their best efforts to put all third parties dealing with the Fund on notice of the limited liability of the Limited Partners and requiring all written agreements entered into by the Fund

to contain a statement to the effect that the Fund is a limited partnership). If a Limited Partner is sued in order to satisfy an obligation of the Fund, the Fund agrees that, upon notice of such by the Limited Partner, it will indemnify such Limited Partner against any cost, damage or liability incurred by such Limited Partner in respect of such suit to the extent that such Limited Partner acted in accordance with the terms of the Partnership Agreement, took no part in the management or control of the Fund's business and did not purport to have the authority to act for or bind the Fund. The Fund will carry insurance in such amounts as the Managing General partners considered reasonable to cover potential liabilities of the Fund. The Independent General Partners will periodically review the appropriateness of obtaining errors and omissions insurance for the Fund.

6. The Units will be sold only to investors with net worths in excess of \$1 million. Prior to the closing of the sale of Units, the Fund will obtain an opinion letter from counsel that the compensation payable to the Adviser by the Fund is in accordance with section 205 of the Advisers Act.

7. The Fund does not contemplate making in-kind distributions of portfolio securities to the General Partners. In any event, prior to making any such distribution, the Fund will obtain either a no-action letter from the staff of the SEC stating that such distribution does not violate the Advisers Act or an order of exemption pursuant to section 206A of the Advisers Act permitting such distribution.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-24977 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17167; 812-7292]

Prudential-Bache Special Situations Fund, L.P., Special Situations Fund, L.P., MGP Limited Partnership; Notice of Application

October 16, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Prudential-Bache Special Situations Fund, L.P. (the "Fund"), Special Situations Fund, L.P. (the "1985 Fund") (together, the "Funds"), and MGP Limited Partnership (the "Adviser") (collectively, the "Applicants").

Relevant 1940 Act Section: Exemption requested under section 17(b) of the Act from the provisions of section 17(a) of the Act.

Summary of Application: The Applicants seek an order permitting certain of the partners of the 1985 Fund

(the "1985 Partners") to contribute and invest their distributive shares of the assets of the 1985 Fund upon its liquidation in exchange for units representing the Fund's limited partnership interests ("Units").

Filing Dates: The application was filed on April 11, 1989, and amended on September 8, 1989 and October 4, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 8, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o Hertzog, Calamari & Gleason, 100 Park Avenue, New York, New York 10017, Attention: David B. Hertzog, Esq.

FOR FURTHER INFORMATION CONTACT: Stuart Horwich, Staff Attorney, (202) 272-3035, or Karen L. Skidmore, Branch Chief, (202) 272-3023 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Fund is a limited partnership organized on March 31, 1989, under Delaware law. The Fund has registered as an investment company with the SEC pursuant to section 8 of the Act. Units will be sold to investors with net worths in excess of \$1 million in a private placement transaction pursuant to Regulation D ("Regulation D") under the Securities Act of 1933, as amended. Prudential-Bache Securities Inc. ("Prudential-Bache"), a wholly-owned subsidiary of Prudential Securities Group Inc. ("Prudential Group"), will serve as exclusive placement agent of the Units. Prudential-Bache Properties, Inc., a wholly-owned subsidiary of Prudential Group, will serve as the Fund's administrator.

2. The investment objective of the Fund will be to maximize long-term

capital appreciation by investing primarily in equity securities and securities with equity features, such as common stocks, preferred stocks, convertible securities, and warrants, of companies traded publicly "over-the-counter" or listed on national securities exchanges, which possess a technological, market or product niche, which may be, for various reasons, undervalued, or with prospects of going private or being acquired.

3. The 1985 Fund is a limited partnership organized on March 15, 1985, under Delaware law. Under the terms of the 1985 Fund's Agreement of Limited Partnership ("1985 Agreement"), the 1985 Fund is to terminate on December 31, 1990, unless terminated earlier or extended for up to one year. In July 1985, units of limited partnership interest in the 1985 Fund (the "1985 Fund Units") in an aggregate amount of \$7,250,000 were sold to qualified investors in a private placement transaction pursuant to Regulation D. There have been no subsequent sales of the 1985 Units. Prudential-Bache served as placement agent of the 1985 Units. The 1985 Fund has not been registered under the Act in reliance on section 3(c)(1) thereof. The 1985 Fund's investment objective is substantially identical to the Fund's investment objective. The 1985 Fund is, and has been, invested in the types of companies and securities in which the Fund intends to be invested.

4. The Adviser was organized as a limited partnership under the laws of the State of Delaware and is registered with the SEC as an investment adviser under the Investment Advisers Act of 1940, as amended. Special Situations Management, Inc. ("SSMI"), a Delaware corporation and a wholly-owned subsidiary of Prudential Group, is the sole general partner of the Adviser. The 1985 Fund pays the Adviser performance-based advisory compensation calculated in accordance with Rule 205-3 under the Advisers Act. It is expected that the Fund will compensate the Adviser in substantially the same manner; however, the Adviser will be compensated by the Fund at a lower rate.

5. The Adviser will serve as the Fund's investment adviser and is serving as the investment adviser of the 1985 Fund. The Adviser is primarily responsible for the selection of the 1985 Fund's investments and the selection of brokers and dealers through which portfolio transactions are executed. The Adviser will have the same responsibilities with respect to the Fund.

6. The Adviser is the sole general partner of the 1985 Fund and is vested with authority to manage and control the business of the 1985 Fund. The authority to manage and control the business of the Fund will be vested in individual general partners of the Fund (the "Individual General Partners"), a majority of whom will be unaffiliated with Prudential-Bache, Prudential Group and the Adviser (the "Independent General Partners"). As a general partner of the Fund, the Adviser will be permitted to participate in the management of the Fund only in the event that no Individual General Partner remains to continue the business of the Fund and then only for the limited period of time (not in excess of sixty (60) days) necessary to convene a meeting of the partners of the Fund for the purpose of making an election to continue the Fund's business.

7. The Adviser, as managing general partner of the 1985 Fund, has elected, in accordance with the 1985 Fund's Agreement of Limited Partnership, to dissolve the 1985 Fund, and to offer qualified limited partners of the 1985 Fund the opportunity to exchange their distributive shares of assets in the 1985 Fund for Units. The Adviser will solicit consents from the 1985 Limited Partners to approve a proposed liquidation (the "Liquidation") and termination of the 1985 Fund in accordance with a proposed plan of liquidation (the "Plan"). Under the Plan, the qualified 1985 Limited Partners who are United States Persons, as such term is defined under the Internal Revenue Code of 1986, as amended (the "1985 U.S. Partners"), will be permitted to exchange their distributive shares of the assets of the 1985 Fund for Units. The 1985 Limited Partners who are not 1985 U.S. Partners (the "1985 Foreign Partners") will receive their distributive shares of the assets of the 1985 Fund in cash and, if qualified, will be permitted to reinvest such cash distributions in Units. In accordance with the 1985 agreement, if consents are obtained from the holders of at least two-thirds of the 1985 Units, the Adviser will proceed with the Liquidation of the 1985 Fund. In connection with the solicitation of consents to the Liquidation, an information statement (the "Information Statement") will be prepared by the Adviser and the 1985 Fund and distributed to the 1985 Limited Partners. The Liquidation will be effected immediately prior to the closing of the offering of the Units (the "Closing"). The 1985 Limited Partners will be informed of the terms of such Liquidation and their opportunity to invest their

distributions from the 1985 Fund in Units.

8. The 1985 Fund will discharge all of its known liabilities and obligations on or before the day prior to the date of the Closing (the "Closing Date"), including the expenses of Liquidation and, if determined to be appropriate by the Adviser and the Independent General Partners, the 1985 Fund will establish a reserve for unknown and contingent liabilities and obligations. Any liabilities and obligations of the 1985 Fund not otherwise satisfied or provided for will be the responsibility of the Adviser, in its capacity as the general partner of the 1985 Fund. The Fund will assume no liabilities, expenses or obligations of the 1985 Fund. Following the Liquidation, the 1985 Fund will be terminated in accordance with the 1985 Agreement and Delaware law.

9. On the Closing Date, the 1985 Fund will liquidate and distribute its assets to each partner thereof (the "1985 Partners") in accordance with the respective final balances of their capital accounts as of that date. A 1985 U.S. Partner who has a net worth in excess of \$1 million may contribute to the Fund all or a portion (in multiples of 25%) of his or its distributive share of the 1985 Fund's assets consisting of portfolio securities, cash and cash equivalents (the "Contributed Assets") in exchange for Units. A 1985 U.S. Partner who does not invest in the Fund all or any portion of his or its distributive share of the 1985 Fund's assets will receive cash in the Liquidation. A qualified 1985 U.S. Partner who elects to invest all or a portion of his or its distributive share of the 1985 Fund's assets in the Fund will contribute to the Fund such portion of his or its distributive share of the 1985 Fund's assets consisting of portfolio securities, cash and cash equivalents (the "Contributed Assets") to the Fund in exchange for Units. The value of the Units so received will be equal to the value of such Contributed Assets.

10. A 1985 Foreign Partner who has a net worth in excess of \$1 million will be qualified to invest all or part of the cash distribution received in the Liquidation by purchasing Units in the Fund. A 1985 Foreign Partner should not be subject to Federal income tax liability on his or its receipt of cash in the Liquidation.

11. The Fund will issue Units to the 1985 U.S. Partners, the aggregate value of which will equal the value of the Contributed Assets transferred to the Fund by such Partners on the Closing Date. The Contributed Assets will be valued at their independent "current market price", as defined in Rule 17a-7(b) under the Act. The Independent

General Partners, prior to the sale of Units to the 1985 Partners, will approve the valuation of the Contributed Assets and determine that they are appropriate for the Fund's portfolio. On the Determination Date, the 1985 Fund's portfolio will consist entirely of cash, cash equivalents and securities for which an independent "current market price", as defined by Rule 17a-7(b), can be obtained. Neither the 1985 Limited Partners nor the Adviser will be in a position to influence the valuation of the securities acquired by the Fund.

12. The Independent General Partners will consider the desirability of the proposed transaction from the point of view of the Fund prior to Liquidation, and the proposed transaction will not be effected unless a majority of the Independent General Partners conclude that: (i) The proposed transaction is desirable as a business matter from the point of view of the Fund, (ii) the proposed transaction is in the best interest of the Fund and (iii) the terms of the proposed transaction meet the criteria contained in section 17(b) of the Act in that such transaction is reasonable and fair, does not involve overreaching and is consistent with the policies of the Fund and the Act. The Independent General Partners will be given the opportunity to retain independent counsel, at the expense of the Fund, to assist them in considering the proposed transaction, prior to making such determinations.

13. Counsel to the Fund will, prior to the Liquidation, provide an opinion letter stating that, in general, under present law, neither the Fund nor partners in the Fund will be subject to any additional tax liability as a result of the proposed transaction described herein. Moreover, the 1985 U.S. Partners should not recognize any gain or loss upon which the contribution of their Contributed Assets in exchange for Units pursuant to the proposed transaction.

14. The expenses of the Liquidation will be borne by the 1985 Fund. Such expenses are expected to be relatively small. Organizational and offering expenses of the Fund of up to two percent (2%) of the gross proceeds of the offering of Units will be borne by the Fund. Any excess expenses will be borne by Prudential-Bache. No other expenses are expected to be incurred in connection with the proposed transaction, and as set forth in Rule 17a-7(c), no brokerage commissions, fees (except for customary transfer fees) or other similar remuneration is to be paid in connection therewith.

15. The Fund intends to distribute an offering memorandum (the "Offering Memorandum") to new investors ("New Investors") and the 1985 Limited Partners describing the proposed transaction. Such Offering Memorandum will set forth the basis for this proposed transaction, the anticipated tax consequences thereof and all other relevant material facts and circumstances.

16. The occurrence of the following events, among others, will be conditions to the Closing: (i) Obtaining the relief sought hereunder, (ii) obtaining the requisite consents to the Liquidation, (iii) obtaining the relief sought pursuant to an application filed on behalf of the Fund and the Adviser on April 11, 1989, as amended and restated, seeking exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the Act and (iv) selling a minimum of 6,000 Units (at \$5,000 per Unit), inclusive of Units acquired by the 1985 Partners. Correspondingly, it is anticipated that the consummation of the Liquidation will also be conditioned upon the occurrence of the foregoing events.

The Applicants' Legal Conclusion

1. Under section 2(a)(3) of the Act, the Adviser technically may be deemed to be an "affiliated person" of the Fund because: (i) It will be the Fund's investment adviser and (ii) it is a partner of the Fund. The 1985 Limited Partners, in turn, may be deemed to be affiliated persons of an affiliated person (*i.e.*, the Adviser) because they are copartners of the Adviser in the 1985 Fund. In addition, the Funds may be deemed to be under the common control of the Adviser and/or Prudential-Bache and, therefore, affiliates. Thus, the 1985 Limited Partners may be deemed to be affiliated persons of the Fund. Because of these relationships, the provisions of section 17(a) of the Act apply to the contribution by the 1985 U.S. Partners of the Contributed Assets in exchange for Units.

2. The Applicants submit that the proposed transaction does not give rise to the abuses that section 17(a) was designed to prevent. A primary purpose of section 17(a) is to prevent a person with a pecuniary interest as a seller of securities from using his position with a registered investment company to benefit himself to the detriment of such company's shareholders. In the instant case, the Fund will not have commenced operations prior to the Liquidation and thus will have no assets to dissipate or partners' interests to dilute. Immediately after the Liquidation and the acquisition

of Units, the 1985 Partners will hold substantially the same assets as partners in the Fund as they had previously held as 1985 Partners. In this sense, the Liquidation can be viewed as merely giving rise to a change in the vehicle in which assets are held, rather than as a disposition giving rise to section 17(a) concerns.

3. The Applicants submit that the proposed transaction is also consistent with the policies underlying the adoption of Rule 17a-7. One of those policies is to permit investment companies that may have otherwise chosen to avoid the application process under section 17(b) of the Act by purchasing and selling securities in the open market, instead to avoid brokerage charges by effecting transactions directly. The proposed transaction avoids the incurrence of brokerage charges without giving rise to any of the abuses which section 17(a) of the Act was designed to prevent.

4. The 1985 U.S. Partners who transfer Contributed Assets to the Fund in exchange for Units will contribute the same value for their Units as will investors who pay cash for their Units, including any 1985 Foreign Partners. All the partners of the Fund will benefit from the greater flexibility in portfolio investments, the administrative convenience engendered and the creation of certain economies of scale that should be available to the Fund as a result of the effective combination of the Funds.

The Applicants' Conditions

If the requested order is granted, the Applicants agree to the following conditions:

1. The Independent General Partners have determined that no dilution of the interests of any partners of the Fund will occur by virtue of such transaction.

2. All expenses of the Liquidation, including the solicitation of consents thereto, will be borne by the 1985 Fund. Organizational and offering expenses of up to two percent (2%) of the gross proceeds of the Offering will be borne by the Fund. Any excess expenses will be borne by Prudential-Bache.

For the SEC, by the Division of Investment of Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-24978 Filed 10-23-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION National Highway Traffic Safety Administration

[Docket No. 88-09; Notice No. 3]

Periodic Motor Vehicle Inspection; Publication of Final Study Report

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

ACTION: Notice of publication of final study report.

SUMMARY: This notice is being issued to announce the completion of a final report on the effectiveness of State periodic motor vehicle inspection (PMVI) programs. This action is in response to Congressional direction, and reflects NHTSA's interest in addressing the effectiveness of State periodic motor vehicle inspection programs.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Luebbert, Office of Enforcement and Emergency Services, Room 5119, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2676.

SUPPLEMENTARY INFORMATION: The Conference Report on the Continuing Resolution for Fiscal Year 1988 (Pub. L. 100-202) directed NHTSA to conduct a comprehensive evaluation of the effectiveness of State motor vehicle safety inspection programs in (1) reducing highway crashes that result in injuries and deaths and (2) limiting the number of defective or unsafe motor vehicles on the highways. In April 1988, NHTSA submitted a plan describing the study methodology and timetable to appropriate Congressional committees. On August 22, 1988, NHTSA announced two public hearings and invited the submission of written comments on the subject, 53 FR 31951 (1988). Detailed background information on PMVI and on the current study was provided in the August 22 notice and, in the interest of brevity, will not be repeated here. NHTSA held the public hearings on September 27, 1988, in Washington, DC and on October 5, 1988, in Lakewood, Colorado. NHTSA heard testimony and received written comments to the docket from sixty-two respondents, including States, national organizations, and interested individuals.

Following the completion of NHTSA in-house study efforts, and after taking into consideration the written comments and testimony at the public hearings, an interim final report was prepared. In a Federal Register notice of May 9, 1989, NHTSA announced the availability of the interim final report and again invited

the submission of written comments. At the same time, the interim final report was sent to all those who provided comments and who testified at the public hearings. NHTSA received written comments from thirteen respondents, including States and national organizations.

In accordance with Congressional direction and the submitted plan, the final report contains a review of the literature, analysis of crash data, assessment of current PMVI programs, and a summary of the public comments received in response to the August 22 and May 9 Federal Register notices and at the public hearings. A copy of this final report has been sent to Congress. Copies of this final report have also been sent to all those who provided comments and who testified at the public hearings. Anyone else interested in obtaining a copy of this report may do so by requesting one from Mr. Sam Luebbert at the above address.

George L. Reagle,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 89-24943 Filed 10-23-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Granting of Relief; Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Notice of granting of restoration of Federal firearms privileges.

SUMMARY: The persons named in this notice have been granted restoration of their Federal firearms privileges by the Director, Bureau of Alcohol, Tobacco and Firearms.

As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge Phil A. Orsini, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202-566-7258).

SUPPLEMENTARY INFORMATION: In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted restoration of Federal firearms privileges with respect to the acquisition, transfer, receipt, shipment, or possession of firearms. These privileges were lost by reason of their

convictions of crimes punishable by imprisonment for a term exceeding one year or because they otherwise fell within a category of persons prohibited by Federal law from acquiring, transferring, receiving, shipping or possessing firearms.

It has been established to the Director's satisfaction that the circumstances regarding the applicants' disabilities and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the restoration will not be contrary to the public interest.

The following persons have been granted restoration:

Anderson, Bradley Ivan, 516 Lamar Drive, Milton, Wisconsin, convicted on April 20, 1981, in the Rock County Circuit Court, Branch III, Janesville, Wisconsin.

Anderson, Robert Ernest, 45 Eisenhower Drive, Savannah, Georgia, convicted on January 10, 1984, in the United States District Court, Southern District of Georgia.

Anderson, William R., 16 Glenleigh, Little Rock, Arkansas, convicted on January 13, 1986, in the United States District Court, Little Rock, Arkansas.

Argento, Joseph Anthony, 1218 North 32nd Avenue, Melrose Park, Illinois, convicted on August 21, 1975, in the United States District Court, Chicago, Illinois.

Armenta, Ruben Gomez, 59300 Highway 245, Badger, California, convicted on January 25, 1985, in the Superior Court of California, Fresno, California.

Arrington, James Francis, Route 1, Box 619, Meridian, Mississippi, convicted on December 8, 1976, in the Lauderdale County Circuit Court, Lauderdale County, Mississippi.

Austin, Earl Ardene Senior, Route 171, Wypitlock, Maine, convicted on December 22, 1982, in the Maine Superior Court, Penobscot County, Bangor, Maine.

Bell, Warren A. Junior, 5425 Congress Drive, New Orleans, Louisiana, convicted on July 7, 1981, Orleans Parish Criminal Court, New Orleans, Louisiana.

Benningfield, James W., 1397 L G & E Road, Magnolia, Kentucky, convicted on October 4, 1983, in the United States District Court, Western District of Kentucky.

Bland, William Robert, 1705 Leestown Road, Lexington, Kentucky, convicted on February 11, 1973, in the United States District Court, Tampa, Florida.

Boykin, Kerry Kendall, Route 2, Box 278-A, Forest, Mississippi, convicted on October 15, 1975, in the United States District Court, Jackson, Mississippi.

Brannon, Michael T., 543 Dolezac, Coos Bay, Oregon, convicted on April 3, 1980, in the Coos Bay Circuit Court, Oregon.

Brinkley, John H., 2244 West 10th Street, Indianapolis, Indiana, convicted on January 25, 1983, in the United States District Court, Indianapolis, Indiana.

Brown, Eddie Junior, 8 Sixth Street, Robinwood, Birmingham, Alabama, convicted on November 9, 1984, in the

Tenth Judicial Circuit Court, Jefferson County, Alabama.

Brown, Ronald Sahara, 1225 Martin Luther King Avenue, Flint, Michigan, convicted January 10, 1973; January 4, 1974; February 4, 1975; February 9, 1977, and October 2, 1977, in the Detroit Records Court, Michigan.

Bruner, Jessie Louise, 3571 Goree Drive, Millbrook, Alabama, convicted on January 18, 1982, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Bruner, Oddis Timothy, 3571 Goree Drive, Millbrook, Alabama, convicted on January 18, 1982, in the United States District Court, Middle District of Alabama, Montgomery, Alabama.

Callahan, Billy Joe, Post Office Box 185, Pilot Knob, Missouri, convicted on September 24, 1976, in the United States District Court, St. Louis, Missouri.

Cannisa, Alan E., 3 Talmadge Street, Derby, Connecticut, convicted on April 20, 1987, in the Superior Court, Salem County, New Jersey.

Catron, Stanley Martin, 3305 South Wiley Road, Yakima, Washington, convicted on January 31, 1986, in the Superior Court, Yakima County, Washington.

Cayemberg, Denis Lee, North 511 Highway 180, Marinette, Wisconsin, convicted on April 21, 1986, in the Brown Circuit Court, Branch Four, Brown County, Green Bay, Wisconsin.

Chamberlain, Edward Lee, Box 852, Shelburne, Vermont, convicted on March 17, 1986, in the District Court of Caledonia County, Vermont.

Chambers, Johnnie Mae, Route 2, Sharp Road, Columbia, Tennessee, convicted on January 7, 1982, in the United States District Court, Nashville, Tennessee.

Chambers, W.C., Route 2, Sharp Road, Columbia, Tennessee, convicted on January 7, 1982, in the United States District Court, Nashville, Tennessee.

Chambers, Wendell Clarke, Route 2, Sharp Road, Columbia, Tennessee, convicted on January 7, 1982, in the United States District Court, Nashville, Tennessee.

Clark, Frances Gertrude, 270 Robinson Road, Andrews, North Carolina, convicted on April 18, 1986, in the United States District Court, Charlotte, North Carolina.

Cline, Janette M., Route 1, Box 288, Pollock, Louisiana, convicted on April 23, 1984, in the United States District Court, Alexandria, Louisiana.

Cline, Kenneth Ray, Route 1, Box 288, Pollock, Louisiana, convicted on April 23, 1984, in the United States District Court, Alexandria, Louisiana.

Gollamore, Charley Edwin, 1432 Southwest Sixty-third, Oklahoma City, Oklahoma, convicted on June 14, 1982, in the Seventh Judicial District Court, Oklahoma.

Cacey, Gary Jack, 5285 Crane Road, West Melbourne, Florida, convicted on June 8, 1978, in the United States District Court, Northern District of Florida, and on July 18, 1978, in the United States District Court, Birmingham, Alabama.

Corporation—Northrop, 1840 Century Park East, Los Angeles, California, convicted on

- May 1, 1974, in the United States District Court, Washington, DC.
- Cross, Richard Alan*, 1802 Milligan Street, Apartment 703, Decatur, Alabama, convicted on August 25, 1980, in the Morgan County Circuit Court, Decatur, Alabama.
- Crum, Michiel Wilbur*, 1108 Harrison Drive, Greenville, Tennessee, convicted on May 27, 1983, in the United States District Court, Greeneville, Tennessee.
- Cushing, Gregory Matthew*, 3527 East Layton Avenue, Cudahy, Wisconsin, convicted April 5, 1982, in the Milwaukee County Circuit Court, Milwaukee, Wisconsin.
- Daugherty, Larry Owen*, 890 Mt. Moriah Road, Boston, Kentucky, convicted on June 9, 1979, in the Bullitt Circuit Court, Shepherdsville, Kentucky.
- Davis, William Hardy*, 1714 Patton Lane, Apartment 111, Austin, Texas, convicted on March 1, 1974, in the Eleventh Judicial Circuit Court, Dade County, Florida.
- Day, William Mark*, 6512 Mesa Drive, Austin, Texas, convicted on April 17, 1986, in the United States District Court, Western District of Texas.
- Dehetre, Glenn Paul*, Route 1, Box 1131, Pownal Road, Auburn, Maine, convicted on September 2, 1982, in the Androscoggin County Superior Court, Auburn, Maine.
- Difilippi, Jack*, 2214 Meridian Avenue, San Jose, California, convicted on August 26, 1980, in the United States District Court, San Jose, California.
- Engel, James Stanley*, Route 1, Box 28, Pepin, Wisconsin, convicted on May 26, 1981, in the United States District Court, Minnesota.
- Federick, Curtis Arlee*, Route 1, Box 68, Atlanta, Texas, convicted on October 18, 1982, in the United States District Court, Texarkana, Texas.
- Frye, Gene Albert*, 317 Bowling Branch Road, Cottontown, Tennessee, convicted in 1963 and 1964, in the Circuit Court, Sumner County, Tennessee.
- Galasso, Anthony Mario*, 45 Canopus Hollow Road, Putnam Valley, New York, convicted on June 15, 1984, in the Supreme Court, County of Westchester, New York.
- Gann, Bilbo Junior*, Route 3, Box 86, Crickasaw County, Houston, Mississippi, convicted on May 8, 1964, in the United States District Court, Northern District of Mississippi, Aberdeen Mississippi.
- Garlinghouse, Charles W.*, 4721 Chukar Drive West, Richland, Washington, convicted on March 2, 1979, in the Benton County Superior Court, Washington.
- Golightly, Charles Ray*, 3278 Lakewood Drive, Shreveport, Louisiana, convicted on April 23, 1985, in the United States District Court, Eastern District of Oklahoma.
- Golna, John Henry*, 680 Penn Avenue, Washington, Pennsylvania, convicted on March 8, 1982, in the United States District Court, Western District of Pennsylvania.
- Gordon, Robert Harrison*, 7615 Strawberry Road, Summerfield, North Carolina, convicted on December 4, 1975, in the United States District Court, Greensboro, North Carolina.
- Grant, Thomas Hugh*, 88450 Stephens Road, Springfield, Oregon, convicted on March 18, 1982, in the United States District Court, Eugene, Oregon.
- Hale, Aldon L.*, 244 Monroe Street, Afton, Wyoming, convicted on April 13, 1987, in the United States District Court, Wyoming.
- Hall, William Bird*, Route 8, Box 211, Cookeville, Tennessee, convicted on June 25, 1982, in the United States District Court, Tennessee.
- Henson, William David*, Post Office Box 1001, Amherst, Virginia, convicted on March 7, 1985, in the Circuit Court, Amherst County, Virginia.
- Holaway, Bobbie Sherrell*, Route 7, Box 11, 110 Decatur Street, Decatur, Alabama, convicted on May 4, 1963, in the United States District Court, Northern District of Alabama, and on March 22, 1985, in the United States District Court, Northern District of Alabama.
- Incorporated—Camco*, 190 North Centre Street, Reno, Nevada, convicted on January 26, 1973, in the United States District Court, Reno, Nevada.
- Janetski, James Kenneth*, 1491 Fourth Street, Port Edwards, Wisconsin, convicted on April 16, 1984, in the Wood County District Court of Wisconsin, Rapids, Wisconsin.
- Jordan, George Lindsay*, 1111 Little High Street, Apartment A-10, Charlottesville, Virginia, convicted on March 5, 1973, in the United States District Court, Washington, DC.
- Kerr, Lyle Gordon*, 1133 Indiana, Hammond, Indiana, convicted on June 21, 1985, in the United States District Court, Hammond, Indiana.
- Kindblade, James Daniel*, 322 Sleepy Hollow, Purcell, Oklahoma, convicted on July 28, 1983, in the Western Judicial District Court of Oklahoma, Oklahoma City, Oklahoma.
- Knuth, Roger A.*, United States Highway 12, North Freedom, Wisconsin, convicted on November 9, 1982, in the Circuit Court, Sauk County, Wisconsin.
- Korkoske, Gregory Phillip*, 83 East Knox Road, Beaverton, Michigan, convicted on May 8, 1978, in the Boy County Circuit Court, Michigan.
- Lambrecht, Harold N.*, Route 8, Box 46, Mandan, North Dakota, convicted on April 9, 1979, in the United States District Court, Bismarck, North Dakota.
- Laroche, George Emile*, 227 Lakeview Avenue, Endeavor, Wisconsin, convicted on July 21, 1958, in the Dane County Circuit Court, Madison, Wisconsin.
- Leadens, William*, 5917 Amy Drive, Edina, Minnesota, convicted on July 11, 1986, in the United States District Court, Fourth District of Minneapolis, Minnesota.
- Lepak, Donald Edward*, 3385 Highway S, Marathon, Wisconsin, convicted on February 1, 1984, in the United States District Court, Western District of Wisconsin.
- Lipski, Robert Steven*, 7134 South 38th Street, Franklin, Wisconsin, convicted on January 19, 1981, in the Vilas County Circuit Court, Eagle River, Wisconsin.
- Litsey, Steven Arnold*, Lowe's Mobile Home Park, Lot 81, Leitchfield, Kentucky, convicted on April 19, 1979, in the Daviess County Circuit Court, Owensboro, Kentucky.
- Mainiero, Nicholas*, 3200 Park Avenue, Bridgeport, Connecticut, convicted on March 5, 1982, in the United States District Court, District of Connecticut.
- Mann, Thomas Chastain*, 165 Cannondale Road, Columbia, South Carolina, convicted on February 14, 1985, in the United States District Court, Columbia South Carolina.
- Marcucci, Maurice Paul*, Route 5, Box 110, Buffalo, Minnesota, convicted on April 6, 1979, in the St. Louis District Court, Sixth Judicial District, Hibbing, Minnesota.
- Marohnic, Michael John*, Route 3, Box 234-A, Warrenton, Virginia, convicted on June 24, 1974, in the Circuit Court of Fairfax County, Virginia.
- May, Zora Lee*, 163 Peyton Creek Road, Pikesville, Kentucky, convicted on January 3, 1984, in the United States District Court, Eastern District of Kentucky.
- McDonald, William Elliott*, Route 2, Box 174, Monroeville, Alabama, convicted on April 29, 1974, in Bowie County, New Balton, Texas and on March 29, 1976, in Potter County, Amarill, Texas.
- McGillis, Robert Brian*, 2527 Smithers South, Renton, Washington, convicted on March 13, 1979, in the Thurston County Superior Court, Washington.
- Meyer, Gordon Lionel Junior*, 320 West White, Millstadt, Illinois, convicted on July 23, 1984, in the United States District Court, Southern District of Illinois, Benton, Illinois.
- MiGiori, Anthony Earl*, 1100 South Highway 89, Apartment 43, Logan, Utah, convicted on February 26, 1982, in the Superior Court, Elk County, Pennsylvania.
- Miller, Debra Day*, 1492 Lambuth Boulevard, Jackson, Tennessee, convicted on June 10, 1983, in the Madison County Circuit Court, Tennessee.
- Miller, Doyle Ray*, 435 Miller Road, London, Kentucky, convicted on October 14, 1974, in the Laurel Circuit Court, Laurel, Kentucky.
- Miller Glenn Harvey*, 429 102d Drive, Southeast, Apartment E-6, Everett, Washington, convicted on September 17, 1984, in the Grays Harbor County Superior Court, Washington.
- Miller, James Jesse*, 297 Farrow Road, Madison, Alabama, convicted on March 9, 1983, in the Alabama States District Court, Northern District of Alabama.
- Moore, Ricky Dean*, 125 Northeast Sixteenth Court, Fort Lauderdale, Florida, convicted on January 16, 1973, in the United States District Court, Southern District of Florida.
- Morse, Arthur Benjamin*, 22657 North M-66, Battle Creek, Michigan, convicted on April 10, 1984, in the United States District Court, Grand Rapids, Michigan.
- Nadler, James Herman*, Route 2, Box 75, East Corning Avenue, Peotone, Illinois, convicted on December 13, 1985, in the United States District Court, Danville, Illinois.
- Neil, Dennis K.*, 532 East 500 North, American Fork, Utah, convicted on January 17, 1985, in the Fourth Judicial District Court, Utah County, Provo, Utah.
- North, Norman Harris*, 6238 Newberry Court, Apartment 1303, Indianapolis, Indiana, convicted on August 18, 1977, in the First Judicial Circuit Court, Jackson County, Illinois.
- O'Donohue, Thomas James*, 768 A Street, Washougal, Washington, convicted on

- October 20, 1980, in the Superior Court, Wasco County, Oregon.
- Oschner, Deborah Ann*, 503 Lakewood Way, Susanville, California, convicted on February 17, 1983, in the United States District Court, Sacramento, California.
- Osgood, Jerome*, 4543 Brookside Way, Las Vegas, Nevada, convicted on May 12, 1980, in the United States District Court, Nevada.
- Pappas, George Nicholas*, 633 Fairwood Forest Drive, Clearwater, Florida, convicted on September 2, 1975, in the United States District Court, Southern District of West Virginia.
- Parduhn, Richard Fredrick*, 501 Monroe Street North, Hudson, Wisconsin, convicted on October 16, 1985, in the Circuit Court, Oconto, Wisconsin.
- Parks, Glenn Lewis*, Rural Delivery 1, Box 524, Elysburg, Pennsylvania, convicted on August 1, 1986, in the United States District Court, Middle District of Pennsylvania, Scranton, Pennsylvania.
- Peach, Walter Wayne*, 101 Powers Boulevard, Waverly, Tennessee, convicted on March 17, 1981, in the Humphreys County Circuit Court, Tennessee.
- Peters, Jack Durvell*, 2921 Highway 50, Grand Junction, Colorado, convicted on April 25, 1984, in the United States District Court of Nevada, Las Vegas, Nevada.
- Peterson, Todd Palmer*, 948 South Alma Road, Apartment 12, Mesa, Arizona, convicted on May 25, 1983, in the Rock County Circuit Court, Branch Three, Janesville, Wisconsin.
- Rainwater, Thomas Andrew*, 76 Mobile Street, Mobile, Alabama, convicted on September 9, 1974, in the Mobile County Court, Mobile, Alabama.
- Redding, Jimmie Don*, 1001 Lombard Street, Evansville, Indiana, convicted on December 17, 1971, in the United States District Court, Evansville, Indiana.
- Rikala, Ronald Kelly*, 41394 Upper Calapooia River Drive, Sweet Home, Oregon, convicted on March 19, 1984, in the Lane County Circuit Court, Oregon.
- Rinard, Dayton James*, 2551 Angela Street, Simi Valley, California, convicted on June 15, 1979, in the Superior Court, Barrow, Alaska.
- Roth, George Henry Junior*, 6118 Frey Drive, Louisville, Kentucky, convicted on October 30, 1979, in the United States Army Court, Fort Bliss, Texas.
- Sansevero, Carl Vincent*, 236 Fingerboard Road, Staten Island, New York, convicted on November 26, 1975, in the Supreme Court, County of Richmond, New York.
- Severson, Jeffrey Scott*, 4767 Brownville Drive, Route 6, Janesville, Wisconsin, convicted on August 31, 1981, in the Rock County Circuit Court, Janesville, Wisconsin.
- Shaul, Perry Merton*, Post Office Box 471, Schoharie Hill Road, Schoharie, New York, convicted on November 16, 1982, in the Schoharie County Court, New York.
- Shaw, Arthur Richard*, 214 Perkins Avenue, Brockton, Massachusetts, convicted on May 25, 1959, in the Superior Court, County of Plymouth, Massachusetts.
- Shenk, Robert Franklin*, Route 1, Box 218, New Market, Virginia, convicted on April 21, 1980, in the Circuit Court for City of Winchester, Virginia; on August 29, 1980, in the Circuit Court of Frederick County, Virginia and on October 29, 1980, in the Circuit Court of Shenandoah County, Virginia.
- Sledd, John Daniel*, 7343 Deer Valley Drive, Germantown, Tennessee, convicted on June 24, 1981, in the United States District Court, Chicago, Illinois, and on November 14, 1984, in the United States District Court, Memphis, Tennessee.
- Smith, Richard Earl*, 115 North Mulberry Street, Tremont City, Ohio, convicted on May 15, 1979, in the United States District Court, Dayton, Ohio.
- Snowden, Byron*, Post Office Box 212, Hazard, Kentucky, convicted on April 26, 1984, in the Perry County Circuit court, Hazard, Kentucky.
- Sonnenfelt, Michael Steven*, 19004 Rawhide Road, Jamestown, California, convicted on June 18, 1971, in the Superior Court In and For the County of Santa Clara, California.
- Sostman, David Alan*, 3437 St. William Street, St. Ann, Missouri, convicted on June 23, 1983, in the United States District Court, Eastern District of Missouri, St. Louis, Missouri.
- Spearman, Charlie Dale Senior*, Post Office Box 541, Osborne Creek Road, Booneville, Mississippi, convicted on February 16, 1984, in the United States District Court, Northern District of Mississippi.
- Spencer, Edward Lee*, Route 1, Box 105-A, Laurel Fork, Virginia, convicted on March 17, 1982, in the Circuit Court, Carroll County, Virginia.
- Stanley, John Ray Senior*, 3301 Bonbrook Circle, Winston-Salem, North Carolina, convicted on May 13, 1981, in the United States District Court, Middle District of North Carolina.
- Steger, Geoffrey C.*, 835 Chilton Lane, Wilmette, Illinois, convicted on November 25, 1984, in the United States District Court, Illinois.
- Summers, Stephen Dale*, 3158 West Edward, Springfield, Missouri, convicted on April 8, 1986, in the United States District Court, Western District of Missouri.
- Thompson, Dale Edward*, 1439 Conway Street, Flint, Michigan, convicted on February 18, 1975, in the Circuit Court, Saginaw County, Michigan.
- Timmerman, Ben Jay*, 102 Sante Fe Drive, Lexington, Nebraska, convicted on September 21, 1984, in the District Court of Dawson County, Lexington, Nebraska.
- Tuttle, Clay Alton Lee*, 1730 East Adams, Cottage Grove, Oregon, convicted on October 28, 1969, in the Superior Court, Pierce County, Washington.
- Uzzle, Johnny Wilbur*, 3611 Hopkinsville Road, Cadiz, Kentucky, convicted on September 9, 1975, in the Trigg County Circuit Court, Cadiz, Kentucky.
- Vermillion, James Richard*, 602 Masters Street, Corbin, Kentucky, convicted on December 15, 1977, in the United States District Court, Lexington, Kentucky.
- Wagner, Don W.*, 236 Pine Hill Apartment London, Kentucky, convicted on October 8, 1982, in the Pike County Circuit Court, Pikeville, Kentucky.
- Wagner, Mary Eloise*, Pine Hills Apartment, Apartment 236, London, Kentucky, convicted on October 8, 1982, in the Pike County Circuit Court, Pikeville, Kentucky.
- Warren, Marcus Timothy*, Route 1, Box 805, Lebanon, Kentucky, convicted on January 27, 1983, in the Hart Circuit Court, Hart County, Kentucky.
- Wasserman, Steven M.*, 360 Long Pond Road, Greece, New York, convicted on April 26, 1984, in the United States District Court, New York.
- Waterman, Gary Andrew*, 1501 Lauren Ashleigh Drive, Chesapeake, Virginia, convicted on November 24, 1982, in the United States District Court, Eastern District of Virginia.
- Weaver, Marion Ransom*, Route 9, 35 Kings Road, Morgantown, West Virginia, convicted on April 18, 1975, in the Monongalia County Circuit Court, Morgantown, West Virginia, and on March 17, 1981, in the Preston County Circuit Court, Kingwood, West Virginia.
- Whitlow, Henry Donald*, 810 Keith Avenue, Anniston, Alabama, convicted on November 19, 1986, in the United States District Court, Birmingham, Alabama.
- Williams, Sherman Dale*, 901 Coronado, Jacksonville, Illinois, convicted on April 23, 1970, in the United States District Court, Springfield, Illinois.
- Wilson, Robert Carroll*, 308 Iris Park Drive, Pineville, Louisiana, convicted on January 9, 1986, in the United States District Court, Western District of Louisiana.
- Wojewodziec, James John*, 10830 Harvey Drive, Apartment 11, Fairfax, Virginia, convicted on October 29, 1984, in the Circuit Court of Fairfax County, Virginia.

Compliance with Executive Order 12291

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: October 13, 1989.

Stephen E. Higgins,

Director.

[FR Doc. 89-24953 Filed 10-23-89; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19,

1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Pierre Bonnard: The Graphic Work" (see list ¹), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, beginning on or about December 2, 1989 to on or about February 4, 1990; at the Museum of Fine Arts, Houston, Texas, beginning on or about February 25, 1990 to on or about April 29, 1990; and at the Museum of Fine Arts, Boston, Massachusetts, beginning on or about May 25, 1990 to or about July 29, 1990, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: October 18, 1989.

Alberto J. Mora,
General Counsel.

[FR Doc. 89-25147 Filed 10-23-89; 8:45 am]
BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Lorie J. Nierenberg of the Office of the General Counsel of USIA. The telephone number is 202/485-8827, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

English Teacher Advisory Panel Meeting

The United States Information Agency announces the following meeting:

Name: English Teaching Advisory Panel.

Date and Time: November 14, 1989, 9:00 a.m. to 5 p.m., November 15, 1989, 9:00 a.m. to 5 p.m.

Place: Room 840, U.S. Information Agency, 301 4th Street, SW., Washington, DC.

Type of Meeting: Part Open—Open: November 14, 1989, 9 a.m. to 5 p.m., Closed: November 15, 1989, 9 a.m. to 5 p.m.

Contact Person: William Royer, Chief, English Language Programs Division, Room 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC, Tel. 485-4877.

Minutes: William Royer, Chief, English Language Programs Division, Room 304, U.S. Information Agency, 301 4th Street, SW., Washington, DC, Tel. 485-4877.

Purpose of Meeting: The purpose of the Advisory Panel meeting is to review overseas English Teaching programs conducted by USIA during FY 89. The Panel will review the effectiveness of these programs as a response to the world-wide demand for English. It will prepare a report for the Director of USIA, making recommendations for improving and refining the Agency's activities in the field of Teaching English as a Foreign Language.

Agenda: The panel will discuss USIA's world wide English teaching programming, especially as executed by the English Language Programs Division. In doing this the panel will review the activities of the Program, Materials Development and the English teaching Forum Branches of the Division. The Division's budget for FY-90 will also be discussed. The joint English Language Teaching By Broadcast project will be reviewed as well as the Agency's English Teaching Fellow program. There will be an open discussion on topics of professional concern affecting the execution of Division responsibilities. In addition to reviewing USIA programs the Panel will discuss the role played in English teaching overseas by other U.S. government agencies, in particular, the Peace Corps and USAID.

Reason for Closing: In its final session on November 15, in preparing its reports to the Director of USIA, the Panel will review information of a proprietary nature, including technical information and financial data, such as salaries. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: October 12, 1989

William B. Royer,

Chief, English Language Programs Division.

[FR Doc. 89-24981 Filed 10-23-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 204

Tuesday, October 24, 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 COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, October 26, 1989
October 19, 1989.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, October 26, 1989, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Report and Order in the matter of Amendment of Part 90 of the Commission's Rules to implement a conditional authorization procedure stations. **Summary:** The Commission will consider implementation of a conditional authorization procedure for applicants filing properly coordinated license applications for shared Private Radio Service frequencies that involve no special or non-routine issues.

Common Carrier—1—Title: Petition for Reconsideration of AT&T Communications, FCC 89-116, released April 18, 1989. **Summary:** The Commission will consider petitions seeking reconsideration of AT&T Communications, FCC 89-116, released April 18, 1989.

Common Carrier—2—Title: Investigation of AT&T Communications Tariff 15, Competitive Pricing Plans—Holiday Rate Plan. **Summary:** The Commission will consider the results of its investigation of AT&T's discounted long distance service restricted to Holiday Corporation, which AT&T claims is justified as a competitive response to an offer by MCI Telecommunications Corp. investigation, CC Docket No. 88-471.

Common Carrier—3—Title: Final Cable Landing License for the North Pacific Cable System. **Summary:** The Commission will consider the grant of final cable landing license to Pacific Telecom Cable, Inc. for the North Pacific Cable System.

Common Carrier—4—Title: Cable Landing License for TPC-4 Submarine Cable. **Summary:** The Commission will consider whether to license the TPC-4 cable system to land at Point Arena, California.

Common Carrier—5—Title: Authorization of TPC-4 Submarine Cable. **Summary:** The Commission will consider whether to authorize construction and operation of the proposed TPC-4 Submarine Cable System.

Mass Media—1—Title: Enforcement of Prohibitions Against Broadcast Indecency in 18 U.S.C. 1464. **Summary:** This Notice of

Inquire initiates a proceeding to consider the issues surrounding a 24-hour ban on indecent programming.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, Telephone number (202) 632-5050.

Federal Communications Commission.

Issued: October 19, 1989.

Donna R. Searcy,

Secretary.

[FR Doc. 89-25099 Filed 10-20-89; 10:56 am]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 19, 1989.

TIME AND DATE: 10:00 a.m., Thursday, October 26, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 2333, District 29, UMWA v. Ranger Fuel Corp.*, Docket No. WEVA 86-439-C. (Issues include whether miners are entitled to compensation under Section III of the Mine Act.)
2. Possible revisions to Commission Procedural Rules.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay 1-800-877-8339 (Toll Free).

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-25130 Filed 10-20-89; 2:14 am]

BILLING CODE 6735-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of October 23, 30, November 6, and 13, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of October 23

Wednesday, October 25

10:00 a.m.

Briefing on Emerging Technical Issues (Public Meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of October 30—Tentative

Tuesday, October 31

8:30 a.m.

Collegial Discussion of Items of Commission Interest (Public Meeting)

Wednesday, November 1

10:00 a.m.

Briefing by General Electric on the Advanced BWR Standard Plant Review (Public Meeting)

11:00 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

1:00 p.m.

Briefing by Combustion Engineering on ALWR System 80+ (Public Meeting)

2:30 p.m.

Briefing by Westinghouse on Advanced LWR SP 90 (Public Meeting)

Week of November 6—Tentative

Thursday, November 9

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 13—Tentative

Thursday, November 16

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: By a vote of 3-0 (Commissioner Rogers was not present) on October 19, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Motion by Citizens for Fair Utility Regulation ("CFUR") for a Stay of Anticipated Low-Power License at Comanche Peak Unit 1" (Public Meeting), held on October 19, be held on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserve 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.

Dated: October 19, 1989.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 89-25149 Filed 10-20-89; 3:09 pm]

BILLING CODE 7590-01-M

UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, October 26, 1989.

TIME: 9:00 a.m. to 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street N.W., ground floor (conference room).

STATUS: Open session.—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-fifth meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak. Telephone (202) 457-1700.

Dated: October 19, 1989.

Bernice J. Carney,

Administrative Officer, The United States Institute of Peace.

[FR Doc. 89-25072 Filed 10-19-89; 4:17 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register

Vol. 54, No. 204

Tuesday, October 24, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-208]

Papayas; Grade Standards

Correction

In proposed rule document 89-23928 beginning on page 41597 in the issue of Wednesday, October 11, 1989, make the following corrections:

§ 51.728 [Corrected]

1. On page 41598, in the second column, in § 51.728(a), in the fifth line, "for" should read "not".

§ 51.732 [Corrected]

2. On page 41599, in § 51.732, in the fourth entry under "Serious damage", "1 3/16" should read "3/16".

3. On the same page, in § 51.732, in the fifth entry under "Damage", remove the dotted line and replace it with a period.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of the Secretary

Regional Strategy Meetings on Choice in Education

Correction

In notice document 89-22062 beginning on page 38550 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38550, in the first column, in the paragraph headed *Meeting information*, in the fourth line, "October 15-16" should read "October 16-17".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-249-000]

Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-24117 appearing on page 42015 in the issue of Friday, October 13, 1989, make the following correction:

On page 42015, in the first column, the docket number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36169;FRL-3629-3]

Pesticide Registration Standard; Availability for Comment

Correction

In notice document 89-19085 beginning on page 33771 in the issue of Wednesday, August 16, 1989, make the following corrections:

On page 33771, in the second and third columns, replace "contract" with "contact" each time it appears.

BILLING CODE 1505-01-D

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. FHFB 89-5]

Election of Directors of the Federal Home Loan Banks

Correction

In rule document 89-22098 beginning on page 38590 in the issue of Tuesday, September 19, 1989, make the following correction:

§ 932.17 [Corrected]

On page 38592, in the third column, in § 932.17(k), in the first line, "§ 32.17" should read "§ 932.17".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 442 and 453

[Docket No. 89N-0322]

Antibiotic Drugs; Updates and Technical Changes

Correction

In rule document 89-23982 beginning on page 41823 in the issue of Thursday, October 12, 1989, make the following corrections:

§ 442.20a [Corrected]

1. On page 41824, in the first column, in § 442.20a, in paragraph 4., in the first line, *Steril* should read *Sterile*.

§ 453.120 [Corrected]

2. On the same page, in the second column, in § 453.120(a)(1), "clindamycin" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1022-R-89]

RIN 1115-AA52

Adjustment of Status for Certain Aliens

Correction

In rule document 89-15790 beginning on page 29442 in the issue of Wednesday, July 12, 1989, make the following corrections:

§ 245a.3 [Corrected]

1. On page 29451, in the first column, in § 245a.3(b)(6), in the 16th line, "course" was misspelled.

2. On page 29452, in the second column, in § 245a.3(b)(12)(iii), in the second line, "accordance" should read "according".

3. On the same page and in the same column, in § 245a.3(c)(3), in the third line, insert "who" after "Act".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-8]

Alteration of VOR Federal Highways

Correction

In rule document 89-22549 beginning on page 39166 in the issue of Monday, September 25, 1989, make the following correction:

§ 71.123 [Corrected]

On page 39167, in the first column, the second heading should read **V-276** [Revised].

BILLING CODE 1505-01-D

Correction

In notice document 89-23218 appearing on page 40773 in the issue of Tuesday, October 3, 1989, make the following correction:

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

**Environmental Impact Statement;
Chittenden County, Vermont**

On page 40773, in the first column, under **SUPPLEMENTARY INFORMATION**, in the 11th line, insert "north" between "I-89" and "and".

BILLING CODE 1505-01-D

Department of Education
Office of the Secretary
Washington, D.C.

Department of Transportation
Federal Highway Administration
Washington, D.C.

Department of Transportation
Federal Aviation Administration
Washington, D.C.

Department of Education
Office of the Secretary
Washington, D.C.

Department of Transportation
Federal Highway Administration
Washington, D.C.

Department of Transportation
Federal Aviation Administration
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Department of Education
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Department of Transportation
Federal Highway Administration
Washington, D.C.

Department of Transportation
Federal Aviation Administration
Washington, D.C.

Tuesday
October 24, 1989

**Environmental
Protection Agency**

Part II

**Environmental
Protection Agency**

**Pesticides Required to be Reregistered;
List D; Notice**

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34004; FRL 3661-5]

Pesticides Required to be Reregistered; List D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is publishing a list (List D) of pesticide active ingredient cases (consisting of one or more chemically-related active ingredients) that are required to be reregistered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This is the last in a series of four such lists required by the Act. In addition to listing the pesticides, this notice discusses the significance of inclusion on List D. Inclusion on this list does not affect the registration status of any pesticide product. Publication of List D in the *Federal Register* initiates a process of accelerated reregistration and data call-in for products containing the listed pesticide active ingredients.

FOR FURTHER INFORMATION CONTACT: By mail:

Jay S. Ellenberger, Special Review and Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and phone number:
Rm. 728, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 1-800-552-8879.

SUPPLEMENTARY INFORMATION:

I. Reregistration of Pesticides

Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, required that all registered pesticides be reregistered in accordance with new standards for registration contained in section 3(c)(5). These include, among other things, a determination by the Agency that the use of the pesticide will not cause unreasonable adverse effects on the environment [3(c)(5)(C) and (D)].

EPA established a Registration Standards process in 1980 to accomplish reregistration. Under this process, the Agency evaluates the existing scientific data base underlying an active ingredient, identifies in a Registration Standard document missing data needed to complete the assessment, and after acquiring all necessary data from registrants, would ultimately make a decision whether to reregister products and under what conditions and restrictions. Under this process, begun in 1980, EPA has evaluated approximately

25 pesticide active ingredients per year, and has, since 1987, initiated rereviews (termed Second Round Reviews) of pesticides with substantially complete data bases at the rate of approximately 10 per year. At that rate, the reregistration of all pesticide products would extend well beyond the year 2000.

II. FIFRA Amendments of 1988

On October 25, 1988, the President signed a new law, the FIFRA Amendments of 1988, which, among other things, makes significant changes in the way EPA will carry out its responsibility to reregister currently registered pesticides. Section 4 of FIFRA, as amended, mandates an accelerated reregistration scheme, to be carried out in five phases over a 9-year period. The thrust of this phased approach is to generate a complete data base for each pesticide product before evaluation by the Agency and reregistration of products. The responsibility for making data available lies with pesticide registrants.

Briefly, FIFRA section 4(c) through (g) establish the following five phases of reregistration:

A. Phase I

1. Identification of active ingredients subject to reregistration. Each product containing an active ingredient that was first registered before November 1, 1984, must be reregistered.

2. Categorization of active ingredients into four lists (A, B, C, and D) according to priorities set by the Act. List A was published in the *Federal Register* of February 22, 1989 (54 FR 7740). List B was issued by order on April 24, 1989, and was published in the *Federal Register* of May 25, 1989 (54 FR 22706). List C was issued and published in the *Federal Register* of July 24, 1989 (54 FR 30845).

3. Notification to registrants of listed active ingredients of when they must indicate their intention to reregister products (see Phase II for a brief description of the information registrants must furnish).

B. Phase II

1. Responses by registrants indicating whether they intend to seek reregistration.

2. Identification by registrants of applicable data requirements based upon regulations issued under FIFRA sec. 3, and of missing or inadequate studies.

3. Commitment by registrants to support the reregistration of their pesticide products by submission of

missing studies or replacement of inadequate existing studies.

C. Phase III

1. Submission by registrants of summaries of previously submitted studies and reformat of certain studies according to guidance to be issued by the Agency.

2. Additional commitment by registrants to fill all applicable data requirements identified by the registrant.

D. Phase IV

1. Review by the Agency of the Phase II and III submissions.

2. Independent determination by the Agency of outstanding data requirements applying to each active ingredient.

3. Notification to registrants of the additional data requirements.

4. Commitment by registrants to fulfill those requirements.

E. Phase V

1. Review by the Agency of all data concerning an active ingredient (both existing studies deemed to be adequate and new studies generated by registrants).

2. Determination by the Agency whether products containing the active ingredient may be reregistered based upon the data reviewed.

3. Submission by registrants of product-specific data if necessary.

4. Reregistration of products, or other appropriate regulatory action.

All pesticide active ingredients for which a Registration Standard was not issued before December 24, 1988, are subject to the requirements of the phased approach outlined above.

III. Lists of Pesticides

A. What the Law Requires

Under Phase I, the Agency is required to develop and publish in the *Federal Register* four lists of pesticide active ingredients that must be reregistered. The first (List A) is a list of active ingredient cases for which Registration Standards had been issued as of December 24, 1988, the effective date of the new law. That list was published in the *Federal Register* of February 22, 1989 (54 FR 7740).

The other three lists (Lists B, C, and D) include each active ingredient contained in a product first registered before November 1, 1984, for which a Registration Standard has not been issued. These lists were issued by the Agency in groups of 150 active ingredient cases in April and July, 1989 (Lists B and C); today's final list

includes all remaining active ingredients. Each list has been published in the **Federal Register**, and a copy sent by certified mail to each registrant having a product containing a chemical on each list.

B. Format of List D

List D includes 118 active ingredient cases, some of which are simple active ingredients, and others of which are groups of active ingredients. The following information is given for each active ingredient case:

1. The name of the active ingredient or case. The name is one of the following: (a) The accepted common name of a single active ingredient; (b) the chemical name of the simple active ingredient, if

brief; (c) a case name descriptive of the members of the case as a whole; or (d) in a few instances, a trade name used because the common and chemical names were too long to include efficiently. In this last case, the trade name is identified in the listing with an asterisk.

2. The number of the active ingredient case. This is an internal reference number identifying the active ingredient case.

3. The Chemical Abstracts Service (CAS) number of each individual chemical included in List D. In a few cases, CAS numbers have not been assigned and so are not given.

4. The acceptable common name (or chemical name if there is no acceptable

common name) of each individual chemical included within each case.

The list is organized in three parts: active ingredients which are chemicals, active ingredients which are microbials (bacterial, viral, or fungal agents), and naturally occurring active ingredients which the Agency has designated as biochemicals. Because the data requirements for the microbials and biochemicals differ from those required for chemical active ingredients, the Agency will be sending registrants of these latter active ingredients different instructions on how to respond in Phase II.

BILLING CODE 6560-50-M

ACTIVE INGREDIENTS, LIST D

Case Name	Case	CAS No.	Chemical/Common Name
CHEMICAL ACTIVE INGREDIENTS			
Acetic acid, and salts	4001	64-19-7 126-96-5	Acetic acid Sodium diacetate
Acetone	4002	67-64-1	Acetone
Aliphatic alcohols, C1-C5	4003	67-56-1 64-17-5 71-23-8 67-63-0 75-65-0	Methanol Ethanol Propyl alcohol Isopropanol tert- Butyl alcohol
Aliphatic alcohols, C6-C16	4004	111-27-3 111-87-5 112-30-1 112-53-8 36653-82-4 68603-15-6 67762-41-8	1- Hexanol 1- Octanol 1- Decanol 1- Dodecanol 1- Hexadecanol Mixed Fatty alcohols (C6-C12) Mixed Fatty alcohols (C10-C16)
Aliphatic esters	4005	5451-63-8 141-78-6 628-63-7 2173-56-0 141-03-7 67762-39-4	n- Tetradecylformate Ethyl acetate n- Pentyl acetate n- Pentyl valerate Dibutyl succinate Methyl esters of fatty acids (C8 - C12)
Alkylbenzene sulfonates	4006	27176-87-0 27177-77-1 25155-30-0 26545-53-9 26836-07-7 27323-41-7 27987-00-4 26856-61-1	Dodecylbenzenesulfonic acid Potassium dodecylbenzenesulfonate Sodium dodecylbenzenesulfonate Diethanolamine dodecylbenzenesulfonate Ethanolamine dodecylbenzenesulfonate Triethanolamine dodecylbenzenesulfonate Sodium (1-methylundecyl)benzenesulfonate Sodium nonylbenzenesulfonate
Allium sativum	4007	8000-78-0	Allium sativum
Aluminum, and salts	4008	7429-90-5 7446-70-0 10043-01-3	Aluminum powder Aluminum chloride Aluminum sulfate
Amical 48 (*)	4009	20018-09-1	Diiodomethyl p-tolyl sulfone
Aquashade (*)	4010	92170-50-8 2650-18-2 1934-21-0	Aquashade Acid Blue 9 Acid Yellow 23
Basic Green 4	4011	569-64-2	Malachite green
Benzocaine	4012	94-09-7 136-44-7	Ethyl p-aminobenzoate Glyceryl p-aminobenzoate
Benzoic acid, and derivs	4013	65-85-0 532-32-1 120-51-4 100-51-6	Benzoic acid Benzoic acid, sodium salt Benzoic acid, benzyl ester Benzyl alcohol
Bis(oxyalkyl)glycine derivs	4014	139-41-3 5064-31-3	N,N- Bis(2-hydroxyethyl)glycine, sodium salt N,N- Bis(carboxymethyl)glycine, trisodium salt
Bromine	4015	7726-95-6	Bromine
Butylene glycol	4016	107-88-0	1,3- Butanediol
Calcium cyanamide	4017	156-62-7	Calcium cyanamide
Capsaicin	4018	404-86-4	Capsaicin (in oleoresin of capsicum)

Carbon and CO ₂	4019	7440-44-0 124-38-9	Carbon Carbon dioxide
Chlorfenac, and salts	4020	85-34-7 53404-90-3 2439-00-1 69462-13-1	2,3,6-Trichlorophenylacetic acid Ammonium 2,3,6-trichlorophenylacetate Sodium 2,3,6-trichlorophenylacetate Dimethylamine 2,3,6-trichlorophenylacetate
Chlorinated TSP	4021	56802-99-4	Chlorinated trisodium phosphate
Chlorine	4022	7782-50-5	Chlorine
Chlorine dioxide, and sodium chlorite,	4023	10049-04-4 7758-19-2	Chlorine dioxide Sodium chlorite
Citric acid, and salts	4024	77-92-9 7632-50-0	Citric acid Ammonium citrate
Copper, and oxides	4025	7440-50-8 1317-39-1 1317-38-0 82010-82-0	Copper (metallic) Cuprous oxide Cupric oxide Cuprous and cupric oxide, mixed
Copper salts, and complexes	4026	55072-57-6 1111-67-7 54453-03-1 12168-20-6 61789-22-3 9007-49-0 7721-15-5 10402-16-1 10380-28-6 22221-10-9 53404-24-3 82027-59-6 50376-91-5 13426-91-0	Copper zinc hydroxide sulfate Cuprous thiocyanate Copper ethylenediaminetetraacetate Cupric ferric subsulfate complex Copper salts of the acids of tall oil Copper salts of fatty and rosin acids Octadecadienoic acid, copper salt Octadecadienoic acid, copper salt Bis(8-quinolinolato)copper Copper 2-ethylhexanoate Copper dehydroabietyl ammonium 2-ethylhexanoate Copper - triethanolamine complex Copper - etidronic acid complex Copper - ethylenediamine complex
meta-Cresol	4027	108-39-4	1-Hydroxy-2-methylbenzene
Dextrin	4028	9004-53-9	Dextrin
Diocylsulfosuccinates	4029	1639-66-3 577-11-7	Sodium dioctylsulfosuccinate Sodium di(2-ethylhexyl)sulfosuccinate
Dried blood	4030	68911-49-9	Dried blood
2-EEEB	4031	62732-91-6	2-(2-Ethoxyethoxy)ethyl 2-benzimidazole carbamate
Ethanolamine	4032	141-43-5	2-Aminoethanol
Ethylene glycol	4033	107-21-1	Ethylene glycol
Ethylenediamine	4034	107-15-3	1,2-Ethanediamine
Ethylenediaminediacetates	4035	38011-25-5	Disodium dihydroxyethyl ethylenediaminediacetate
Ethylenediaminetetraacetate	4036	60-00-4 17421-79-3 64-02-8 150-38-9 53404-51-6 53404-52-7 17572-97-3 139-33-3 7379-26-2 5964-35-2	Ethylenediaminetetraacetic acid Sodium ethylenediaminetetraacetate Tetrasodium ethylenediaminetetraacetate Trisodium ethylenediaminetetraacetate Potassium ethylenediaminetetraacetate Tetra(ethanolamine) ethylenediaminetetraacetate Tripotassium ethylenediaminetetraacetate Disodium ethylenediaminetetraacetate Ammonium ethylenediaminetetraacetate Tetrapotassium ethylenediaminetetraacetate
Ethylenediaminetriacetates	4037	139-89-9 53404-54-9	Trisodium(2-hydroxyethyl)ethylenediaminetriacetate Sodium N-(2-hydroxyethyl)ethylenediaminetriacetate
Eugenol	4038	97-53-0	2-Methoxy-4-(2-propenyl)phenol
Famphur	4039	52-85-7	0,0-Dimethyl O-(p-(dimethylsulfamoyl)phenyl) phosphorothioate

Fentichlor	4040	97-24-5	2,2'- Thiobis(4-chlorophenol)
Fluorosalan	4041	4776-06-1	3,5- Dibromo-3'-(trifluoromethyl)salicylanilide
Freons (*)	4042	75-69-4 75-71-8	Trichloromonofluoromethane Dichlorodifluoromethane
Gluconic acid	4043	526-95-4	Gluconic acid
Glycerol	4044	56-81-5	Glycerol
Glycolic acid, and salts	4045	79-14-1 2836-32-0	Hydroxyacetic acid Hydroxyacetic acid, monosodium salt
Halazone (*)	4046	80-13-7	4-(N,N- Dichlorosulfamoyl)benzoic acid
8-Hydroxyquinoline, and salts	4047	148-24-3 7091-57-8 134-30-5 134-31-6	8- Hydroxyquinoline 8- Quinololin benzoate 8- Quinololin citrate 8- Quinololin sulfate
Inorg. bicarbonates	4048	144-55-8	Sodium bicarbonate
Inorg. chlorates	4049	7775-09-9 10137-74-3	Sodium chlorate Calcium chlorate
Inorg. fluosilicates	4050	16919-19-0 16949-65-8 16893-85-9 16871-71-9	Ammonium fluosilicate Magnesium fluosilicate Sodium fluosilicate Zinc fluosilicate
Inorg. halides	4051	7786-30-3 7647-14-5 7647-15-6 10043-52-4	Magnesium chloride Sodium chloride Sodium bromide Calcium chloride
Inorg. nitrate/nitrite	4052	7757-79-1 7631-99-4 7632-00-0	Potassium nitrate Sodium nitrate Sodium nitrite
Inorg. phosphates	4053	7558-79-4 7758-29-4 7722-88-5 7601-54-9 7778-53-2 7320-34-5 7558-80-7	Sodium phosphate Sodium tripolyphosphate Tetrasodium pyrophosphate Trisodium phosphate Potassium phosphate, tribasic Tetrapotassium pyrophosphate Monosodium phosphate
Inorg. polysulfides	4054	1344-81-6 37199-66-9	Calcium polysulfide Potassium polysulfide
Inorg. sulfates	4055	7778-18-9 7778-80-5 7487-88-9 13932-13-3	Calcium sulfate Sodium sulfate Magnesium sulfate Potassium tetrathionate (K2S4O6)
Inorg. sulfites	4056	7631-90-5 7757-83-7	Sodium bisulfite Sodium sulfite
Inorg. thiosulfates	4057	10124-41-1 10233-00-8 7783-18-8	Calcium thiosulfate Potassium thiosulfate Ammonium thiosulfate
Iron salts	4058	7782-63-0 10045-89-3 17375-41-6 10028-22-5	Ferrous sulfate heptahydrate Ferrous ammonium sulfate Ferrous sulfate monohydrate Ferric sulfate
Isobutyl ketones	4059	108-10-1 108-83-8	4- Methyl-2-pentanone Diisobutyl ketone
Lanolin, and derivs.	4060	8006-54-0 63393-93-1 61790-81-6	Lanolin Isopropyl lanolin Ethoxylated lanolin

Lauryl sulfate salts	4061	151-21-3 3097-08-3 2235-54-3 139-96-8	Sodium lauryl sulfate Magnesium lauryl sulfate Ammonium lauryl sulfate Triethanolamine lauryl sulfate
Malic acid	4062	6915-15-7	Malic acid
Menthol	4063	1490-04-6	5- Methyl-2-(1-methylethyl)cyclohexanol
Mineral acids	4064	7647-01-0 7664-38-2 7664-93-9 7646-93-7 7681-38-1	Hydrogen chloride Phosphoric acid Sulfuric acid Potassium hydrogen sulfate Sodium bisulfate
Mineral bases, strong	4065	1310-58-3 1310-73-2 1305-78-8	Potassium hydroxide Sodium hydroxide Calcium oxide
Mineral bases, weak	4066	584-08-7 497-19-8 533-96-0 1305-62-0	Potassium carbonate Sodium carbonate Sodium sesquicarbonate Calcium hydroxide
Nickel sulfate	4067	10101-97-0	Nickel sulfate hexahydrate
Norea	4068	18530-56-8	3-(Hexahydro-4,7-methanoindan-5-yl)-1,1-dimethylurea
Oleic acid sulfonates	4069	68443-05-0	Sodium sulfonated oleic acid
Oxalic acid, and salts	4070	144-62-7 1113-38-8	Oxalic acid Ammonium oxalate
Paraben esters	4071	99-76-3 94-13-3 94-26-8	Methyl 4-hydroxybenzoate Propyl 4-hydroxybenzoate Butyl 4-hydroxybenzoate
Peroxy cmpds	4072	7722-84-1 10058-23-8 79-21-0	Hydrogen Peroxide Potassium peroxymonosulfate Peroxyacetic acid
Petroleum sulfonates	4073	68608-26-4	Sodium petroleum sulfonate
Phenol, and salts	4074	108-95-2 139-02-6	Phenol Sodium phenate
Polyacrylate resins	4075	9003-01-4	Acrylic polymer resins
Polybutene resins	4076	9003-29-6 9003-27-4	Polybutene Polyisobutylene
Polyethylene	4077	9002-88-4	Polyethylene
Propionic acid, and salts	4078	79-09-4 4075-81-4 137-40-6	Propionic acid Calcium propionate Sodium propionate
Putrescent whole egg solids	4079	51609-52-0	Putrescent whole egg solids
Salicylic acid, and derivs	4080	69-72-7 119-36-8	Salicylic acid Methyl salicylate
Silica and silicates	4081	63231-67-4 7631-86-9 6834-92-0 10101-39-0	Silica gel Silicon dioxide Sodium metasilicate Calcium silicate
Silver, and cmpds.	4082	7440-22-4 7775-41-9 7761-88-8 7783-90-6 53404-00-5	Silver Silver fluoride Silver nitrate Silver chloride Silver thiuronium acrylate copolymer

Soap salts	4083	68952-95-4 112-80-1 544-60-5 143-19-1 10124-65-9 13429-27-1 143-18-0 7492-30-0	Soap Oleic acid Ammonium oleate Sodium oleate Potassium laurate Potassium myristate Potassium oleate Potassium ricinoleate
Sulfallate	4084	95-06-7	2- Chloroallyl diethyldithiocarbamate
Sulfamic acid	4085	5329-14-6	Sulfamic acid
Sulfur dioxide	4086	7446-09-5	Sulfur dioxide
Tartar emetic	4087	28300-74-5	Potassium antimonyl tartrate
2,3,6-TBA, and salts	4088	50-31-7 2078-42-4 3426-62-8	2,3,6- Trichlorobenzoic acid 2,3,6- Trichlorobenzoic acid, sodium salt 2,3,6- Trichlorobenzoic acid, dimethylamine salt
TCA, and salts	4089	76-03-9 650-51-1	Trichloroacetic acid Sodium trichloroacetate
Tetrachlorophenol, salts	4090	25167-83-3 53535-27-6 25567-55-9	Tetrachlorophenol, isomer unspecified Potassium tetrachlorophenates Sodium tetrachlorophenates (Coco alkyl)amine tetrachlorophenates
Tetraiodofluorescein	4091	15905-32-5 16423-68-0	2',4',5',7' -Tetraiodofluorescein 2',4',5',7' -Tetraiodofluorescein, disodium salt
Thidiazuron	4092	51707-55-2	1- Phenyl-3-(1,2,3-thiadiazol-5-yl)urea
Toluene/xylene sulfonates	4093	1300-72-7 30346-73-7 104-15-4	Sodium xylenesulfonate Potassium xylenesulfonate Toluenesulfonic acid
Turkey red oil	4094	8002-33-3 68187-76-8	Sulfonated castor oil Sulfonated castor oil, sodium salt
Undecylenic acid	4095	112-38-9	Undecylenic acid
Urea	4096	1317-25-5	Urea
Vegetable and flower oils	4097	8007-70-3 57-06-7 8001-29-4 8001-26-1 8001-22-7 8008-74-0 8001-78-3 8014-17-3 8007-02-1 8000-48-4 8000-46-2	Oil of anise Oil of mustard Cottonseed oil Linseed oil Soybean oil Sesame oil Hydrogenated castor oil Essential oils Oil of lemongrass Oil of eucalyptus Oil of geranium
Xylenol	4098	1300-71-6 105-67-9	Xylenol (mixed isomers) 2,4- Dimethylphenol
Zinc salts	4099	7646-85-7 1314-13-2 7733-02-0 68813-94-5	Zinc chloride Zinc oxide Zinc sulfate Basic zinc sulfate
Zirconium oxide	4100	1314-23-4	Zirconium oxide

MICROBIAL ACTIVE INGREDIENTS

Agrobacterium radiobacter	4101		Agrobacterium radiobacter
B. popilliae & B. lentimorbus	4102		Bacillus popilliae and B. lentimorbus
Colletotrichum	4103		Colletotrichum gloeosporioides spores
Nosema locustae	4104		Nosema locustae
Phytophthora citrophthora	4105		Phytophthora citrophthora
NPV inclusion bodies	4106		Polyhedral inclusion bodies of gypsy moth NPV Inclusion bodies of Douglas fir tussock moth NPV Polyhedral inclusion bodies of n. sertifer NPV

BIOCHEMICAL ACTIVE INGREDIENTS

Cytokinin	4107	525-79-1	6-(Furfuralamino)purine
Dodecanyl acetate isomers	4108	16974-12-2 29868-16-4	(Z)-9- Dodecanyl acetate (E)-9- Dodecanyl acetate
Disparlure	4109	29804-22-6	cis-7,8- Epoxy-2-methyloctadecane
Gibberellic acid, and salts	4110	77-06-5 125-67-7	Gibberellic acid Potassium gibberellate
Hexadecadienol, acetates	4111	50933-33-0 51607-94-4 53042-79-8 52207-99-5	7,11- Hexadecadien-1-ol, acetate (stereoisomer unspec.) (Z,E)-7,11- Hexadecadien-1-ol, acetate (E,Z)-7,11- Hexadecadien-1-ol, acetate (Z,Z)-7,11- Hexadecadien-1-ol, acetate
Muscalure (*)	4112	27519-02-4	(Z)-9- Tricosene
Nuranone	4113	64726-91-6	(R,Z)-5-(1-Decenyl)dihydro-2-(3H)-furanone
Octadecadieneol, acetates	4114	53120-26-6 53120-27-7	(E,Z)-3,13- Octadecadien-1-ol acetate (Z,Z)-3,13- Octadecadien-1-ol acetate
Periplanone B	4115	61228-92-0	**1,10(14)- Diepoxy-4(15),5-germacradiene-9-one **=(1Z,5E)-
Tridecanyl acetates	4116	65954-19-0 72269-48-8	(Z)-4- Tridecen-1-yl acetate (E)-4- Tridecen-1-yl acetate
Trimethyldodecadienoates	4117	41096-46-2 42588-37-4	Ethyl (E,E)-3,7,11-trimethyl-2,4-dodecadienoate 2- Propynyl (E,E)-3,7,11-trimethyl-2,4-dodecadienoate
Virelure (*)	4118	53939-28-9 53939-27-8	(Z)-11- Hexadecenal (Z)-9- Tetradecenal

(*) = Trademark

BILLING CODE 6560-50-C

IV. Significance of Inclusion on List D

Active ingredient cases included on List D are subject to FIFRA section 4(d), 4(e), 4(f) and 4(g) (Phases II, III, IV, and V) of the accelerated reregistration scheme.

The publication of List D is required by FIFRA section 4(c). Publication itself does not affect the registration status of any currently registered pesticide product. However, the Act establishes the publication date of List D as the determinant of the dates for completion of certain activities in Phases II, III, and IV, including:

A. A 90-day response period for Phase II, during which each registrant of a product containing an active ingredient on List D must respond to the Agency in accordance with FIFRA section 4(d). Registrants will be sent by certified mail, specific instructions and guidance on how to respond.

B. A 1-year submission period for Phase III, during which registrants who have indicated in Phase II that they are relying on adequate data previously submitted to the Agency are required to summarize and reformat those data in accordance with guidance from the Agency.

C. A 33-month period for Phase IV, during which the Agency must evaluate Phase II and III submissions, independently determine remaining data requirements for each active ingredient, publish in the *Federal Register* a notice of outstanding data requirements, and notify registrants under FIFRA section 3(c)(2)(B) of any additional requirements.

In addition, fees are to be collected for each List D active ingredient in accordance with FIFRA section 4(i)(2). The Agency has determined that, for the purpose of reregistration fees, the term "active ingredient" refers to the chemical (or group of chemicals) associated with a single active ingredient case. In List D, individual active ingredient cases which are deemed to be "active ingredients" for fee purposes are listed in the first column.

Fees for active ingredients are to be allocated among registrants according to market share over the 1986-88 period, in accordance with FIFRA section 4(i)(7). In April, 1989, the Agency requested the

submission of market share information from registrants; this information has formed the basis for allocation of reregistration fees. Reregistration fees must be paid in part at the time of the 90-day Phase II response.

Active Ingredients Not Listed

With the publication of List D, EPA has fulfilled the requirement of FIFRA section 4(c) that it list all active ingredients that must be reregistered. Lists A, B, C, and D include, based on the Agency's best information, all active ingredients that were first registered before November 1, 1984, and for which products were still registered as of the date of publication of each list.

EPA has attempted to keep its lists accurate based on its most current records of products still registered. Before publication in the *Federal Register*, each list was cross-checked against a list of products that were cancellable because their registrants chose not to pay or failed to pay maintenance fees. If all products containing a particular active ingredient were cancellable, the active ingredient was deleted from the list before publication. (Some active ingredients on List A are no longer registered; however, these ingredients were not deleted from List A regardless of their current registration status, since List A is a historical record of Registration Standards issued.)

Nonetheless, because of the rapid pace of product cancellations during this period (since March 1, 1989, approximately 20,000 or one-half of all registrations have been voluntarily cancelled or are cancellable for failure to pay), EPA may have inadvertently omitted from the lists one or more active ingredients contained in a currently registered product. Any active ingredient that is not included on List A, B, C, or D by name is deemed to be included on List D. Active ingredients first registered since November 1, 1984, are not required to be reregistered, and thus do not appear on any list.

If any person is aware of any active ingredient that he believes should have been included on List B, C, or D because it is contained in a currently registered product, but which was omitted, he

should notify the Agency as soon as possible at the number or address given under **FOR FURTHER INFORMATION CONTACT** to clarify or correct its records. If that person is the registrant, he should request a Phase II response packet.

Any registrant who has a currently registered product containing an active ingredient not listed must submit a Phase II response within the 90-day deadline (by January 24, 1990). If the Agency subsequently discovers a product for which a 90-day response was not timely received, it will cancel the product in accordance with the procedures of FIFRA section 4(d)(5) (A) or (B) as appropriate.

V. Paperwork Reduction Act

The Agency will be sending instructions to registrants having pesticide products containing active ingredients on List D, explaining how they must respond during Phase II.

The information collection requirements contained in those instructions (and triggered by this notice) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0102.

Public reporting burden for this collection of information is estimated to vary from 10 to 42 hours per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070-0102), Washington, DC 20503.

Dated: October 13, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-24919 Filed 10-23-89; 8:45 am]

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Federal Register

Tuesday
October 24, 1989

Part III

Department of the Treasury

Comptroller of the Currency

12 CFR Parts 7 and 32
National Bank Lending Limit; Notice of
Proposed Rulemaking

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 7 and 32

[Docket No. 89-13]

National Bank Lending Limit

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency ("OCC") is proposing revisions to its regulation concerning national bank lending limits. These revisions are intended to simplify and clarify the regulation by: (1) Amending definitions, moving definitions to the beginning of the regulation, changing references and clarifying interpretations; (2) restructuring and simplifying the loan combination rules to clarify their operation and tie them more closely to the purpose of the lending limit; and (3) replacing the "means and purpose" test for combining loans to foreign governments with an aggregate cap on such loans.

DATE: Comments must be received on or before January 22, 1990.

ADDRESS: Comments should be sent to Docket No. 89-13, Communications Division, 5th Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219. Attention: Lynnette Carter. Comments will be available for inspection and photocopying at the same address.

Pursuant to the Paperwork Reduction Act of 1980, the collection of information requirements in the regulation has been submitted to the Office of Management and Budget ("OMB"). Comments specifically addressing those requirements should be directed to the Comptroller's Office at the above address and should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for the Comptroller of the Currency.

FOR FURTHER INFORMATION CONTACT: Deborah Katz, Attorney, Legal Advisory Services Division, (202) 447-1883; William C. Kerr, National Bank Examiner, Supervision Policy/Research, (202) 447-1164.

SUPPLEMENTARY INFORMATION:**Background**

Section 401(a) of the Garn-St Germain Depository Institutions Act of 1982, Public Law 97-320 (1982), amended R.S. 5200, 12 U.S.C. 84, to raise the basic limit

on a national bank's lending to a single borrower from 10 to 15 percent of unimpaired capital and unimpaired surplus. It also provided express authority for the OCC to issue regulations implementing that statute. Rules concerning the combination of loans to separate borrowers were eliminated from the statute to permit the OCC maximum flexibility in developing regulations on this subject.

The OCC implemented the amended statute with a final rule published on April 12, 1983, 48 FR 15844. This final rule created a new part 32 in title 12 of the Code of Federal Regulations which supplanted and restructured existing interpretive rulings previously found at 12 CFR part 7. Many of the previous interpretive rulings and staff letter opinions construing those rulings were incorporated into the new regulation to facilitate reference to the law governing national banks' lending limit. The preamble to the final rule requested additional comments on 12 CFR 32.5, resulting in a final amendment of that section on June 14, 1983, 48 FR 27224.

Part 32 has now been in effect for more than six years. The OCC has reviewed the operation of the regulation and is proposing revisions to simplify and clarify the regulation. These changes include amendments to definitions, changes in references, and clarification of certain interpretations.

Additionally, to enhance ease of use, it is proposed that virtually all significant definitions be placed in the beginning of the regulation. The OCC is also proposing a restructuring and simplification of the loan combination rules, to clarify their operation and to ground them more solidly on the policies underlying the lending limit. Finally, a new, simpler test consisting of an aggregate lending cap of 50 percent of capital is also being proposed to take the place of the "means and purpose" test for combining loans to foreign governments, which will also reduce paperwork burdens. The following is a discussion of the specific changes proposed.

I. Definitions**A. General Definitions**

In order to make it easier to use the regulation, the OCC proposes to move most of the relevant definitions to two sections (proposed §§ 32.2 and 32.3) which will appear in the beginning of the regulation. Many of these definitions are currently in various interpretive rulings located at the end of part 32. Most have been incorporated without change.

The following table summarizes the source of each general definition in proposed § 32.2 and whether it has been changed:

Definition	Source	Comments
§ 32.2(a) "Person".....	§ 32.2(b).....	No change.
§ 32.2(b) "Capital and Surplus".....	§ 32.2(c).....	Technical change.
§ 32.2(c) "Standby Letter of Credit".....	§ 32.2(e).....	No change.
§ 32.2(d) "Named Borrower".....	New paragraph.	
§ 32.2(e) "Control".....	§ 32.5(a).....	Slightly modified.

Most of the definitions in proposed § 32.2 have been incorporated from definitions in the existing regulation. Additionally, a few technical amendments have been made. For example, the definition of "unimpaired capital and unimpaired surplus" has been amended to reference § 3.100, the regulatory section which has replaced former § 7.1100 that is referred to in the existing § 32.2(c). Similarly, the definition of "control" in proposed § 32.2(e) has been taken from § 32.5(a)(2)(v), but has been slightly modified to make it virtually identical to the definition of control in 12 U.S.C. 371c. Finally, "Named Borrower" is defined to refer to the person named as the borrower or debtor in a loan agreement, whether written or oral, express or implied.

B. Definition of "Loan and Extension of Credit"

Additionally, the OCC believes that it will be helpful to locate all the definitions of those arrangements considered "loans and extensions of credit" subject to the lending limit in one section of the regulation. Accordingly, a new § 32.3 is proposed which contains the relevant definitions of that key phrase. The section opens with a general definition of the phrase which has been incorporated without change from the existing 12 CFR 32.2(a). Most of the remaining definitions are derived from interpretive rulings currently found immediately after the regulation in part 32. The single new section defining loan renewals merely codifies existing OCC policy. It is emphasized that the specific definitions incorporated into the body of the proposed regulation are *not* the exclusive universe of arrangements which are "loans." Rather, the OCC expressly reserves the authority to deem other arrangements to be "loans and extensions of credit" under the general definition of proposed § 32.3(a).

The chart below summarizes the source of each definition in proposed § 32.3 and whether it has been changed:

Definition	Source	Comment
§ 32.3(a) Loan and extension of credit.....	§ 32.2(a).....	No change.
§ 32.3(b) Contractual commitment to advance funds.....	§ 32.2(d).....	Modified.
§ 32.3(c) Obligations of other parties.....	§ 32.101.....	Modified.
§ 32.3(d) Sale of Federal funds.....	§ 32.102.....	No change.
§ 32.3(e) Purchase of securities subject to repurchase agreement.	§ 32.103.....	Modified.
§ 32.3(f) Purchase of third party paper.....	§ 32.104.....	No change.
§ 32.3(g) Overdrafts.....	§ 32.105.....	No change.
§ 32.3(h) Charged-off loans.....	§ 32.106.....	Modified.
§ 32.3(i) Loan renewals.....	New paragraph.....	
§ 32.3(j) Loan participations.....	§ 32.107.....	Modified.
§ 32.3(k) General obligations of States.....	§ 32.109.....	No change.
§ 32.3(l) Loans to industrial development authorities.....	§ 32.110.....	No change.

Major changes in present definitions are discussed below.

1. "Contractual Commitments to Advance Funds"

12 U.S.C. 84(b)(1) defines "loans and extensions of credit" to include "any liability of a national banking association to advance funds to or on behalf of a person pursuant to a contractual commitment." Likewise, under the present regulation, contractual commitments to advance funds are considered to be loans for lending limit purposes. 12 CFR 32.2(a). The proposed regulation retains that treatment in § 32.3(b), but with several important changes.

a. *Commercial letters of credit.* The first major change clarifies the definition of commercial letters of credit. The phrase "contractual commitment to advance funds" currently includes standby letters of credit. See 12 CFR 32.2(d) and proposed § 32.3(b). Standby letters of credit include any letter of credit which represents an obligation to the beneficiary on the part of the issuer to repay money borrowed by or advanced to the account party, or to make payment on account of any indebtedness undertaken by the account party, or to make payment on account of any default by the account party in the performance of an obligation. See 12 CFR 32.2(e) and proposed § 32.2(c). However, the phrase "contractual commitment to advance funds" does not include commercial letters of credit upon which the issuing bank expects the beneficiary to draw, which do not "guarantee" payment of a money obligation, and which do not provide for payment in the event of default by the account party. See 12 CFR 32.2(d).

The question has arisen whether so-called "direct pay" letters of credit are contractual commitments to advance funds for lending limit purposes. These direct pay letters of credit, like standby letters of credit, are generally used to support an account party's obligation to make payments to a beneficiary.

However, unlike a standby letter of credit, this type of letter of credit has a "direct pay" feature. The direct pay letter of credit serves as a payment mechanism. As explained in OCC Interpretive Letter No. 361 (May 22, 1986), [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) 85,531, the exemption from the definition of contractual commitment to advance funds for commercial letters of credit was intended to apply to the traditional commercial letter of credit used to facilitate the sale of goods. However, some direct pay letters of credit often involve the imposition of a payment mechanism on what would otherwise be a standby letter of credit. The OCC does not believe that this structural alteration should in and of itself exempt a direct pay letter of credit from the definition of contractual commitment to advance funds since it does not appear to significantly alter the bank's exposure to risk. The OCC is proposing revisions to the definitions of "contractual commitments to advance funds" and "commercial letters of credit" to clarify this point. Under the proposed § 32.3(b), a letter of credit will be considered a commercial letter of credit and will receive the corresponding exemption from the definition of contractual commitment to advance funds only if it is expected by the issuer to be drawn upon in connection with a sale or transfer of goods.

b. *Commitments to lend.* On June 24, 1988, the OCC adopted a temporary rule revising its treatment of loan commitments under the lending limit regulation, 53 FR 23752, (hereafter "Temporary Rule"). This revision is restated here in proposed § 32.3(b). The Temporary Rule affected all banks, however, it was intended to provide relief for banks which experienced a decline in their capital and, hence, in their lending limits after entering into commitments. Such banks faced the dilemma of either funding those commitments, thereby exceeding their

lending limit, or breaching the commitment agreements.

Under the Temporary Rule, a binding written commitment within a bank's lending limit when made is treated as a loan from the time the bank entered into the commitment. Thus, such a commitment is included within the bank's lending limit until it is released or it expires; a subsequent decline in lending limit does not result in a violation when the commitment is funded. Loan commitments made in excess of the lending limit are not treated as "loans," and, thus, are not affected by the revision.

Although the Temporary Rule was effective immediately, the OCC requested comments from the public. In response to comments objecting to the impact of the Temporary Rule on banks that have not experienced a capital decline, the OCC subsequently issued a Notice of Proposed Rulemaking to amend the Temporary Rule. See 54 FR 30054 (July 18, 1989). This proposed amendment is intended to revise and clarify the effect of the Temporary Rule on the loan commitments of national banks that have not experienced a decline in capital by restoring some flexibility to banks in managing their loan commitments relative to their lending limits. The comment period for the proposed amendment to the Temporary Rule closed on September 18, 1989. After full consideration of the comments received, the OCC will revise the Temporary Rule prior to adopting a final regulation.

2. Obligations of Other Parties

The lending limit treatment of the obligations of "accommodation parties" is currently discussed in interpretative ruling 12 CFR 32.101. Numerous questions have arisen as to the treatment of such parties under the current rule. Proposed § 32.3(c) incorporates that interpretation with significant changes. Under the proposed rule, a loan will be deemed to have been made to any person (in addition to the

named borrower) who becomes a party to the loan agreement or transaction in any capacity that makes that person primarily liable with the named borrower.

A person is a party to the loan transaction, even though not named in the loan agreement, when that person is a party to an ancillary agreement which is an integral part of the loan transaction. For example, under the proposed rule, a third party who becomes a guarantor of payment through a document separate from the loan agreement would still be deemed a "party to the loan * * * transaction."

A person is "primarily liable" when the bank may enforce a right of collection against that person without prior resort against the named borrower, i.e., without first being required to show that the named borrower has refused to honor a proper demand for payment. In such a situation, the primary repayment obligation of the other party is essentially the same as the named borrower's and, thus, a "loan" should be deemed to have been made to that person for purposes of the bank's lending limit. An intention of the lending bank to proceed first against one party, rather than another with primary liability, is not material to this issue.

On the other hand, one who becomes a party in a capacity that imposes only secondary liability, i.e., one who is obligated to pay the debt only after there has been unsuccessful resort to the named borrower, has incurred a repayment obligation substantially different from that of the named borrower and should not be treated as having received a "loan." However, in certain circumstances, such secondary parties may have a loan attributed to them under the proposed attribution rules discussed below. See proposed § 32.7(c)(iii).

One example of such a secondary party is an accommodation endorser whose obligation is described in sections 3-414 and 3-415 of the Uniform Commercial Code. The proposed regulation also lists a guarantor of collection as an example of such a secondary party, but distinguishes a guarantor of payment. This distinction is based on section 3-416 of the Uniform Commercial Code. In this regard, it should be noted that under the UCC a guaranty is presumed to be one of payment (primary liability) unless it clearly states that it is one of collection (secondary liability). Thus, banks are advised to review their contracts of guaranty to insure that they do not inadvertently give rise to such "loans" to guarantors.

3. Purchase of Securities Subject to Repurchase

Section 32.103 currently provides that the purchase of "Type I securities" subject to an agreement that the security will be repurchased at the end of a stated period is not a "loan and extension of credit" for lending limit purposes. "Type I securities" are defined to include general obligations of the United States or any State or political subdivision thereof. See 12 CFR 1.3(c). Purchases of other types of securities subject to an agreement that the seller will repurchase at the end of a stated period are considered to be loans for lending limit purposes by the purchasing bank to the seller and not an obligation of the underlying obligor of the security. This exemption is continued in proposed § 32.3(e), but has been modified as described below.

The exemption from the lending limit for purchases of Type I securities subject to a repurchase agreement is intended to facilitate the liquidity of Type I securities. The exemption is also justified by the financial integrity that is normally represented by Type I obligations. However, the dislocations in the securities markets caused by the failure of government securities dealers have made it apparent that there is additional risk present where the bank does not assure control of or establish an effective security interest in the collateral securities. The failure of the purchasing bank to assure control of or establish its rights to the securities which underlie the repurchase transaction introduces all the risks present in an unsecured loan. When control of the collateral securities is not assured, the financial integrity of the collateral security is of little relevance if the repurchasing counter party fails to honor its commitment. Thus, one of the underlying justifications for the exemption in § 32.103 is defeated where the purchasing bank does not obtain sufficient control of the collateral securities.

For the above reasons, the OCC believes that it is appropriate to require that the purchasing bank must assure control of or establish its rights to the collateral securities purchased under the resale agreement in order to qualify for the exemption. The acceptable methods for obtaining control of or the right to the collateral securities are specified in proposed § 32.3(e). Essentially, the bank should be able to readily exercise dominion over the property and, thereby, easily establish superior rights to it. In other words, the bank should be able to have the property quickly disposed of at market value in order to

effect satisfaction of the counter party's obligation. A bank's purchase of Type I securities subject to a repurchase agreement will be considered a loan and extension of credit that is subject to the lending limit if the requisite control of or right to the collateral securities is not obtained. It should be noted that the term "physical securities" is assumed to be one of common parlance in the securities markets that refers to paper-based or certificated bearer and definitive (registered) securities.

4. Charged-Off Loans

Proposed § 32.3(h) incorporates the interpretation currently in 12 CFR 32.106. Section 32.106 generally provides that charged-off loans are subject to a bank's lending limit as loans and extensions of credit. Some bankers have misconstrued this provision to allow additional extensions of credit to borrowers whom the bank has voluntarily released from charged-off loans even when the total borrowings, including the charged-off loans, exceed the bank's lending limit. The OCC proposes to amend the provision in § 32.106 to clarify that a written release by the bank of the borrower's obligation will not result in the exemption of a charged-off loan from application of the lending limit. The preamble to the current regulation, 48 FR 15851 (April 12, 1983), explained that § 32.106 was only intended to expand the previous interpretive rule to allow a limited exemption for charged-off loans which are unenforceable due to the expiration of the statute of limitations, judicial decision or other similar reasons. The proposed amendment clarifies that a mere release of the borrower from the obligation to repay will not result in an exemption, and that the charged-off loan will continue to be considered a loan and extension of credit to the defaulting borrower for purposes of applying the lending limit.

The OCC is clarifying its position for prudential reasons. It hopes to encourage banks to seek recoveries on charged-off loans and avoid making new credit available to borrowers who have a demonstrated lack of creditworthiness. This clarifying amendment does not affect the availability of the temporary substitute lending limit located at § 32.8, 51 FR 15303 (April 23, 1986).

5. Loan Renewals

The proposed rule contains a new definition regarding lending limit treatment of certain renewals and restructurings of loans. This definition codifies in Part 32 a longstanding OCC

interpretation based on case law. *See, e.g., OCC Interpretive Letter No. 286* [April 23, 1984], [Transfer Binder 1983-1984] Fed. Banking L. Rep. (CCH) 85,450. *See also Corsicana National Bank v. Johnson*, 251 U.S. 68 (1919); *Payne v. Ostrus*, 50 F.2d 1039 (8th Cir. 1931). In general, a renewal or restructuring of a loan is not regarded as the equivalent of a new loan at the time of renewal for purposes of the lending limit unless new funds are advanced by the bank to the borrower or a new borrower is substituted for the original obligor. The restructuring of a loan to include extended repayment terms, altered interest rates, or additional security similarly will be treated as a renewal rather than a new loan and extension of credit, as long as the original obligor on the loan is not released.

Nevertheless, a renewal taken under circumstances which indicate "a deliberate purpose to evade the law and to extend unwarranted lines of credit" would violate the statute. *Payne v. Ostrus*, 50 F.2d at 1041. Generally, the renewal of a loan is deemed to be an extension of the old debt, applying the lending limit on the day the bank initially extended the funds. Subsequent events such as a reduction in a bank's capital resulting in a lower lending limit do not cause a loan that was previously legal to become illegal; rather, such a loan is deemed to be "nonconforming." However, it is the OCC's opinion that renewals of nonconforming loans present an opportunity to bring loans into conformance. A bank must make every effort to bring a loan into conformance with the bank's lending limit, for example, by having the debtor partially repay the loan or by securing another bank's participation in the loan. Where it is not practicable for the bank to make a loan conform to the lending limit before the loan is renewed, the OCC will not consider the loan renewal to be a violation of law leading to possible director liability.

Notwithstanding the above-stated general policy, the renewal of a loan made prior to the effective date of this part, which became nonconforming solely because of a change in the lending limit rules applicable at the time the loan was made, is subject to the limitations on renewal in § 32.9(c).

6. Loan Participations

Section 32.107, formerly Interpretive Ruling 7.1135, provides for the removal of a loan from a bank's lending limit through the *bona fide*, non-recourse sale of a participation. Some confusion may have arisen when former I.R. 7.1135 was consolidated into part 32 and a related or companion rule, I.R. 7.7519, was

retained in part 7. The proposed § 32.3(i) will incorporate the existing § 32.107 and, additionally, will incorporate I.R. 7.7519 into the section. The new paragraph merely reorganizes the rules and does not represent a change in OCC position.

II. Additional Limitation

Section 32.4 of the current regulation implements 12 U.S.C. 84(a)(2), which provides a separate and additional limitation of 10 percent of unimpaired capital and unimpaired surplus for loans "fully secured" by readily marketable collateral. Where credit is to be extended and the total exceeds the basic 15 percent limit of section 84(a)(1), many bankers have inquired whether the entire loan must be fully secured or broken down into two loans, an unsecured loan up to 15 percent of total capital and a fully secured loan up to an additional 10 percent of total capital, to comply with existing § 32.4. The OCC believes that such legal precautions are time-consuming, unnecessary and burdensome for banks to explain to their customers. Accordingly, proposed § 32.5(b) clearly eliminates any requirement for making two separate loans and clarifies that only the portion of a loan that exceeds the 15 percent limit need be secured.

III. Rules Governing the Combination of Loans to Separate Borrowers

A. Summary of Current Rule and Need For Change

The current combination rules can be summarized as follows. The general rule found in § 32.5(a)(1) is that loans and extensions of credit to one person will be attributed to other persons for lending limit purposes when (i) the proceeds of the loans and extensions of credit are to be used for the direct benefit of the other person or persons or (ii) a "common enterprise" is deemed to exist between the persons. The regulation contains a general principle and several *per se* rules which are used to determine whether a common enterprise exists between separate borrowers. The generally applicable principle, set forth at § 32.5(a)(2)(i), is that the evaluation of whether a common enterprise exists will depend upon the facts and circumstances of individual cases. Loans to separate borrowers may be combined even in cases which do not meet every detail of the *per se* rules contained in the regulation.

The first *per se* rule, located at § 32.5(a)(2)(ii), provides that a common enterprise will be deemed to exist and loans and extensions of credit combined

where the expected source of repayment for each loan and extension of credit is the same for each borrower. The second *per se* rule, located at § 32.5(a)(2)(iii), concerns loans and extensions of credit made to borrowers who are related through common control, as defined in § 32.5(a)(2)(v). The rule provides that, in such circumstances, a common enterprise will be found to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them. A common enterprise will be deemed to exist *per se* when 50 percent or more of one person's annual gross receipts or expenditures are derived from transactions with one or more persons related through common control. (This rule is referred to as the "50 percent test.") The third *per se* rule, located at § 32.5(a)(2)(iv), provides that a common enterprise will be deemed to exist when separate persons borrow from a bank for the purpose of acquiring a business enterprise of which those persons will own more than 50 percent of the voting securities.

The current regulation also contains specific rules concerning loans to corporate groups at § 32.5(b). These rules provide that loans and extensions of credit to a person (defined at § 32.2(b) to include a corporation) and its subsidiaries need not be combined where the bank has determined that the person and its subsidiaries are not engaged in a common enterprise, as defined above. Notwithstanding this general rule, the regulation provides at § 32.5(b)(3) that loans and extensions of credit in the aggregate by a national bank to a corporate group (i.e., a person and all of its subsidiaries) may not exceed 50 percent of the bank's unimpaired capital and unimpaired surplus. The regulation also contains specific rules governing loans to partnerships at § 32.5(c).

The existing rule concerning loans to foreign governments, their agencies, and instrumentalities is located at § 32.5(d). That provision states that loans and extensions of credit to foreign governments, their agencies, and instrumentalities will be combined with one another for lending limit purposes if, at the time the loan and extension of credit is made, the borrower does not have sufficient resources or revenue over time to service its debt obligations ("means test") or the purpose of the loan and extension of credit is not consistent with the purposes of the borrower's general business ("purpose test"). Banks are required to assemble and retain certain documentation concerning such

loans to demonstrate compliance with the means and purpose test(s).

As explained in the preamble to the current rule, 48 FR 15846 (April 12, 1983), the rules for combining loans to separate but related borrowers are an important aspect of the OCC's bank supervision function. Historically, there has been a correlation between problem banks and concentrations of loans to related entities. The current combination rules were intended to serve the OCC's regulatory goal of preventing excessive concentrations of loans to related borrowers while still accommodating the needs of prudent lenders who might be unnecessarily constrained by overly harsh rules. The OCC intended that the rules be easily understood and applied. Unfortunately, the combination rules are complex and have caused confusion and uncertainty. Accordingly, the OCC is proposing changes in those rules designed to promote greater simplicity and certainty.

One major source of confusion is that the existing rule is not clearly grounded in the policies underlying the lending limit statute. Ambiguity in a complex rule is inevitable. However, such ambiguities are much more easily resolved if the rule clearly reflects the policies the rule is intended to promote. Accordingly, the proposed rules are intended to more clearly reflect the core policy of the lending limit: risk diversification in bank loan portfolios.

An additional source of confusion in the present regulation has been the use of the word "combine." Confusion arises because the term does not clearly indicate the precise nature of the combination or attribution intended. When it is said that loans to A and B will be "combined," we could really be saying four different things:

- Loans made to A will be attributed to B, but loans to B will not be attributed to A.
- Loans to B will be attributed to A, but loans to A will not be attributed to B.
- Loans to A will be attributed to B, and loans to B will be attributed to A.
- Loans to A and B will be attributed to some third party and, thus, combined.

To help reduce the confusion which arises from the inherent ambiguity in the term "combine," the new rules avoid that term and use the more precise words "aggregate" and "attribute." Consistent with this approach, the proposed rules have both an aggregation rule (which specifies which loans will be added together to determine a bank's lending limit for a particular person) and attribution rules (which specify when loans nominally made to one person will

be attributed to another for purposes of the bank's lending limit).

B. Aggregation Rule

As stated above, the aggregation rule in proposed § 32.6 lists the loans which must be added up in computing the lending limit for a person. Basically, it requires the aggregation of all loans made directly or indirectly to the person and all loans attributed to the person under the attribution rules described below. The requirement that "indirect" loans be aggregated is based on 12 U.S.C. 84(b)(1) which states that the term "loans" shall include all "indirect advances of funds to a person made on the basis of any obligation of that person to repay * * *." The OCC has construed this requirement as relating to situations in which a bank advances funds to a third party on behalf of or at the direction of a person and is based on an obligation of that person to repay the funds.

C. Attribution Rules

Under 12 U.S.C. 84(d)(2), the OCC is granted authority "to determine when a loan putatively made to a person shall for purposes of [the lending limit] be attributed to another person." The attribution rules in proposed § 32.7, described below, are an exercise of this authority. Essentially, they are designed so that attribution will occur where needed to serve the purposes of the lending limit, i.e., to promote risk diversification. In this regard, the rule specifically states that attribution of a loan to someone other than the named borrower will not remove the loan from the total of loans used to compute the lending limit of the borrower. Because the named borrower remains primarily liable on the loan, the bank continues to have a credit-risk exposure to the named borrower. Thus, an attributed loan should remain and, under the proposed rule, does remain in the named borrower's total of loans even though it has been attributed to another person and is also included in that person's loan total.

As stated above, one goal of the proposed amendment is to clarify the existing rules by grounding them more clearly on the underlying policies of the lending limit. To that end, the OCC is considering two different attribution rules: diversification rules and benefit rules. Each will be discussed below.

1. Diversification Rules

To replace the "common enterprise" test of the existing regulation, the OCC is proposing attribution rules which clearly promote diversification of credit

risk. These attribution rules consist of a general rule and several specific rules.

a. *General diversification rule.* The general rule in proposed § 32.7(c)(1) states the core principle which will guide attribution under the diversification rules. The specific diversification rules define situations in which attribution will usually be warranted under that general principle. It should be noted that the OCC reserves the ability to attribute loans under the general rule even when none of the specific rules is directly applicable. Nevertheless, it is expected that such circumstances will be rare and banks should seldom need to seek guidance as to whether attribution is required under the general rule.

The proposed general rule states that attribution will be warranted when the repayment of a loan will likely depend, directly or indirectly, upon another person. This principle is in full accord with the risk diversification policy of the statute; in calculating a person's lending limit to promote risk diversification, a bank should take into account all loans where repayment is likely to depend upon that person whether or not that person is listed as the named borrower.

The phrase "is likely to depend" was carefully drafted. The word "likely" refers to a reasonable likelihood at the time the loan is made that the bank will need to look to someone other than the named borrower for repayment; attribution is warranted even where there is less than a certainty that such recourse will be necessary.

b. *Specific diversification rules.* The specific rules described below define situations in which the repayment of a loan is sufficiently dependent on another person to warrant attribution to that person. The intent is to provide rules which are bright-line, relatively easy to apply and based on information banks normally review in connection with making an informed judgment as to creditworthiness. One problem with bright-line rules is that they can be inflexible and, occasionally, over-inclusive, i.e., require attribution even where the purpose of the statute would not be served. To provide more flexibility, some of the specific rules are phrased as rebuttable presumptions. In other words, they provide that once the bright-line rule is satisfied, attribution will be presumed unless the bank places information in the loan file which specifically and reasonably rebuts the factual basis for the presumption of attribution. The particular presumptions and the type of information needed to rebut them will be discussed below.

However, two general points on rebuttal need to be emphasized.

First, to rebut effectively a presumption under the proposed rule, information must be placed in the loan file before the bank becomes legally bound under the agreement. When a loan is originated, the bank has the responsibility to determine whether the loan should be attributed to another person and, thereby, cause the bank to exceed its lending limit to that person. Thus, if a bank is going to rely upon the rebuttal of a presumption of attribution to avoid a violation of the lending limit, the information that forms the basis for the rebuttal must be available and recorded by the bank at the time the loan is made and its legality is determined. Further, when a bank makes a loan to a person to whom other existing loans have been attributed, the bank is required to include those attributed loans in the person's total when determining whether the new loan would cause the bank to exceed its lending limit. In such a case, if a bank is relying upon a previous rebuttal of a presumption of attribution to exclude such preexisting loans from the prospective borrower's total, i.e., loans that would be attributed to the person absent rebuttal, the bank should review the previous rebuttal information to confirm that it is still valid. This is consistent with the established position of the OCC that when a bank makes a new loan, it is responsible for reviewing prior loans to ensure that intervening changes in circumstances do not require the attribution to the proposed new borrower of prior loans not previously attributed to that person.

The second major point on rebuttals is that both the burden of production and the burden of persuasion with respect to rebuttal lies with the bank that would rely upon it. The burden of production is the responsibility for being able to establish to OCC that the factual basis for the rebuttal was in existence at the time the loan was made. In this regard, the proposed rule requires that the information be placed in the relevant loan file at that time. See proposed §§ 32.7(c)(2) (ii) and (iii). Thus, it is recommended that banks planning to rely on a rebuttal prepare and place in the loan file a dated and signed memorandum summarizing the factual basis for the rebuttal and the reasons the author believes those facts to be true. Similarly, the burden of persuasion requires that banks relying on a rebuttal be able to show to the OCC that the facts relied upon do specifically and reasonably rebut the basis for the presumption of attribution in the

relevant specific rule. In short, a bank is required to demonstrate to the satisfaction of the OCC that a particular loan is entitled to the rebuttal and the OCC will be the final arbiter of this issue.

(1) *Primary liability in any capacity.* The first specific rule provides in proposed § 32.7(c)(2)(i) that loans will be attributed to any person who is in any capacity primarily liable on the loan with the named borrower. As discussed above in connection with proposed § 32.3(c) ("Obligations of other parties"), primary liability arises when the bank may enforce a right of collection against the person without prior resort against the named borrower.

This rule continues a long-standing position of the OCC evidenced in the present combination rules and prior interpretive rulings. It is also a corollary to the rule regarding treatment of other parties to the loan agreement in proposed § 32.3(c). The difference between the two rules is that, unlike proposed § 32.3(c) which applies only to parties to the loan transaction, this specific rule applies to a person who incurs primary liability on a loan without becoming a party to the loan transaction; but the effect of the two rules is the same. Unlike some of the other specific rules to be discussed, attribution under this rule is not subject to rebuttal.

The proposed rule lists two examples of arrangements which can require attribution: partnerships and joint ventures or associations. The rule continues the treatment of these arrangements under § 32.5(c) of the existing rule without significant change. Thus, for example, the OCC will continue its policy of attributing to general partners loans made to a partnership notwithstanding non-recourse arrangements in those loans. See 48 FR 15844, 15848 (April 12, 1983). Similarly, the OCC will continue to exempt limited partners and members of associations or joint ventures from attribution if the limited partnership, joint venture, or association agreement provides that they are exempt from liability for the obligations of the entity and if such provisions are valid under applicable state law.

(2) *Source of repayment.* Consistent with the diversification policy of the lending limit, a specific rule has been proposed in § 32.7(c)(2)(ii) to attribute a loan to any person who is expected to be the source of repayment of the loan. Thus, the OCC is continuing the rule currently found in § 32.5(a)(2)(ii), the first *per se* test of "common enterprise." Note that as explained by proposed

§ 32.7(c)(2)(ii)(A), the effect of having loans to several different borrowers attributed to the same person as the source of repayment is to aggregate those loans for lending limit purposes together with all other loans to the repayment source. For example, if a bank has made loans to A, B, and C, and if C is the source of repayment for A and B, then the loans to A and B would be attributed to C and, hence, C's total loans for lending limit purposes would include all three loans.

In determining whether a person is a "source of repayment," the OCC will continue to be guided by precedent under current § 32.5(a)(2)(ii). However, the proposed rule further provides that a person will be presumed to be the source of repayment for a loan when that person provides more than 50 percent of the named borrower's annual gross receipts. The definition of "annual gross receipts" has been incorporated from existing § 32.5(a)(2)(iii). In determining a borrower's annual gross receipts, a bank may use factual information for the 12 months immediately preceding the loan, factual information for the latest fiscal period, or information for the 12 months covered by the borrower's most recent audited financial statements provided they are reasonably current.

The presumption that a person is a source of repayment under the 50 percent test may be rebutted. As an example, assume that a partner in a professional partnership receives more than 50 percent of his or her annual gross receipts in the form of distributions from the partnership and, thus, the partnership is presumed to be the source of repayment for a loan to the partner. Such a loan would not be required to be attributed to the partnership if the presumption were rebutted by showing that the partnership is merely acting as a conduit for the individual partner's billings of his or her own clients. As another example, rebuttal could be based on a showing that while a borrower had been dependent on a particular company for more than 50 percent of his gross receipts over the past year, his income source had recently changed. In such a situation, of course, the loan should be attributed to the new income source if it exceeds the 50 percent test.

The OCC does not propose to accept the fact that the borrower has sufficient funds from other sources to repay a specific loan as a basis for rebuttal. In other words, where a borrower derives more than 50 percent of its income from a particular source, the loan will be attributed to that source even if it is

shown that the remaining income from other sources is adequate to repay a specific debt. The OCC requests specific comment on the need to maintain this position as a means to further the risk diversification policy of the lending limit.

In proposed § 32.7(c)(2)(ii)(C), a major exception to the proposed "source of repayment" rule is provided to prevent employers from having employee loans attributed to them. Specifically, an individual's employer will not be treated as a source of repayment under this rule because of wages and salaries paid to that individual unless such individual controls the person paying the wage or salary. The relevant definition of "control" is contained in proposed § 32.2(e).

(3) *Common security or enhancements.* A specific rule in proposed § 32.7(c)(2)(iii) addresses attribution due to reliance upon collateral or credit enhancements. Basically, the proposed rule provides that a loan secured by an interest in or commitment by a person, business or property will be presumptively attributed to that person, business or property if the named borrower lacks adequate revenue or resources, when the loan is made, to repay the debt in accord with the terms of the loan agreement. Under such circumstances, repayment of the loan will be presumed to depend primarily on the securing interest or commitment and, thus, the diversification policy of the lending limit requires that the loan be attributed to that expected repayment source. However, as will be discussed, this presumption is subject to rebuttal.

This proposed special rule addresses concentrations of credit risk that can arise from excessive reliance upon the same collateral or source of credit enhancement. The rule provides that where a loan is attributed to a property or business that is not a "person" under the rule, the lending limit will still be applied as if that business or property was a person, i.e., the loans attributed to it will be aggregated to determine whether they exceed the bank's lending limit.

The treatment of credit enhancement parties under proposed § 32.7(c)(2)(iii) is consistent with the proposed § 32.3(c) which provides that usually parties to a loan transaction which incur only secondary liability will not be treated as having received a loan and extension of credit. Guarantors of collection and accommodation endorsers are examples of such secondary credit enhancement parties. However, under the proposed rule, such parties may have a loan attributed to them if, at the time the loan

is made, there is a sufficient likelihood that they will be called upon to repay the loan.

The determination of whether the named borrower has sufficient revenue or resources to service the debt at the time the loan is made will be relatively straightforward based on generally accepted credit underwriting standards. Assuming that such revenue or resources are lacking when the loan is made, the presumption of attribution can still be rebutted by information showing a reasonable basis to expect that the borrower will in the near future develop such resources or revenue. For example, assume that a parent signs as the guarantor of collection on a car loan to a child who recently graduated from college. The child is unemployed at the time the loan is made and, thus, is unable to service the loan when it is made. The presumption attributing the loan to the guarantor parent could be rebutted by information indicating that the child had accepted an offer of employment to begin in the relatively near future and that the salary from that new job will be sufficient to service the debt.

2. Benefit Rules

The OCC is strongly considering eliminating the "direct benefit" test of the existing § 32.5(a)(i). However, to facilitate comment on whether such a test should be retained, general and specific benefit-based attribution rules are provided in proposed § 32.7(d). If OCC decides not to retain a benefit-based rule, proposed § 32.7(d) will not appear in the final rule.

The OCC specifically requests comment on whether a benefit-based test for attribution should be retained. The OCC is particularly interested in comments on the following points:

- Does the benefit-based rule significantly advance the purposes of the lending limit statute?
- Is a benefit-based rule necessary to accomplish the supervisory objectives of the OCC or will the proposed diversification rules suffice?
- What are the costs to the industry and the OCC of retaining a benefit-based rule?

a. *General benefit rule.* The general benefit rule in proposed § 32.7(d)(1) essentially incorporates the language of existing § 32.5(a)(1)(i). The proposed specific rules define circumstances in which loan proceeds will be deemed to directly benefit another person and, thus, require attribution to that person under the general rule. The specific rules in proposed § 32.7(d)(2) reflect interpretations of existing § 32.5(a)(1)(i) that the OCC has adopted, but they are

not intended to be an exclusive listing of direct benefit situations; the OCC reserves the ability to attribute loans under the general rule even when none of the specific rules are applicable.

b. *Specific benefit rules.* The first specific rule in proposed § 32.7(d)(2)(i) provides that where the proceeds of a loan are loaned to another party, the loan will be attributed to that other party. Similarly, the rule provides for attribution when the proceeds are transferred without a reasonably equivalent exchange of value, i.e., where the recipient of the proceeds has not exchanged property or services the fair market value of which approximate the amount of proceeds received. The exchange of the recipient's note for the loan proceeds will not be an exchange of value, but rather a loan.

The second specific rule in proposed § 32.7(d)(2)(ii) covers situations similar to the first except that it applies where property purchased with the proceeds of the loan, rather than the proceeds themselves, is transferred without an equivalent exchange of value.

The third specific rule in proposed § 32.7(d)(2)(iii) covers loans to trusts. Essentially it provides that loans to trusts will be attributed to the beneficiaries of the trust according to their degree of beneficial ownership or entitlement. Thus, for example, where a loan to a trust was used to purchase property which would benefit both the income beneficiary and the corpus beneficiary, the loan would be attributed to both *pro rata*.

The final specific rule in proposed § 32.7(d)(2)(iv) provides that where the proceeds of a loan are used to purchase the original-issue equity of another person so that the proceeds are received as part of the capital of that person, the loan will be attributed to that other person. Accordingly, under this rule, loans used to purchase previously issued shares from an existing shareholder would not be attributed to the issuing corporation.

3. Loans to Corporations

The rule in proposed § 32.7(e) continues the existing rule with respect to loans to corporations with one minor change; it eliminates surplusage in current § 32.5(b)(2).

Section 32.5(b)(2), pertaining to loans to corporations, reads as follows:

Loans or extensions of credit to a person and its subsidiary or to subsidiaries of one person need not be combined where the bank has determined that the person and subsidiaries involved are not engaged in a "common enterprise" as the term is defined in paragraph (a) of this section.

This provision was intended to emphasize that a bank would not have to automatically combine all loans and extensions of credit to a person and its subsidiaries. The paragraph does not state a rule but is primarily editorial; it reiterates a rule previously set forth in existing § 32.5(a) and is unnecessary. Some banks, however, have placed undue emphasis on the phrase "where the bank has determined" that no common enterprise exists and have argued that the OCC was thereby acknowledging that only the banks, and not the OCC, should make the determination whether such loans should be combined. This is neither Congress's nor the OCC's intention and, accordingly, it is proposed that the paragraph be removed.

4. Proposed Elimination of Means and Purpose Test

The OCC is proposing to revise the rules concerning national banks' lending to foreign governments, their agencies and their instrumentalities. Specifically, the OCC is proposing to eliminate the means and purpose test and the associated collection-of-information requirements. The means and purpose test essentially involves a series of determinations made by bank management of a highly subjective nature. The OCC believes that it is possible to establish more definitive ground rules in proposed § 32.7(f) that will add needed certainty to the area of loans to foreign governments and their agencies and instrumentalities and will adequately protect banks against excessive concentration in such loans. The proposed change is intended neither to loosen nor tighten the limit on loans to foreign governments. Rather, the proposed rule is intended to ease compliance burdens and to accord loans to foreign governments treatment similar to that of private borrowers. Comments are specifically requested on the effect of the proposed rule in these respects.

The OCC's proposal contains an aggregate limit on a national bank's loans to a foreign government and its agencies (including political subdivisions) and instrumentalities of 50 percent of the bank's unimpaired capital and unimpaired surplus. The term "political subdivision" includes the foreign equivalent of state and local governments. Comment is specifically requested as to whether a political subdivision with independent taxing authority should be entitled to its own 15 percent limit, upon adequate documentation by the lender. The term "instrumentalities" of a foreign government refers to corporations or other business organizations that are,

directly or indirectly, majority-owned or controlled by the foreign government. The presumption of control applied here to foreign governments is similar to that used in existing § 32.5(a)(2)(v). More generally, the 50 percent foreign government lending cap is modeled on the 50 percent corporate group lending cap in existing § 32.5(b). As noted above, the rule imposing the 50 percent corporate group lending cap is based on the principle that the risks in lending to one member of a corporate group closely resemble the risks of lending to the entire group. See 48 FR 15848 (April 12, 1983). The OCC holds a similar belief concerning the risks of lending to government entities or government-owned corporations within a single country. Thus, the OCC believes that the 50 percent foreign government lending cap is appropriate.

Within the 50 percent overall cap, a national bank's loans and extensions of credit to a foreign government and its agencies (including political subdivisions) and instrumentalities that are primarily performing governmental functions will be limited to an individual and aggregate cap of 15 percent of the bank's unimpaired capital and unimpaired surplus. In other words, this proposed rule applies the statutory 15 percent limit to loans to a foreign government and its agencies and instrumentalities that are performing governmental functions. This approach is logical because all debts of a government and its agencies will be dependent upon one repayment source, i.e., the government's fund-raising ability. Of course, the usual statutory exceptions will be applicable to such loans.

By contrast, each individual instrumentality of a foreign government engaged in commercial activities will have its own separate 15 percent limitation (subject to the usual statutory exemptions). The OCC believes that such businesses should, to the fullest extent possible, be treated like their U.S. counterparts. A separate 35 percent aggregate limitation within the 50 percent foreign government lending cap will be imposed on a national bank's loans to all such commercial-activity instrumentalities of a foreign government. This 35 percent aggregate figure is justified by the fact that such entities have a source of revenue separate from that of the foreign government, i.e., funds from their commercial operations.

The OCC has proposed to define "commercial activities" with reference to the private sector of the United States economy and the concept of free

enterprise prevalent in the United States. The OCC anticipates that this term will be refined through the issuance of interpretive letter opinions. Nevertheless, the OCC specifically requests comment on the types of factors that distinguish "commercial activities" from "governmental functions."

IV. Transitional Rules

The transitional rules currently found in § 32.7 were designed to cover the period after the effective date of the statutory amendment, October 15, 1982, and prior to the effective date of § 32.7, April 14, 1983. The statute has now been in effect for seven years and the current regulation has been in effect for six years. The window period for loans in conformance with the prior statute but not in conformance with part 32 ended on January 1, 1985. It appears that the transitional rules are no longer necessary to resolve any problems, inconsistencies or inequities caused by the gap in effective dates of the statute and regulation and, accordingly, the OCC proposes to delete them. However, any litigation or administrative action concerning a violation of 12 U.S.C. 84 during that period should be decided on the basis of the transitional rules. Of course, any violation of 12 U.S.C. 84 which occurred prior to its amendment in 1982 will continue to be decided on the basis of the rules in effect at that time.

Transitional rules are, however, needed to cover the amendments proposed in this rulemaking and are provided in the proposed § 32.9. They are essentially the same as the existing transitional rules except as discussed below.

Proposed § 32.9(a) continues the rule of existing § 32.7(a) by providing that loans which were in violation of the lending limit prior to any of the effective dates, including the effective date of the proposed amendments, will remain violations until paid in full. Over-line commitments issued prior to the effective date of the Temporary Rule on commitments, June 24, 1988, were not "loans" and, thus, are not subject to this transitional rule. However, the rule would apply to any over-line advances made prior to the effective date of the Temporary Rule. Unfunded commitments are treated in proposed § 32.9(d), discussed below.

Proposed § 32.9(c), like existing § 32.7(c), grandfathers existing conforming loans and, further, permits renewals and extensions of such loans even if not in conformance with the new rules. However, such renewals or

extensions must conform with the new rules no later than two years after the new rules become effective.

Proposed § 32.9(d) and the Temporary Rule will permit a bank to honor all legally binding commitments to advance funds which were made in good faith prior to the effective date of the amendment and were within the bank's lending limit when made, even if the advances would cause the bank to exceed its present lending limit if they were treated as new loans. Thus, the new treatment of commitments applies retroactively to eligible commitments entered into before the effective date of the Temporary Rule, as well as to commitments entered into after that date. However, the new rule does not retroactively validate advances that were made prior to the effective date of the Temporary Rule and that exceeded the lending limit at that time. Even if made pursuant to a binding commitment, such advances were illegal loans when made and will remain violations of law. A rule which retroactively validated such advances would impair the existing rights of shareholders against their directors under 12 U.S.C. 93(a).

V. Interpretations

As explained above, most of the existing interpretations have been moved into the body of the proposed regulation. However, the OCC will retain existing 12 CFR 32.108, as new § 32.101, and existing 12 CFR 32.111, as new § 32.102, without change.

VI. Special Studies

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Comptroller of the Currency certifies that this proposed regulation will not have a significant impact on a substantial number of small banks. All banks should benefit from the regulatory simplification that will result from the proposal.

Executive Order 12291

The OCC has determined that this proposed rule does not constitute a "major rule" within the meaning of Executive Order 12291. Consequently, a Regulatory Impact Analysis will not be required on the grounds that this revision (1) would not have an annual effect on the economy of \$100 million or more, (2) would not result in a major increase in the cost of bank operations or government supervision, and (3) would not have a significant adverse effect on competition, employment,

investment, productivity, innovation, or competition with foreign-based entities.

List of Subjects in 12 CFR Part 32

National banks, Lending limit.

For the reasons set forth in the preamble, title 12, chapter I, parts 7 and 32 of the Code of Federal Regulations are proposed to be amended as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority for part 7 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*

§ 7.7519 [Removed]

- Section 7.7519 is removed.
- Part 32 is revised to read as follows:

PART 32—LENDING LIMITS

Sec.

- 32.1 Authority, purpose and scope.
- 32.2 Definitions.
- 32.3 Definition of "loan and extension of credit."
- 32.4 General limitation.
- 32.5 Additional general limitation: loans fully secured by readily marketable collateral.
- 32.6 Aggregation rule.
- 32.7 Combining loans to separate borrowers.
- 32.8 Exceptions to the lending limit.
- 32.9 Transitional rules.
- 32.10 Substitute lending limit for banks with agricultural or oil and gas loans.

Interpretations

- 32.101 Interest or discount on loans.
- 32.102 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.

Authority: 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84 and 93a.

§ 32.1 Authority, purpose and scope.

[Note: No changes in this section.]

(a) *Authority.* This part is issued pursuant to authority granted in 12 U.S.C. 1 *et seq.*, 12 U.S.C. 84 and 12 U.S.C. 93a.

(b) *Purpose.* Revised Statute 5200 (12 U.S.C. 84) is intended to prevent one individual, or a relatively small group, from borrowing an unduly large amount of the banks funds. It is also intended to safeguard the bank's depositors by spreading the loans among a relatively large number of persons engaged in different lines of business.

(c) *Scope.* This part applies to all loans and extensions of credit made by national banks and their domestic operating subsidiaries. This Part does not apply to loans made by a national bank to its affiliates (as that term is defined in subsection (b)(1) of section 23A of the Federal Reserve Act (12 U.S.C. 371c(b)(1))), operating

subsidiaries, and Edge Act or Agreement Corporation subsidiaries.

§ 32.2 Definitions.

For purposes of this part:

(a) *Person* means an individual; sole proprietorship; partnership; joint venture; association; trust; estate; business trust; corporation; not-for-profit corporation; sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organization.

[Note: Old § 32.2(b) without change.]

(b) *Unimpaired capital and unimpaired surplus* is equivalent to the terms "capital" and "surplus" as defined in 12 CFR 3.100.

[Note: Old § 32.2(c) with technical change.]

(c) A *standby letter of credit* is any letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer

(1) To repay money borrowed by or advanced to or for the account of the account party, or

(2) To make payment on account of any indebtedness undertaken by the account party, or

(3) To make payment on account of any default by the account party in the performance of an obligation.

[Note: Old § 32.2(e) without change.]

(d) A *named borrower* is the person named as the borrower or debtor in the loan agreement.

[Note: New paragraph.]

(e) For purposes of § 32.7(a)(2)(ii), a person shall be presumed to have "control" when:

(1) The person directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of another person; or

(2) The person controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions, of another person; or

(3) Any other circumstances exist which indicate that the person directly or indirectly exercises a controlling influence over the management or policies of another person.

[Note: New paragraph.]

§ 32.3 Definition of "loan and extension of credit."

[Note: New section.]

(a) *Loans and extensions of credit* means any direct or indirect advance of funds (including obligations of makers and endorsers arising from the

discounting of commercial paper) to a person made on the basis of any obligation of that person to repay the funds, or repayable from specific property pledged by or on behalf of a person. "Loans and extensions of credit" also includes a "contractual commitment to advance funds" as that term is defined in this section.

[Note: Old text moved from § 32.2(a) without modification.]

(b) (1) *Contractual commitment to advance funds* means:

(i) A bank's obligation, under a standby letter of credit as defined in § 32.2 or similar arrangement, to make payments (directly or indirectly) to a third party beneficiary contingent upon a default by the bank's customer in the performance of an obligation under the terms of that customer's contract with the third party or upon some other stated condition, or

(ii) A bank's obligation to guarantee or stand as surety for the benefit of a third party.

(2) In addition to standby letters of credit, the term includes guarantees, puts or other similar arrangements. Further, a binding, written commitment to lend is considered a "contractual commitment to advance funds" under this part if it and all other outstanding loans (including other binding commitments) to the borrower are within the bank's lending limit on the date of the commitment. Thus, if such a commitment and all other outstanding loans to a borrower are within the bank's lending limit on the date of a commitment, the bank may fund the commitment without violating the lending limit even if its capital and, hence, its lending limit should decline prior to the actual advance of the funds. On the other hand, if a commitment and all other outstanding loans to a borrower are not within a bank's lending limit on the date of the commitment, then the commitment would not be deemed a loan until funded and its legality would be determined at that time. In determining whether the issuance of a commitment would cause a bank to exceed its lending limit on the date of the commitment, a bank may deduct from the amount of the commitment the aggregate amount of legally binding written loan participations in the commitment by other financially responsible persons or institutions.

(3) For purposes of this part, commercial letters of credit are not considered "contractual commitments to advance funds." A commercial letter of credit is a letter of credit under which the issuing bank expects the beneficiary

to draw upon the issuer in connection with a sale or transfer of goods.

[Note: Text moved from old § 32.2(d) and modified.]

(c) Obligations of other parties. Where a person other than the named borrower becomes a party to the loan agreement or transaction and, in that capacity, is primarily liable with the named borrower, such liability is a "loan and extension of credit" to such person in the amount of the liability assumed. However, the secondary liability of, for example, an accommodation indorser or a guarantor of collection (as opposed to a guarantor of payment) is not a "loan and extension of credit" to such person for purposes of this part.

[Note: Text moved from old § 32.101 and modified.]

(d) Sale of Federal funds.

[Note: Text moved from old § 32.102 without change.]

(1) *Sale of Federal funds* means, for purposes of this section, any transaction among depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at Federal Reserve banks or from credits to new or existing deposit balances due from a correspondent depository institution.

(2) Sales of Federal funds with a maturity of one business day or under a continuing contract are not "loans and extensions of credit" for purposes of this part. However, sales of Federal funds with a maturity of more than one business day are subject to the lending limit.

(3) A "continuing contract" refers to an agreement that remains in effect for more than one business day but has no specified maturity and requires no advance notice for termination.

(e) Purchase of securities subject to repurchase agreement.

[Note: Paragraph moved from old § 32.103 and changed as indicated below.]

(1) A bank's purchase of "Type I securities," as defined in § 1.3(c) of this chapter, subject to an agreement that the seller will repurchase at the end of a stated period is not a "loan and extension of credit" for purposes of this part if the bank has obtained control of the securities. A bank may obtain control of the securities through the following methods:

(i) Acquiring possession of physical securities by direct delivery to the purchasing bank of the certificates representing the securities, or of book-entry securities by appropriate entry in an account maintained for the purchasing bank by a Federal Reserve

Bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations;

(ii) Delivery of either physical securities or book-entry securities to a third-party custodian designated by the purchasing bank under a written custodial agreement which explicitly recognizes the purchasing bank's interest in the securities as superior to that of any other person;

(iii) Appropriate entry on the books of a third-party custodian acting pursuant to a tripartite agreement with the purchasing bank and the seller, ensuring adequate segregation and identification of either physical or book-entry securities; or

(iv) A substantially equivalent method.

A repurchase transaction in which the purchasing bank does not obtain control over the securities will be regarded as a loan from the purchasing bank to the seller for lending limit purposes and not as an obligation of the underlying obligor of the security.

[Note: New text.]

(2) The purchase of securities (other than Type I securities) subject to an agreement that the seller will repurchase at the end of a stated period is a loan and extension of credit from the purchasing bank to the seller and not an obligation of the underlying obligor of the security to the purchasing bank.

[Note: Old text, modified.]

(f) Purchase of third-party paper.

[Note: Text moved from old § 32.104 without change.]

Where a bank purchases third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period after default, the seller's obligation to repurchase is subject to 12 U.S.C. 84 and is measured by the total unpaid balance of the paper owned by the bank less any applicable dealer reserves. Where the seller's obligation to repurchase is limited, the seller's total loans and extensions of credit, for the purpose of 12 U.S.C. 84, are measured by the total amount of paper the seller may ultimately be obligated to repurchase. Where no more than an agreed percentage of the purchase price is retained by the bank and credited to a reserve to be held as a form of collateral security, but the bank has no direct or indirect recourse to the seller, the loans and extensions of credit do not constitute loans and extensions of credit to the seller subject to the limitations of section 84.

(g) Overdrafts.

[Note: Text moved from old § 32.105 without change.]

Overdrafts, whether or not prearranged, are "loans and extensions of credit" for purposes of this part. This rule does not apply to "intra-day" or "daylight" overdrafts.

(h) Loans charged off in whole or in part.

[Note: Moved from old § 32.106 and changed.]

The lending limit applies to all existing loans and extensions of credit to a person by the bank, including loans and extensions of credit which have been charged off on the books of the bank in whole or in part and not subsequently recovered. Loans and extensions of credit which have become unenforceable by reason of discharge in bankruptcy or are no longer legally enforceable because of expiration of the statute of limitations or a judicial decision are not "loans and extensions of credit" for purposes of this part. However, where a bank has voluntarily given up its right to collect a charged off loan, the loan will remain a "loan and extension of credit" for purposes of this part.

(i) Renewal and restructuring of loans and extensions of credit.

[Note: New paragraph]

In the absence of circumstances indicating that a loan and extension of credit has been renewed or restructured as a means to evade the lending limit, a renewal or restructuring of a loan will not be deemed a new "loan and extension of credit" unless new funds are advanced by the bank to the borrower or a new borrower is substituted for the original obligor. However, the renewal of loans and extensions of credit which have become nonconforming solely because of a change in the lending limit rules applicable at the time the loan was made, is subject to the limitations on renewal in § 32.9(c).

(j) Sale of loan participations.

[Note: Moved from old § 32.107 and changed.]

(1) When a bank sells a participation in a loan and extension of credit, including the discount of a bank's own acceptance, that portion of the loan that is sold on a nonrecourse basis will not be applied to the bank's lending limit. In order to remove a loan and extension of credit from a bank's lending limit, a participation must result in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. This is so even where the participation agreement provides that repayment must be applied first to the shares sold. In that

case, the pro rata sharing may only be accomplished if the agreement also provides that, in case of a default or comparable event defined in the agreement, participants shall share in all subsequent repayments and collections in proportion to the percentage of participation at the time of the occurrence of the event.

[Note: Old text moved without change.]

(2) The provisions of the above paragraph apply to "loans and extensions of credit," as defined in this section, including "contractual commitment(s) to advance funds," as defined above.

(3) The "purchase" of a participation in a loan and extension of credit with recourse or under a repurchase agreement results in a loan by the purchasing bank to the seller in the amount subject to repurchase.

[Note: New text; § 7.7519 is to be removed.]

(k) Loans to or guaranteed by general obligations of a State or political subdivision.

[Note: Text moved from old § 32.109 without change.]

(1) A loan and extension of credit to a bank customer which is guaranteed or fully secured by a "general obligation" of any State or political subdivision thereof, within the meaning of 12 CFR 1.3(g), is not considered an obligation of the customer for purposes of 12 U.S.C. 84. The lending bank should obtain the opinion of competent counsel that the guarantee or collateral is a valid and enforceable obligation of the public body.

(2) A loan and extension of credit to a State or political subdivision thereof is not subject to any limitation based on capital or surplus if the loan and extension of credit constitutes a "general obligation" of the State or political subdivision within the meaning of 12 CFR 1.3(g). The lending bank should obtain the opinion of competent counsel that the loan and extension of credit is a valid and enforceable obligation of the borrower.

(l) Loans to industrial development authorities.

[Note: Text moved from old § 32.110 without change.]

(1) A loan and extension of credit to an industrial development authority or similar public entity created for the purpose of constructing and leasing a plant facility, including a health care facility, to an industrial occupant is not a loan and extension of credit to the authority for the purposes of 12 U.S.C. 84 if:

(i) The bank relies on the credit of the industrial occupant in making the loan;

(ii) The authority's liability with respect to the loan is limited solely to whatever interest it has in the particular facility;

(iii) The authority's interest is assigned to the bank as security for the loan or a promissory note from the lessee to the bank provides a higher order of security than the assignment of a lease; and

(iv) The industrial occupant's lease rentals are assigned and paid directly to the bank.

(2) A loan and extension of credit meeting the above criteria will be deemed a loan and extension of credit to the lessee and will be aggregated with other obligations of the lessee for purposes of section 84.

§ 32.4 General limitation.

[Note: Old § 32.3 without change.]

12 U.S.C. 84(a)(1) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and not fully secured, as determined in a manner consistent with paragraph (2) of this section, by collateral having a market value at least equal to the amount of the loan and extension of credit shall not exceed 15 per centum of the unimpaired capital and unimpaired surplus of the association.

§ 32.5 Additional general limitation: loans fully secured by readily marketable collateral.

[Note: Old § 32.4 with change.]

(a) *Law.* 12 U.S.C. 84(a)(2) provides:

The total loans and extensions of credit by a national banking association to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 per centum of the unimpaired capital and unimpaired surplus of the association. This limitation shall be separate from and in addition to the limitation contained in paragraph (1) of this subsection.

(b) *Compliance with 12 U.S.C.*

84(a)(2). A loan and extension of credit, or a portion thereof, will qualify for the foregoing additional limitation if it is secured by readily marketable collateral having a current market value equal to, at all times, the amount of the loan and extension of credit or portion thereof subject to this rule. "Current market value" means the bid or closing price listed for an item in a regularly published listing or in an electronic reporting service.

[Note: Change in text.]

(c) For purposes of this part, "readily marketable collateral" means financial instruments and bullion which are salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions on an auction or a similarly available daily bid and ask price market. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in money market and mutual funds of the type which issue shares in which banks may perfect a security interest.

[Note: No change in text.]

(d) Each bank must institute adequate procedures to ensure that the collateral value fully secures at all times the outstanding loan or portion thereof subject to this rule.

[Note: Change in text.]

(e) Financial instruments may be denominated in foreign currencies which are freely convertible to U.S. dollars. If collateral is denominated and payable in a currency other than that of the loan and extension of credit which it secures, the bank's procedures must require that the collateral be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.

[Note: No change in text.]

(f) If collateral values fall below 100 percent of the outstanding loan, or the applicable portion thereof, to the extent that the loan is no longer in conformance with this section and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking action.

[Note: Change in text.]

§ 32.6 Aggregation rule.

[Note: New section.]

In computing a bank's lending limit to a person, the following loans and extensions of credit as defined above (hereinafter "loans") must be aggregated:

(a) All loans made directly to that person;

(b) All loans made indirectly to that person, i.e., where a bank advances funds to a third party at the direction or on behalf of that person and based on

an obligation of that person to repay; and

(c) All loans attributed to that person under § 32.7 below.

§ 32.7 Combining loans to separate borrowers.

[Note: Old § 32.5 with substantial changes.]

(a) This section contains attribution rules which specify when loans and extensions of credit as defined above (hereinafter "loans") in the name of one person (the named borrower) will be attributed to another person for purposes of the lending limit. It also contains special rules applicable to loans to foreign governments and loans to corporations.

(b) Attribution of a loan to a person other than the named borrower for purposes of computing a bank's lending limit to that other person can occur under the two types of rules set forth below: the diversification rules and the benefit rules. Attribution under the rules below does not remove a loan from the named borrower's total of loans used to compute whether that total exceeds the bank's lending limit; rather, the loan is included in determining the total of loans for both the borrower and the attributed person.

(c) *Diversification rules*—(1) *General diversification rule*. A loan made to a named borrower will be attributed to another person when the repayment of the loan is likely to depend, directly or indirectly, on that other person.

(2) *Specific rules*. The rules below define circumstances in which the repayment of a loan to one person may be sufficiently dependent upon another person to warrant attribution to that other person. However, OCC retains authority to require attribution, under the general rule above, in other situations when warranted by the facts and circumstances.

(i) *Primary liability in any capacity*. Loans upon which a person other than the named borrower is jointly or severally liable in any capacity with the named borrower are attributed to that other person. Examples of this rule are:

(A) Loans to a partnership are attributed to its general partners. However, such loans are not attributed to limited partners in a limited partnership if under the partnership agreement and applicable state law the limited partners are not liable for partnership debts and actions.

(B) Loans to a joint venture or association are attributed to each member unless the members, by the terms of the membership agreement and applicable state law, are not liable for

the debts or actions of the joint venture or association.

(ii) *Source of repayment*. Loans made to a named borrower are attributed to another person which is the source of repayment of the loan. A person will be presumed to be the source of repayment when that person supplies more than 50% of the borrower's annual gross receipts, as defined below, at the time the loan is made. This presumption will be inapplicable if, at the time the loan is made, the loan file contains factual information which specifically and reasonably rebuts the presumption. This rule will be applied as follows:

(A) Loans to different borrowers who share a source of repayment in the same person will be aggregated through their attribution to the common repayment source. Further, loans attributed to a person as a repayment source under this rule will be aggregated with all other loans on which that person is directly liable or which have been attributed to that person under this or other rules.

(B) For the purposes of this paragraph, "gross receipts" includes gross revenues, intercompany loans, dividends, capital contributions, and similar receipts.

(C) To prevent employers from having employee loans attributed to them under this rule, an individual's employer will not be a "source of repayment" under this rule because of wages or salaries paid to that individual unless such individual controls the person paying the wage or salary.

(iii) *Common security or enhancements*. Dependence upon security, collateral, or source of credit enhancement will not cause a loan to be attributed to another entity except as provided below. A loan secured by an interest in or commitment by a person, business, or property will be attributed to that person, business, or property if the named borrower lacks adequate resources or revenue, when the loan is made, to repay the debt in accord with the terms of the loan agreement. Under such circumstances, repayment of the loan will be presumed to depend primarily on the securing interest or commitment. This presumption will be inapplicable if, at the time a loan is made, the loan file contains factual information which specifically and reasonably rebuts the presumption. Where a business or property relied upon by a borrower as a source of credit enhancement is not a "person" as defined above, the lending limit will be applied as if it were a "person," i.e., the loans attributed to the business or property under this rule will be

aggregated to determine whether they exceed the statutory lending limit.

(d) *Benefit rules*—(1) *General benefit rule*. A loan made to a named borrower will be attributed to another person when the proceeds of the loan are used or are to be used for the direct benefit of the other person.

(2) *Specific benefit rules*. The rules below define circumstances in which loan proceeds will be deemed to directly benefit another person and require attribution of the loan to the other person. However, OCC retains authority to require attribution, under the general benefit rule, in other situations when warranted by the facts and circumstances.

(i) Loans the proceeds of which are either transferred to another person without a reasonably equivalent exchange of value or are loaned to another person will be attributed to that other person.

(ii) Loans the proceeds of which are used to purchase an asset that is transferred to another person without a reasonably equivalent exchange of value will be attributed to that other person.

(iii) Loans to a trust will be attributed to the beneficiary of the trust. Loans to a trust with multiple beneficiaries will be attributed to each beneficiary according to the degree of beneficial ownership or entitlement under the terms of the trust.

(iv) Loans the proceeds of which are used to invest in or purchase original issue equity of another person so that the proceeds are received as part of the capital of that person will be attributed to that other person.

(e) *Loans to corporations*. (1) For purposes of this paragraph, a corporation is a "subsidiary" of any person which owns or beneficially owns more than 50 percent of the voting stock of the corporation. Such ownership need not be direct. Thus, if A owns more than 50 percent of the voting stock of Corporation X which, in turn, owns more than 50 percent of the voting stock of Corporation Y, Corporation Y would be considered a subsidiary both of A and of Corporation X.

(2) Loans and extensions of credit by a national bank to a "corporate group" may not exceed 50 percent of the bank's unimpaired capital and unimpaired surplus. This aggregate limitation applies only to loans made pursuant to sections 84 (a)(1) and (a)(2). A "corporate group" includes a person and all of its subsidiaries.

(f) *Loans to foreign governments, their agencies, and instrumentalities*. (1) For purposes of this paragraph:

(i) *Agencies* of a foreign government means agencies, departments and

political subdivisions of the foreign government, including provinces or states and local or municipal governments.

(ii) *Instrumentalities* of a foreign government include corporations or other business organizations that are, directly or indirectly, majority-owned or controlled by the foreign government.

(iii) *Control* by a foreign government shall be presumed to exist when:

(A) The foreign government controls, in any manner, the election of a majority of the directors, trustees, or other persons exercising similar functions of another person; or

(B) Any other circumstances exist which indicate that the foreign government directly or indirectly exercises a controlling influence over the management or policies of another person.

(iv) *Commercial activity* means an activity involving trade, commerce or profit generally conducted or performed in the private sector of the United States economy.

(v) *Governmental function* means an activity generally performed or engaged in only by a sovereign entity and does not include those activities referred to in paragraph (f)(1)(iv) of this section.

(2) Loans and extensions of credit to any single instrumentality of a foreign government which is primarily engaged in commercial activities shall not exceed 15 percent of a bank's unimpaired capital and unimpaired surplus; all loans to such instrumentalities of a foreign government shall not exceed, in aggregate, 35 percent of a bank's unimpaired capital and surplus.

(3) Loans and extensions of credit to a foreign government and any of its agencies and instrumentalities thereof that are primarily engaged in the performance of a governmental function shall not exceed, in the aggregate, 15 percent of a bank's unimpaired capital and surplus.

(4) Notwithstanding paragraphs (a) through (e) of this section, a national bank's loans and extensions of credit to a foreign government, its agencies, and instrumentalities may not, when combined, exceed 50 percent of the bank's unimpaired capital and surplus. The 50 percent limitation is the total of the following:

(i) Loans and extensions of credit to a foreign government and any of its agencies and instrumentalities thereof that are primarily engaged in the performance of a governmental function; plus

(ii) Loans and extensions of credit to all instrumentalities of a foreign government primarily engaged in commercial activities.

§ 32.8 Exceptions to the lending limit.

[Note: Old § 32.6 without change.]

(a) *Discount of commercial or business paper*—(1) *Law*. 12 U.S.C. 84(c)(1) provides:

Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse shall not be subject to any limitation based on capital and surplus.

(2) This exception applies to negotiable paper given in payment of the purchase price of commodities in domestic or export transactions purchased for resale or to be used in connection with the fabrication of a product, or to be used for any other business purpose which may reasonably be expected to provide funds for payment of the paper. Loans or extensions of credit arising from the discount of paper of the kind described in this paragraph must bear the full recourse endorsement of the owner. However, loans or extensions of credit arising from the discount of such paper in export transactions may be endorsed by such owner without recourse or with limited recourse, or may be accompanied by a separate agreement for limited recourse; provided, that if transferred without full recourse, the paper must be supported by an assignment of appropriate insurance covering the political, credit, and transfer risks applicable to the paper. Insurance provided by the Export-Import Bank or the Foreign Credit Insurance Association is considered appropriate for this purpose. Loans or extensions of credit based on this exception are not subject to any limitation.

(3) Since the reason for the unlimited credit under this exception is that the paper arises from the sale of a commodity which may reasonably be expected to provide funds for payment of the paper, failure to pay either principal or interest when due removes the reason for unlimited credit. Therefore, although the line of credit to the maker or endorser should not be classified as excessive by reason of such default, the paper on which the default has occurred must thereafter be taken into consideration in determining whether additional loans or extensions of credit may be made within the limits of 12 U.S.C. 84. The same principles of disqualification from the exception applies to any renewal or extension of either the entire loan or an installment thereof.

(b) *Bankers' acceptances*—(1) *Law*. 12 U.S.C. 84(c)(2) provides:

The purchase of bankers, acceptances of the kind described in section 13 of the Federal Reserve Act and issued by other banks shall not be subject to any limitation based on capital and surplus.

(2) This exception permits the purchase by a national bank without limitation of bankers, acceptances created by other banks, provided that such acceptances are of the kind described in 12 U.S.C. 372 and 373 (eligible acceptances). Acceptances other than those described in section 372 and 373 must be included within the purchasing bank's lending limit to each acceptor bank.

(3) The limits under which a national bank may itself accept drafts eligible for rediscount are contained in sections 372 and 373. These limits are distinct from the limits under section 84. Acceptances by a national bank of "ineligible" drafts, i.e., time drafts which do not meet the requirements for discount with a Federal Reserve bank, are subject to the limitations of section 84.

(4) During any period within which a national bank holds its own acceptances, eligible or ineligible, having given value therefor, the amount given is considered, for purposes of this Part, to be a loan or extension of credit to the customer for whom the acceptance was made and is subject to the lending limits. To the extent that a loan or extension of credit created by discounting the acceptance is covered by a bona fide participation agreement, the discounting bank need only consider that portion of the discounted acceptance which it retains as being subject to the limitations of Section 84.

(c) *Loans secured by bills of lading or warehouse receipts covering readily marketable staples*—(1) Law. 12 U.S.C. 84(c)(3) provides:

Loans and extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples shall be subject to a limitation of 35 per centum of capital and surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 per centum of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure such staples.

(2) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 35 percent of its capital and surplus in addition to the general 15 percent permitted by section 84(a)(1) and in addition to the 10 percent permitted by section 84(a)(2), provided the collateral requirements of section 84(a)(2) are met.

(3) A readily marketable staple means an article of commerce, agriculture, or industry of such uses as to make it the subject of dealings in a ready market with sufficiently frequent price quotations as to make:

(i) the price easily and definitely ascertainable, and

(ii) the staple itself easy to realize upon sale at any time at a price which would not involve any considerable sacrifice from the amount at which it is valued as collateral. Staples eligible for this exception must be nonperishable, may be refrigerated or frozen, and must be fully covered by insurance when such insurance is customary. This exception is intended to apply primarily to basic commodities, such as wheat and other grains, cotton, wool, and basic metals such as tin, copper, lead, and the like. Whether a commodity is readily marketable depends upon existing conditions and it is possible that a commodity that qualifies at one time may cease to qualify at a later date. Fabricated commodities which do not constitute standardized interchangeable units and do not possess uniformly broad marketability do not qualify as readily marketable collateral.

(4) Commodities sometimes fail to qualify as nonperishable because of the manner in which they are handled or stored during the life of the loan or extension of credit. Accordingly, the question as to whether a staple is nonperishable must be determined on a case-by-case basis.

(5) This exception is applicable to a loan or extension of credit arising from a single transaction or secured by the same staples for:

(i) Not more than 10 months if secured by nonperishable staples; and

(ii) Not more than six months if secured by refrigerated or frozen staples.

(6) The important characteristic of warehouse receipts, order bills of lading, or other similar documents is that the holder of such documents has control of the commodity and can obtain immediate possession. (However, the existence of brief notice periods, or similar procedural requirements under state law, for the disposal of the collateral will not affect the eligibility of instruments for this exception.) Only documents with these characteristics are eligible securities for loans under this exception. In the event of default on a loan secured by such documents, the bank must be in a position to sell the underlying commodity and promptly transfer title and possession to the purchaser, thus being able to protect itself without extended litigation.

Generally, documents qualifying as "documents of title" under the Uniform Commercial Code are "similar documents" qualifying for this exception.

(7) Field warehouse receipts are an acceptable form of collateral when they are issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the commodities even though the grain elevator or warehouse is maintained on the commodity owner's premise.

(8) Warehouse receipts issued by the borrower-owner which is a grain elevator or warehouse company, duly-bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this exception only when the receipts are registered with an independent registrar whose consent is required before the commodities can be withdrawn from the warehouse.

(d) *Loans secured by U.S. obligations*—(1) Law. 12 U.S.C. 84(c)(4) provides:

Loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States shall not be subject to any limitations based on capital and surplus.

(2) This exception applies only to the extent that loans or extensions of credit are fully secured by the current market value of obligations of the United States or guaranteed by the United States.

(3) If the market value of the collateral declines to the extent that the loan is no longer in conformance with this exception and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days.

(e) *Loans to or guaranteed by a federal agency*—(1) Law. 12 U.S.C. 84(c)(5) provides:

Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission, or establishment of the United States or any corporation wholly owned directly or indirectly by the United States shall not be subject to any limitation based on capital and surplus.

(2) This exception may apply to only that portion of a loan or extension of credit that is covered by a federal guarantee or commitment.

(3) For purposes of this exception, the commitment or guarantee must be payable in cash or its equivalent within sixty days after demand for payment is made.

(4) A guarantee or commitment is unconditional if the protection afforded the bank is not substantially diminished or impaired in the case of loss resulting from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements, such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(f) *Loans secured by segregated deposit accounts*—(1) Law. 12 U.S.C. 84(c)(6) provides:

Loans or extensions of credit secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on capital and surplus.

(2) The bank must ensure that a security interest has been perfected in the deposit, including the assignment of a specifically identified deposit and any other actions required by state law.

(3) Deposit accounts which may qualify for this exception include deposits in any form generally recognized as deposits. In the case of a deposit eligible for withdrawal prior to the maturity of the secured loan, the bank must establish internal procedures which will prevent the release of the security.

(4) A deposit which is denominated and payable in a currency other than that of the loan or extension of credit which it secures may be eligible for this exception if it is freely convertible to U.S. dollars. The deposit must be revalued at least monthly, using appropriate foreign exchange rates, to ensure that the loan or extension of credit remain fully secured. This exception applies to only that portion of the loan or extension of credit that is covered by the U.S. dollar value of the deposit. If the U.S. dollar value of the deposit falls to the extent that the loan is in nonconformance with this exception and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions, or other extraordinary occurrences prevent the bank from taking such action. This exception is not authority for national banks to take deposits denominated in foreign currencies.

(g) *Loans to financial institutions with the approval of the Comptroller*—(1) Law. 12 U.S.C. 84(c)(7) provides:

Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or

other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Comptroller of the Currency, shall not be subject to any limitation based on capital and surplus.

(2) This exception is intended to apply only in emergency situations where a national bank is called upon to provide assistance to another financial institution.

(3) For purposes of this paragraph (g), "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.

(h) *Discount of installment consumer paper*—(1) Law. 12 U.S.C. 84(c)(8) provides:

(i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person transferring the paper shall be subject under this section to a maximum limitation equal to 25 per centum of such capital and surplus, notwithstanding the collateral requirements set forth in subsection (a)(2).

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of such consumer paper is reasonably adequate, and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker shall be the sole applicable loan limitations.

(2) This exception allows a national bank to discount negotiable or nonnegotiable installment consumer paper of one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)) if the paper carries a full recourse endorsement or unconditional guarantee by the seller transferring such paper. The unconditional guarantee may be in the form of a repurchase agreement or a separate guarantee agreement. A condition reasonably within the power of the bank to perform, such as the repossession of collateral, will not be considered to make conditional an otherwise unconditional agreement.

(3) For purposes of this paragraph (h), "consumer" means the user of any products, commodities, goods, or services, whether leased or purchased, and does not include any person who purchases products or commodities for the purpose of resale or for fabrication into goods for sale.

(4) For purposes of this paragraph (h), "consumer paper" includes paper relating to automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premium fees, and similar consumer items. Also included is paper covering the lease (where the bank is not the owner or lessor) or purchase of equipment for use in manufacturing, farming, construction, or excavation.

(5) Under certain circumstances, installment consumer paper which otherwise meets the requirements of this exception will be considered a loan or extension of credit to the maker of the paper rather than the seller of the paper. Specifically, where:

(i) Through the bank's files it has been determined that the financial condition of each maker is reasonably adequate to repay the loan or extension of credit, and

(ii) An officer designated by the bank's Chairman or Chief Executive Officer pursuant to authorization by the Board of Directors certifies in writing that the bank is relying primarily upon the maker to repay the loan or extension of credit, the loan or extension of credit is subject only to the lending limits of the maker of the paper.

Where paper is purchased in substantial quantities, the records, evaluation, and certification may be in such form as is appropriate for the class and quantity of paper involved.

(i) *Loans secured by livestock or dairy cattle*—(1) *Loans secured by livestock*—(i) Law. 12 U.S.C. 84(c)(9)(A) provides:

Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 per centum of the face amount of the note covered, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a maximum limitation equal to 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to make loans or extensions of credit to one person in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)), if the loans or extensions of credit are secured by livestock having a market value at least equal to 115 percent of the outstanding loan balance at all times. The loans or extensions of credit may be secured by shipping documents or other instruments which transfer title to, secure title to, or give a first lien on livestock. "Livestock" includes dairy and beef cattle, hogs,

sheep, goats, horses, mules, poultry, and fish, whether or not held for resale. To support compliance with this exception, the bank must maintain in its files an inspection and appraisal report on the livestock pledged. The inspection and appraisal report should be performed at least every 12 months, or more frequently as deemed prudent.

(iii) Under the laws of certain states, a person furnishing pasturage under a grazing contract may have a lien on the livestock for the amount due for pasturage. If the lien which is based on pasturage furnished by the lienor prior to the making of the loan:

(A) Is assigned to the bank by a recordable instrument and

(B) Is protected against being defeated by some other lien or claim, by payment to a person other than the bank, or otherwise,

it would qualify under this exception provided the amount of such perfected lien is at least equal to the amount of the loan and the value of the livestock is at no time less than 115 percent of the loan. Where the amount due under the grazing contract is dependent upon future performance thereunder, the resulting lien has merely prospective value and does not meet the requirements of the exception.

(2) *Loans secured by dairy cattle*—(i) Law. 12 U.S.C. 84(c)(9)(B) provides:

Loans and extensions of credit which arise from the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which paper carries a full recourse endorsement or unconditional guarantee of the seller, and which are secured by the cattle being sold, shall be subject under this section, notwithstanding the collateral requirements set forth in subsection (a)(2), to a limitation of 25 per centum of such capital and surplus.

(ii) This exception allows a national bank to discount paper of one person given in payment for dairy cattle in an amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted by section 84(a)(1)). The discounted paper must carry the full recourse endorsement or unconditional guarantee of the seller and the dairy cattle must secure the debt. Liens on the cattle may be in any form which allows the bank to maintain a perfected security interest in the cattle under applicable state law.

(3) The exception for loans and extensions of credit secured by livestock is separate and apart from the exception for loans and extensions of credit created by the discount of paper for the purchase of dairy cattle. Therefore, a national bank may make loans or extensions of credit to one person secured by each type of collateral in an

amount equal to 10 percent of its capital and surplus (in addition to the 15 percent permitted under section 84(a)(1)).

(j) *Loans to Student Loan Marketing Association*. 12 U.S.C. 84(c)(10) provides:

Loans or extensions of credit to the Student Loan Marketing Association shall not be subject to any limitation based on capital and surplus.

§ 32.9 Transitional rules.

[Note: Old § 32.7 with significant changes.]

(a) Loans and extensions of credit which were in violation of 12 U.S.C. 84 prior to the relevant effective dates of this Part will be considered to remain in violation of section 84 and subject to actions under 12 U.S.C. 93 and 1818, and other appropriate laws after those dates until they are paid in full, regardless of whether the loans and extensions of credit conform to the rules established in this part. Renewals or extensions of such loans and extensions of credit will also be considered violations of law.

(b) A national bank which has outstanding loans and extensions of credit to a person in violation of section 84 as of the relevant effective dates of this part may make additional advances to such person after those dates if the additional advances are permitted under this part. The additional advances, however, may not be used directly or indirectly to repay any outstanding illegal loans and extensions of credit.

(c) Loans and extensions of credit which were made prior to the relevant effective dates of this part, but have become nonconforming solely because of a change in the lending limit rules applicable at the time the loan was made, will not be considered to be violations of law during the existing contract terms of such loans and extensions of credit. Renewals or extensions of such loans and extensions of credit which are not in conformance with the rules set forth in this part may be made on or after the effective dates of this part. However, all loans and extensions of credit made under such renewals or extensions must conform with the rules set forth in this Part no later than [insert a date two years after the effective date of the amendment].

(d) If a national bank, prior to June 24, 1988, entered into a legally binding written commitment to advance funds and such commitment was within the bank's lending limit when made, advances on or after June 24, 1988, under such commitment may be made notwithstanding the fact that such advances would cause the bank to exceed its lending limit.

§ 32.10 Substitute lending limit for banks with agricultural or oil and gas loans.

[Note: Old § 32.8 without change.]

(a) *Definitions*. For purposes of this section:

(1) *Agricultural loans* include loans or extensions of credit secured by farmland, loans to finance agricultural production and other loans to farmers reported in the bank's Report of Condition and Income (Call Report). The following are examples of such types of loans; for growing and storing of crops, breeding and marketing of livestock, financing fisheries, purchases of farm machinery and equipment, maintenance and operations of the farm, and discounted notes of farmers.

(2) *Oil and gas loans* include loans or extensions of credit to oil companies, petroleum refiners, and companies primarily engaged in the oil- and gas-related business, for example: operating oil and gas field properties, contract drilling, performing exploration services on a contract basis, performing oil and gas field services, manufacturing or leasing of oil field machinery and equipment, pipeline transportation of petroleum, natural gas transmission or distribution, and investing in oil and gas royalties or leases.

(3) *Special category loan charge-offs* mean agricultural or oil and gas loans charged-off during the period from January 1, 1986 through December 31, 1989, which have been or will be reported in a special memorandum item in the bank's Call Report in accordance with the Comptroller of the Currency's capital forbearance policy.

(b) A national bank which has special category loan charge-offs resulting in a reduction in its unimpaired capital and unimpaired surplus since December 31, 1985, may substitute a lending limit calculated under this section for the general limitation provided at 12 U.S.C. 84(a)(1), up to a maximum amount of 20 percent of unimpaired capital and unimpaired surplus, until January 1, 1995.

(c) The substitute lending limit in paragraph (b) of this section is the lesser of the following amounts:

(1) 15 percent of unimpaired capital and unimpaired surplus on December 31, 1985; or

(2) 15 percent of the total of:

(i) The difference between the sum of special category loan charge-offs and the sum of recoveries on those charge-offs; plus

(ii) Unimpaired capital and unimpaired surplus; or

(3) 20 percent of unimpaired capital and unimpaired surplus.

Interpretations

§ 32.101 Interest or discount on loans.

[Note: Old § 32.108 without change.]

The lending limit does not apply to the portion of a loan and extension of credit that represents accrued or discounted interest.

§ 32.102 Separate limitations for 12 U.S.C. 24 and 12 U.S.C. 84.

[Note: Old § 32.111 without change.]

The lending limit prescribed by 12 U.S.C. 84 is separate and distinct from the investment limit prescribed by 12 U.S.C. 24. Accordingly, a national bank may make loans and extensions of credit to one borrower up to the full amount permitted by 12 U.S.C. 84 and also hold eligible investment securities

of the same obligor up to the full amount permitted by 12 U.S.C. 24. In order for a security to be an "investment security" it must be eligible for investment by a national bank in accordance with the standards set forth in 12 CFR part 1.

Dated: October 18, 1989.

Robert L. Clarke,

Comptroller of the Currency.

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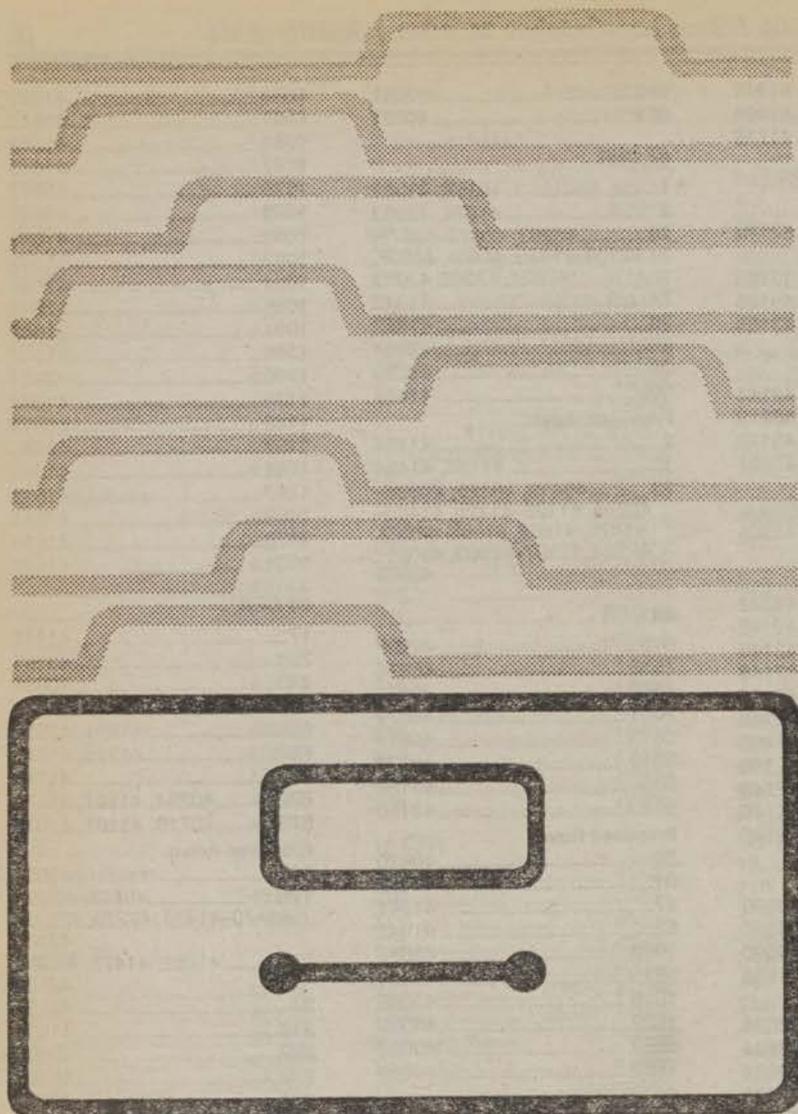
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