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# federal register

Wednesday
May 21, 1980

## Highlights



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# Highlights

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## MEETINGS ANNOUNCED IN THIS ISSUE



## HEARING

## CFR PARTS AFFECTED IN THIS ISSUE

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

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# Presidential Documents

Title 3—

## The President

**Proclamation 4760 of May 19, 1980**

## National Recreation and Parks Week

**By the President of the United States of America**

**A Proclamation**

From the beaches of Hawaii to the hills of New England, America's public recreation and park systems include outstanding features of our historical, cultural and natural heritage.

Magnificent canyons, splendid forests, the homes of great Americans—these are among the places preserved in Federal, State and local park systems. Recreation areas make everything from scuba diving to spelunking to plain old picnicking available to millions.

Among the Federal government's diverse holdings are national forests, grasslands, wildlife refuges, even the famous Gateway Arch in St. Louis. State park systems have similar treasures. Oregon's coast is dotted with State-run beaches that offer agate-hunting and surf-fishing, while New York's Adirondack Park—three times the size of Yellowstone and the country's largest State park—boasts more than 9000 square miles of wilderness within a day's drive of 55 million Americans.

The preservation of wilderness is one goal of the country's park systems. Accessibility is another. Parks and recreation areas all over the country offer a variety of programs, experiences and opportunities to all Americans, including the disabled, the disadvantaged, the elderly and the very young.

It is important that everyone be able to enjoy our landscape and history and to engage in healthy leisure activities—whether it's boating or fishing, walking or climbing. But to work well, to work for all of us and all our needs, the park systems need our help—our suggestions, our thoughts, our cooperation—especially in this time of energy conservation. These are contributions we can all make, this week and every week.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby proclaim June 1–7, 1980, as National Recreation and Parks Week. I call on all Americans to observe this occasion by giving serious thought to the ways they can better use and preserve the parks of this country.

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

[FR Doc. 80-15724
Filed 5-19-80; 2:59 pm]
Billing code 3195-01-M

# Presidential Documents

**Proclamation 4761 of May 19. 1980**

## Captive Nations Week. 1980

**By the President of the United States of America**

**A Proclamation**

Twenty-one years ago. by a joint resolution approved July 17 1959 (73 Stat. 212). the Eighty-Sixth Congress authorized and requested the President to proclaim the third week in July as Captive Nations Week

Throughout our history we Americans have held the deep conviction that liberty and independence are among mankind's inalienable rights Our ideal has remained that of our founding fathers governments derive their legitimacy from the consent of the peoples they govern Soviet aggression against Afghanistan is the latest stark reminder that this ideal is not universally respected

Mindful of our heritage and our principles. let us take this week to salute the men and women everywhere who are devoted to the cause of liberty and the pursuit of human rights in their native lands

NOW THEREFORE. I. JIMMY CARTER. President of the United States of America. do hereby designate the week beginning on July 13. 1980. as Captive Nations Week

I invite the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their dedication to the ideals that unite us and inspire others.

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

Jimmy Carter

[FR Doc. 80-15800
Filed 5-20-80; 11:45 am]
Billing code 3195-01-M

# Rules and Regulations

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 103

### Powers and Duties of Service Officers; Availability of Service Records; Revisions To Service Fee Schedule

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the fee schedule of the Immigration and Naturalization Service. The rule increases ten fees, reduces five; consolidates three fee descriptions into one and deletes the accompanying footnote, and adds one new fee.

These amendments to the fee schedule are necessary because recent studies of the processing costs of Service applications have increased in certain areas, and decreased in others. The Service is required by law to have its fee structure reflect, to the extent possible, the actual cost of providing the service, and the proposed increases and reductions in the involved fees are intended to comply with that requirement.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:**
For general information:
Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633–3048.
For specific information:
Ruth Homan, Chief, Finance Branch, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536. Telephone: (202) 633–3027.

**SUPPLEMENTARY INFORMATION:** In May of 1979, the Service undertook a review of its fee schedules as required under 31 U.S.C. 483a and OMB Circular A–25. Under that law, and the implementing OMB Circular, it is required that a benefit or service provided to or for any person by a Federal Agency be fair and equitable and be self-sustaining to the fullest extent possible.

The fee review study indicated that certain fees should be increased and others reduced. It was also decided to propose a new fee for requesting telecommunication service and to consolidate three fee descriptions into one. The fee changes, and the basis for them are summarized below.

(a) In order to simplify our regulations, we proposed to consolidate fee descriptions 6, 7 and 8 relating to applications for passport and visa waivers into one fee description. The fee itself is not changed. The footnote regarding communications costs is to be deleted.

(b) Form I–290B for filing appeal in a case over which the Board of Immigration Appeals does not have jurisdiction is increased from $35 to $50, based on an actual Service processing cost of $59.58. This fee is being administratively limited so it does not exceed the fee for filing an appeal in the U.S. Court of Appeals in force at the time the review was conducted, although the Judicial Conference raised that fee to $65.00 effective October 1, 1979. (Fee Description (F.D.) 9).

(c) Form I–129B, Petition to classify nonimmigrant as temporary worker or trainee is increased from $10 to $15, based on an actual Service cost of $14.69. (It is Service policy to round to the nearest $5 increment) (F.D. 10).

(d) Form I–129F for filing a petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act is increased from $10 to $15, based on an actual Service processing cost of $15.61. (F.D. 11).

(e) Form I–140 for filing petition to classify alien as third or sixth preference immigrant is increased from $20 to $25, based on actual Service processing cost of $23.14 (F.D. 16).

(f) Form I–17, Application for approval of schools for attendance by nonimmigrant students is reduced from $30 to $20, based on actual Service processing cost of $20.69. (F.D. 18).

(g) Form I–191, Application for discretionary relief under section 212(c) of the Act is reduced from $50 to $35 based on actual Service processing cost of $34.28. (F.D. 19).

(h) Form I–192, Applications for discretionary relief under section 212(d)(3) of the Act is increased from $10 to $15, based on actual Service processing costs of $13.47. (F.D. 20).

(i) Form I–612, Application for waiver of the foreign residence requirement pursuant to sec. 212(e) of the Act is reduced from $50 to $35, based on actual Service processing costs of $36.75. (F.D. 21).

(j) Form I–601 for filing application for waiver of ground of excludability under section 212(h) or (i) of the Act is reduced from $40 to $35, based on actual Service processing costs of $35.64. (F.D. 22).

(k) Fee for filing a motion to reopen or reconsider any decision under the immigration laws is increased from $25 to $50 based on Service processing cost of $57.43. This fee is being administratively limited so it does not exceed the fee for filing a notice of appeal in the U.S. Court of Appeals in force at the time the review was conducted, although the Judicial Conference raised that fee to $65.00 effective October 1, 1979. (F.D. 29).

(l) Form I–246, for filing an application for stay of deportation under 8 CFR 243.4 is increased from $25 to $70, based on a Service processing cost of $71.89. (F.D. 30).

(m) For filing request for temporary withholding of deportation under sec. 243(h) of the Act, the fee is increased from $25 to $50. The actual Service processing cost is $259.19; however, it has been determined that the lower proposed amount is more fair and equitable than a fee based on full recovery of costs. (F.D. 31).

(n) Form I–256A, Application for suspension of deportation under sec. 244 of the Act is increased from $65 to $75. The actual Service processing cost is $187.31; however, it has been determined that the lower proposed amount is more fair and equitable than a fee based on full recovery of costs. (F.D. 32).

(o) The fee for the certification of true copies is increased from $1 to $2, based on a Service processing cost of $1.91. (F.D. 43).

(p) The fee for attestation under seal is reduced from $3 to $2, based on Service processing cost of $1.96. (F.D. 44).

(q) A new fee is added for providing telegraphic communication service, generally for the purpose of providing expeditious notification of approved petitions to interested parties. There is no fee for this service now specified in the regulations. However, it costs the Service $11.55 to process such a request. The fee will be $10.

On October 1, 1979 the proposed revisions to the Service's fee schedule were published in the **Federal Register** (44 FR 56368) and public comments were invited for a period of 60 days. The Service received a total of three comments from the public. Two commenters opposed the fee of $50 for filing motions and recommended limiting such fee to the amount charged for filing the original application. Another commenter opposed charging any fee for an application for stay of deportation or an application for suspension of deportation and questioned the legality of such fee. The Service carefully reviewed the cost figures used to develop the revised fee schedule and is satisfied that the fees as proposed represent realistic and readily identifiable costs for each item. The Service's General Counsel has reviewed the legality of the Service fees to recover costs for processing applications for suspension of deportation and stay of deportation. It is Counsel's opinion that 31 U.S.C. 483a does contemplate recovery of the direct and indirect costs to the Service in processing such applications. Based upon the cost accounting review of the fee schedule, and General Counsel's legal opinion, the Service is publishing the fee schedule as originally proposed without any changes.

Accordingly, the following amendments are made in Chapter I to Title 8 of the Code of Federal Regulations:

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

In § 103.7(b)(1), delete the existing 6th, 7th, and 8th fee descriptions, replacing them with a new single description. Revise the existing 9th, 10th, 11th, 16th, 18th, 19th, 20th, 21st, 22nd, 29th, 30th, 31st, 32nd, 43rd and 44th fee descriptions and add a new 45th fee description. The new and revised fee descriptions reads as follows:

**§ 103.7 Fees.**

* * * * *

(b) *Amounts of fees*—(1) The following fees and charges are prescribed:

* * * * *

| | |
|---|---|
| For filing application for waiver of passport and/or visa | $5.00 |
| For filing appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. (The fee of $50 shall be charged whenever an appeal is filed by or on behalf of two or more aliens and all such aliens are covered by one decision) | 50.00 |
| For filing petition to classify nonimmigrant as temprary worker or trainee under section 214(c) of the Act | 15.00 |
| For filing petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act | 15.00 |
| * * * * * | |
| For filing petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act | 25.00 |
| * * * * * | |
| For filing application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof | 20.00 |
| For filing application for discretionary relief under section 212(c) of the Act | 35.00 |
| For filing application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government | 15.00 |
| For filing application for waiver of the foreign-residence requirement under section 212(e) of the Act | 35.00 |
| For filing application for waiver of ground of excludability under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those sections.) | 35.00 |
| * * * * * | |
| For filing a motion to reopen or reconsider any decision under the immigration laws (except on applications filed by students on Form I-538, exchange visitors on Form IAP-66, Cuban refugees on Form I-485A filed under the Act of November 2, 1966 or A-1, A-2 or G-4 nonimmigrants on Form I-566 for which no fee is chargeable). When the motion to reopen or reconsider is made concurrently with any application under the immigration laws, such application will be considered an integral part of the motion and only the fee for filing the motion or the fee for filing the application, whichever is greater, is payable. (The fee of $50 shall be charged whenever a motion is filed by or on behalf of two or more aliens and all such aliens are covered by one decision.) | 50.00 |
| For filing application for stay of deportation under Part 243 of this chapter | 70.00 |
| For filing application for temporary withholding of deportation under section 243(h) of the Act | 50.00 |
| For filing application for suspension of deportation under section 244 of the Act | 75.00 |
| * * * * * | |
| For certification of true copies, each | 2.00 |
| For attestation under soal | 2.00 |
| For filing request for telegraphic communication service | 10.00 |
| * * * * * | |

(Sec. 103; 8 U.S.C. 1103; 31 U.S.C. 483a; OMB Circular No. A-25)

These amendments are published pursuant to 5 U.S.C. 552 and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. The provisions of 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date have been complied with as described in the Supplementary Information section above.

*Effective date:* This final rule becomes effective on June 20, 1980.

Dated: May 15, 1980.

**David Crosland,**

*Acting Commissioner of Immigration and Naturalization.*

[FR Doc. 80-15568 Filed 5-20-80; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF ENERGY

### 10 CFR Part 205

### Administrative Procedures and Sanctions; 1980 Interpretations of the General Counsel

**AGENCY:** Department of Energy.

**ACTION:** Notice of interpretations.

**SUMMARY:** Attached are interpretations and responses to petitions for reconsideration issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period April 1, 1980 through May 9, 1980.

Appendix C identifies those requests for interpretation which have been dismissed during the same period.

**FOR FURTHER INFORMATION CONTACT:** Diane Stubbs, Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 5E052, Washington, D.C. 20585, (202) 252-2931.

**SUPPLEMENTARY INFORMATION:** Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the **Federal Register** in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation or ruling interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation or ruling (§ 205.85(e)). The interpretations published below are not subject to administrative appeal.

The responses to petitions for reconsideration published herein have been issued in accordance with the provisions set forth in 10 CFR 205.85(f). It should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to

insure that no inadvertent errors are made which affect the validity of the interpretation.

Issued in Washington, D.C., May 15, 1980.

**Merrill F. Hathaway, Jr.,**

*Acting Assistant General Counsel for Interpretations and Rulings.*

**Appendix A.—*Interpretations***

| No. | To | Date | Category | File No. |
|---|---|---|---|---|
| 1980-7. | Shell Oil Co ... | Apr. 22. | Price ..... | A-488 |
| 1980-8. | Baker Industries, Inc. | May 7 | Allocation ..... | A-424 |
| 1980-9. | State of New Mexico. | May 7 | Price ..... | A-496 |

**Interpretation 1980-7**

To: Shell Oil Company.

Regulation Interpreted: 10 CFR 212.78.

Code: GCW-PI—Part 212, Subpart D; Tertiary Incentive Crude Oil Program.

*Facts*

Shell Oil Company (Shell) is a crude oil producer as that term is defined in 10 CFR 212.31. As part of Shell's production activities, the firm currently utilizes enhanced oil recovery (EOR) techniques in order to maximize crude oil production and intends to engage in other projects using EOR techniques. According to Shell, some of the EOR techniques which it currently uses in ongoing projects and intends to use qualify for the tertiary incentive crude oil benefits set forth in 10 CFR 212.78. The tertiary incentive program went into effect on October 1, 1979, and permits the sale of crude oil after January 1, 1980, at uncontrolled prices to recover "recoupable allowed expenses" from qualified EOR projects. Shell presently has crude oil production selling at controlled prices which is available for sale at uncontrolled prices under the new program.

Shell has filed a request for interpretation seeking a clarification of § 212.78 with respect to its application to Shell's EOR projects. Shell inquires specifically as to whether a royalty owner that has no interest in an EOR project may be paid in reference to the uncontrolled price charged in sales of tertiary incentive crude oil. Shell expresses the opinion that such a royalty owner should be paid only in reference to the otherwise applicable ceiling price for this crude oil if the royalty owner is not a "qualified producer" in an EOR project.

*Issues*

1. Is the tertiary incentive crude oil program set forth in § 212.78 applicable to qualified EOR projects in operation prior to October 1, 1979?

2. On what basis are royalty interests in a property to be paid when crude oil produced from that property is sold as tertiary incentive crude oil and the owner of the royalty interest is not a "qualified producer?" [1]

*Interpretation*

For the reasons set forth below, the Department of Energy (DOE) has determined that the tertiary incentive crude oil program set forth in § 212.78 is applicable to qualified EOR projects in existence prior to October 1, 1979, but only permits recovery of "recoupable allowed expenses" incurred and paid after August 21, 1979. Only those producers that contribute to a project's initiation or expansion on or after October 1, 1979, may qualify to receive "tertiary incentive revenues" in an amount equal to, but not in excess of, the "recoupable allowed expenses" attributed to that "qualified producer." Royalty interest owners of properties for which tertiary incentive crude oil has been sold and who are not "qualified producers" are to be paid on the basis of the otherwise applicable ceiling price rather than the uncontrolled prices received in sales of the tertiary incentive crude oil. Royalty payments, therefore, are clearly outside the express regulatory definition of "tertiary incentive revenues."

The tertiary incentive crude oil program was initially proposed by DOE on March 22, 1979. 44 FR 18677 (March 29, 1979). The final rule adopting the amendments to § 212.78 was issued on August 21, 1979, and made effective October 1, 1979. 44 FR 51148 (August 30, 1979). The incentive crude oil program was designed exclusively to provide producers with "front-end" money to offset certain costs associated with projects using qualified EOR techniques. The incentive would derive from sales at uncontrolled rather than controlled prices of crude oil produced by or for the behalf of "qualified producers" from any property in which that producer owned an interest.

Section 212.78(a)(2) sets forth the price rule applicable to first sales of tertiary incentive crude oil as follows: "Notwithstanding the provisions of § 212.73(a), beginning January 1, 1980, first sales of crude oil by or for the behalf of a producer are not subject to the ceiling price limitations of this subpart, provided that the tertiary incentive revenue from such sales does not exceed the recoupable allowed expenses attributable to that producer."

A producer may qualify to charge market prices in sales of crude oil by or for its behalf after January 1, 1980, by qualifying to recover "recoupable allowed expenses" attributed to it. This qualification must be determined by reference to the definition of "qualified producer," and also by reference to the definitions of "allowed expense" and "recoupable allowed expenses."

"Qualified producer" is defined in § 212.78(c) as a producer that possesses an interest in the property on which the EOR project is located and contributes to the initiation or expansion of that project.[2]

In order to be qualified the producer must also be in compliance with the certification requirements of § 212.78(d)(2) or (e)(2). A producer may comply with these requirements in either of two ways. With respect to certain "self-certifiable EOR techniques," § 212.78(d)(2) provides that a producer shall be considered a "qualified producer" if it certifies to the Economic Regulatory Administration (ERA) that the project employs a particular one of those techniques enumerated in § 212.78(c). As to any other EOR technique, the producer must obtain an order from the ERA designating it as a "qualified producer" engaged in the initiation or expansion of a tertiary process that involves high levels of risk and cost, and the order must set forth the "allowed expenses" with respect to that project.

As defined in § 212.78(c) "allowed expense" includes seventy-five percent of environmental, engineering, and laboratory expenses, and seventy-five percent of an expense listed in the appendix to the regulation or in an order issued pursuant to § 212.78(e)(2) or (3), but may not be based on an expense incurred and paid prior to August 22, 1979.[3] Thus, this is the operative date for determining which expenses of an EOR project may be the basis for an "allowed expense."

The effective date of the program, October 1, 1979, marks the implementation of the tertiary incentive program and the date from which certification as a "qualified producer" may be obtained under § 212.78. Thus, on or after that date a producer may qualify by possessing an interest in the property on which the EOR project is located, by contributing to the initiation or expansion of the project, and by complying with the certification requirements. To contribute to an expansion, as that term is used in the definition of "qualified producer" in § 212.78(c), means to invest in any modification which is reasonably intended to result in a not insignificant increase in total production or rate of production in addition to the production that would otherwise result from efficient maintenance of the project.

---

[1] Shell also asks whether royalty payments, if required to be made on the basis of uncontrolled prices, are part of the total amount of "tertiary incentive revenues." This question is treated as included within the second issue.

[2] Section 212.78(c) provides: "Qualified producer" means, with respect to a particular project, a producer that possesses an interest in the property on which the project is located and contributes to the initiation or expansion of the project, provided that the producer has complied with the requirements of subsections (d)(2) or (e)(2) of this section, whichever is applicable.

[3] Section 212.78(c) provides: "Allowed expense" means seventy-five percent of an environmental expense or seventy-five percent of an engineering and laboratory expense or seventy-five percent of an expense listed either in the appendix to this section or in an order issued pursuant to either subsection (e)(2) or (e)(3) of this section; provided that, an allowed expense may not be based on an expense incurred and paid prior to August 22, 1979. No more than one million dollars or twenty-five percent, whichever is less, of the total amount of allowed expenses with respect to a particular project may be based on engineering and laboratory expenses. The allowed expenses of a particular project shall be attributable to the qualified producer(s) with respect to that project. Where there is more than one qualified producer, the qualified producers shall allocate these expenses among themselves in whatever manner they determine. With respect to a particular property, the total amount of allowed expenses may not exceed twenty million dollars.

This is consistent with the purpose of the tertiary incentive crude oil program to increase domestic crude oil production by the use of EOR techniques. *See* 44 FR 51148. Accordingly, while "allowed expenses" are not limited by the effective date of this regulation, a participant may not become a "qualified producer" prior to that date.

Based on the foregoing, it is clear that three dates are key elements in the tertiary incentive crude oil program. Section 212.78(a)(2) states that sales of incentive crude oil at uncontrolled prices may begin on January 1, 1980. The "tertiary incentive revenues" derived from these sales may only be used to recover "recoupable allowed expenses" not incurred and paid prior to August 22, 1979. The effective date of the amendments to § 212.78, October 1, 1979, is the base date to be used in determining which producers involved in qualified EOR projects are to be treated as "qualified producers" and are thereby entitled to the benefits of the tertiary incentive crude oil program. Only a producer that contributes to a project's initiation or expansion after September 30, 1979, may be a "qualified producer" for purposes of § 212.78, and once a producer qualifies, all of the "allowed expenses" that are also "recoupable allowed expenses," [4] as defined in § 212.78(c), are eligible to be recovered in accordance with § 212.78(a)(2). Thus, the "qualified producer" will not be limited solely to the "recoupable allowed expenses" associated with the initiation or the expansion.

Shell's request also focuses on the manner in which investment in a qualified EOR project may be recouped and asks for clarification as to whether § 212.78(a)(2) requires that royalty interests be paid based on the uncontrolled price received from sales of tertiary incentive crude oil. In addition, if royalty payments are to be based on uncontrolled prices, Shell asks whether they are included in "tertiary incentive revenues."

Section 212.78(a)(2) provides that the ceiling price does not apply to "first sales of crude oil by or for the behalf of a [qualified] producer" provided that "tertiary incentive revenue" from such sales does not exceed the "recoupable allowed expenses" attributable to that producer. Thus, the rule clearly provides that the producer must have "recoupable allowed expenses" attributed to it in order to be released from the applicable ceiling price. Under § 212.78(c) "recoupable allowed expenses" may be attributed only to "qualified producers." Accordingly, only the "qualified producer" may be paid in reference to the uncontrolled price for its interest in the tertiary incentive crude oil sold, provided that the "tertiary incentive revenues" received do not exceed the "recoupable allowed expenses" attributable to that producer. With respect to all other interests in the crude oil produced from the property concerned, the tertiary incentive program has no effect and the interest owners must be paid in reference to the otherwise applicable ceiling price in order to prevent the diversion of limited "tertiary incentive revenues" to royalty owners that have not invested in EOR projects.[5]

The ceiling price regulations represent DOE's exercise of authority to control prices of crude oil pursuant to the Emergency Petroleum Allocation Act of 1973, as amended, Pub. L. No. 93–159 (November 27, 1973) (EPAA), and these regulations are amended by the tertiary incentive program only to create an incentive for investment in EOR projects. The mechanism for that incentive is spelled out in the various provisions of § 212.78 which enable a "qualified producer" of controlled crude oil to increase its revenues from that oil in an amount equal to the "allowed expenses" of a qualified EOR project. Reflecting the intent that the incentive program should encourage investment, the DOE adopted a definition of "qualified producer" in § 212.78(c) which limits the term's application to a producer that contributes to the initiation or expansion of a qualified project.

The DOE has consistently expressed the purpose of these amendments to the price regulations to permit recoupment of front-end expenses to offset costs associated with EOR techniques to encourage their use. When the amendments were issued on August 21, 1979, the DOE stated in the preamble that its sole intent was "to offset certain costs associated with enhanced oil recovery techniques." 44 FR 51148. Previously, the notice of the proposed tertiary incentive program stated that the amendments were intended to allow a producer to charge uncontrolled prices for crude oil otherwise subject to a ceiling price in order to recoup certain EOR expenses from the resulting increased revenues. 44 FR 18677 (March 29, 1979).

In addition, at 44 FR 51148 the notice issuing the amendments included two supplements intended to facilitate the implementation of the program. In the "Appendix to Section 212.78" the DOE provides a detailed enumeration of "allowed expenses" of certain EOR techniques which might be recouped. The second supplement promulgated with the amendments is entitled "General Guidelines" on Tertiary Incremental and Incentive Programs" in which the DOE explicitly stated that the purpose of allowing the producer to charge the market price is to offset that producer's "recoupable allowed expenses." General Guidelines, §§ III(B) and IV(B). These guidelines also state that the ERA may issue orders permitting recoupment of allowed expenses of an EOR project based on a demonstration by the producer "that the offset of certain costs is necessary to make the use of that technique an attractive investment opportunity." General Guidelines, § IV(B).

Shell's request for interpretation is premised on the fact that the royalty interest owner has no interest in the EOR project is not a qualified producer. Therefore, by definition, the royalty owner has incurred no expenses to recoup and is not the object of the incentive program. Such royalty owners do not contribute to the initiation or expansion of an EOR project and in no way increase the output of such projects. The receipt of tertiary incentive revenues by such royalty owners would not foster any goal of the tertiary incentive crude oil program and would constitute a windfall profit to them. Based on the clear intent of the program to offer partial recoupment of certain actual expenses as an incentive to invest in EOR projects, § 212.78(a)(2) can only be interpreted to remove the ceiling price with respect to the "qualified producer." Accordingly, the amendments do not modify the ceiling with respect to such royalty interest owners, and they must continue to receive payment on the basis of the otherwise applicable ceiling price. It follows that royalty payments to royalty owners that are not "qualified producers" may not be paid on the basis of the uncontrolled price in sales of tertiary incentive crude oil and do not come within the definition of "tertiary incentive revenue."

Therefore, for the reasons set forth above the tertiary incentive crude oil program set forth in § 212.78 is applicable to projects which were in existence prior to October 1, 1979. However, only a producer that contributes to the initiation or expansion of a qualified EOR project on or after that date may be a "qualified producer." The amendments implementing the program permit only the "qualified producer" to be paid in reference to uncontrolled prices from sales of tertiary incentive crude oil, and royalty interest owners that are not "qualified producers" are to be paid their interest based on the otherwise applicable ceiling price rules for sales of crude oil.

Issued in Washington, D.C. on April 22, 1980.

Merrill F. Hathaway, Jr.,

*Acting Assistant General Counsel for Interpretations and Rulings.*

**Interpretation 1980–8**

To: Baker Industries, Inc.

Regulations Interpreted: 10 CFR 211.51, 211.102 and 211.103.

Code: GCW–AI—Allocation Levels, Definition of Emergency Services.

*Facts*

Baker Industries, Inc. (Baker), located in Parsippany, New Jersey, provides guard, burglar alarm, and fire detection and extinguishment services to public and private customers, including banks, Federal buildings, the military, and nuclear power installations. Baker's employees may maintain the equipment installed for this purpose and they may travel to the scene in Baker's company vehicles to investigate in the event an alarm is triggered. If an alarm is triggered or if investigation establishes that a break-in or fire has occurred, Baker's employees contact the appropriate police or fire officials. If the alarm proves false, the employees reset the alarm and service it as appropriate. If the system Baker installed is designed to extinguish a fire, the employee

[4] "Recoupable allowed expenses" are defined in § 212.78(c) as follows: "Recoupable allowed expenses" means, with respect to a particular producer, the allowed expenses that are attributable to that producer; provided that such expenses are incurred in arm's-length transactions and for fair market value and further provided that such expenses have been paid and reported pursuant to subsection (h) of this section.

[5] Section 212.78(c) provides: "Tertiary incentive revenue" means, in the case of first sales of crude oil pursuant to the provisions of subsection (a)(2), the excess of the market-clearing price over the othewise applicable ceiling price less any *ad valorem* or severance taxes attributable to this excess.

may manually release the extinguishing agent if investigation indicates that a fire has occurred but the agent has not been released. In addition, Baker provides for the transportation of cash and other commodities for such customers as the Federal Reserve System, retail businesses, and hospitals, in which time is of the essence and on which, according to Baker, human life and safety may depend. For example, Baker transports blood samples and X-ray film for hospitals. Over 65,000 customers are serviced by Baker's protective service organizations across the country.

Baker is a "bulk purchaser" of motor gasoline, as defined in 10 CFR 211.102, for some of the gasoline used in its vehicles.

Baker seeks an interpretation that under 10 CFR 211.103(b)(3) Baker is entitled to a first priority allocation for motor gasoline purchased in bulk on the grounds that Baker uses this gasoline for "emergency services," as defined in 10 CFR 211.51.[1]

*Issue*

Do the services performed by Baker, whether for governmental or private customers, qualify as "emergency services" as defined in 10 CFR 211.51, so that as a bulk purchaser Baker may receive a first priority allocation for motor gasoline used in these services under 10 CFR 211.103(b)(3)?

*Interpretation*

For the reasons set forth below, the Department of Energy (DOE) has determined that under the Mandatory Petroleum Allocation Regulations, Baker is not entitled to a first priority allocation for any of the motor gasoline consumed in its activities, because those activities do not qualify as "emergency services." 10 CFR 211.51, 211.103(b)(3). However, as an "end-user" that is a bulk purchaser of motor gasoline, Baker is entitled to a second priority allocation, because its consumption of motor gasoline constitutes a "commercial use." 10 CFR 211.51, 211.102, 211.103(c)(2).

Section 211.103 provides in pertinent part:

(a) *General.* The allocation levels listed in this section only apply to allocations made by suppliers to end-users which are bulk purchasers and to wholesale purchaser-consumers. Suppliers shall allocate to all purchasers to which the allocation levels apply in accordance with the provisions of § 211.10. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline under an allocation level not subject to an allocation fraction shall receive first priority and be supplied sufficient amounts to meet 100 percent of their allocation requirements. End-users which are bulk purchasers and wholesale purchaser-consumers which are entitled to purchase motor gasoline for all uses under an allocation level subject to reduction by application of an allocation fraction shall receive second priority. . . .

(b) *Allocation levels not subject to an allocation fraction.* One hundred (100) percent of base period use for the following uses:

* * * * *

(3) Emergency services;

* * * * *

(c) *Allocation levels subject to an allocation fraction.* One hundred (100) percent of base period use (as reduced by application of the allocation fraction) for the following uses:

* * * * *

(2) Commercial use;

* * * * *

Section 211.51 defines "commercial use" and "emergency services" as follows:

"Commercial use" means usage by those purchasers engaged primarily in the sale of goods or services and for uses other than those involving industrial activities and electrical generation.

"Emergency services" means law enforcement, fire fighting, and emergency medical services.

Baker consumes motor gasoline in a "commercial use," not in "emergency services," entitling it as a bulk purchaser only to the second priority allocation for motor gasoline set forth in § 211.103(c)(2), not to the first priority allocation in § 211.103(b)(3).[2] By its own description, Baker uses motor gasoline in selling goods and services to its clients, falling exactly within the "commercial use" definition in § 211.51. Baker's use of gasoline does not fit within the "emergency services" definition in § 211.51, since the gasoline is not used in "law enforcement, fire fighting, and emergency medical services." Baker does not enforce the law, which is the responsibility of the public police officials employed by the governments in the jurisdictions where Baker conducts its business. For a fee, Baker's private guard and burglar alarm services assist citizens in doing what they ordinarily do for themselves, protecting the safety of their persons and the security of their property. Similarly, Baker does not consume motor gasoline in fighting fires, which is the responsibility of fire fighting officials and companies[3] in the jurisdictions in which Baker conducts its business. Baker merely sells fire alarm and extinguishment services to clients to minimize the damage that may befall their property should a break-in or fire occur. Baker is here also merely assisting its clients in doing what they ordinarily do themselves, taking steps short of "fire fighting" to prevent or minimize damage to their property from fires. Baker acknowledges that only police officials and fire fighting companies are responsible for law enforcement and fighting fires by contacting them whenever a break-in or fire occurs. Baker undertakes to install and maintain automatic alarm and extinguishment equipment and only responds to a triggered alarm in order to investigate and to service the system if necessary. Consumption of motor gasoline in these general activities cannot entitle a bulk purchaser to a first priority allocation under the regulations. Baker's consumption of motor gasoline in transporting cash and other commodities for its clients, including blood samples and X-ray film for hospitals, also does not constitute a use in "emergency [medical] services," which pertains only to the activities of public or private firms that directly provide emergency medical services to patients, not to the many businesses, including Baker, that sell a useful service and/or a product to clients.

For the reasons set forth above, we have determined that under DOE's Mandatory Petroleum Allocation Regulations, Baker consumes motor gasoline in a "commercial use," entitling it as a bulk purchaser to the second priority allocation for motor gasoline, as set forth in § 211.103(c)(2), not to the first priority allocation in § 211.103(b)(3) for "emergency services."

Issued in Washington, D. C., on May 7, 1980.

Merrill F. Hathaway, Jr.,

*Acting Assistant General Counsel for Interpretations and Rulings.*

**Interpretation 1980–9**

To: Commissioner of Public Lands, State of New Mexico.

Regulations Interpreted: 10 CFR 205.202, 210.62 (a) and (c); Part 212, Subpart D.

Code: GCW–AI–PI—Part 212, Subpart D: Normal Business Practices.

*Facts*

Under a trust created by the United States Congress, the Commissioner of Public Lands of the New Mexico State Land Office (Commissioner) acts as Trustee of the State of New Mexico. The trust consists of state-owned trust land totaling about 13 million acres, including the surface and mineral estates. The Commissioner is authorized to lease the land for mineral exploration and development.

The Commissioner is authorized to take in-kind and sell the State's royalty share of crude oil produced on State leases. N.M. Stat. Ann. §§ 19–10–3, 19–10–61 and 19–14–1. Accordingly, the State of New Mexico is a "supplier" [1] of crude oil subject to the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, Subpart C, and a "producer" [2] of crude oil subject to the

[1] This Interpretation does not address Baker's questions about its status under potential rationing plans for motor gasoline as no such regulations are currently in effect.

[2] *Cf., e.g., National Soft Drink Association,* Interpretation 1979–24, 44 FR 72098 (December 13, 1979).

[3] To qualify for a first priority allocation level for consumption of motor gasoline in "emergency services," based on "fire fighting," a firm that is a "bulk purchaser" need not be part of a governmental unit, but it must have the responsibility and perform the functions traditionally associated with a fire fighting company.

[1] Supplier is defined in 10 CFR 211.51 as follows: "Supplier" means any firm or any part or subsidiary of any firm other than the Department of Defense which presently, during the base period, or during any period between the base period and the present supplies, sells, transfers or otherwise furnishes (as by consignment) any allocated product or crude oil to wholesale purchasers or end-users, including, but not limited to, refiners, natural gas processing plants or fractionating plants, importers, resellers, jobbers and retailers.

[2] "Producer" is defined in 10 CFR 212.31 as follows: "Producer" means a firm or that part of a firm which produces crude oil or natural gas, or any firm which owns crude oil or natural gas when it is produced.

Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart D. On July 30, 1971, the Commissioner and the Famariss Oil and Refining Company (Famariss) entered into an agreement whereby Famariss purchased all of the State's in-kind royalty share of crude oil produced on the State's leases. Southern Union Refining Company (Southern Union), a small independent refiner, succeeded to the rights of Famariss when it acquired all of its outstanding stock on August 21, 1975. This supply agreement was extended until July 30, 1981.[3]

The administrative regulations issued by the Commissioner of Public Lands and the Oil and Gas Accounting Commission of the New Mexico Department of Taxation and Income are incorporated by reference into the State's agreement with Southern Union to sell the State's royalty oil to Southern Union. N.M. Stat. Ann. §§ 7–28–1 and 19–10–56. The current regulations, in effect on May 15, 1973, provide that Southern Union may make payment for royalty crude oil at any time up to 65 days from the end of the calendar month for which payment is "due." The lease agreement between the Commissioner and Southern Union provides that payment is "due" on the twentieth day of each month for crude oil delivered in the preceding month. Thus, Southern Union may not be required to make payment for the royalty crude oil until more than three months after its delivery. There is no provision for Southern Union to pay interest charges to the Commissioner under this long-established practice.

The Commissioner would like to enact a change in the administrative regulations to shorten the period of time between the delivery of royalty crude oil and the receipt of payment. The proposed change would require full payment for the royalty crude oil no later than 20 days after the end of the month when delivery is made. If Southern Union fails to make payment on the twentieth day, the Commissioner proposes to charge interest on the amount due for each day past the twentieth day. The Commissioner requests an interpretation confirming the legality of these proposed actions under Department of Energy (DOE) regulations. Southern Union asserts that these actions would violate the normal business practice rule, 10 CFR 210.62(a). The Commissioner has responded that this rule cannot abridge the inherent and continuing authority under State law to change the payment terms applicable to all sales of royalty crude oil.

*Issue*

Would the Commissioner violate DOE regulations if the proposed changes in credit terms and payment schedules for New Mexico royalty crude oil were enacted and implemented under State law?

[3] The availability of New Mexico's royalty crude oil under this supply agreement was a principal inducement for Famariss to build a 36,100 barrel/day refinery in Lovington, New Mexico. *See generally Famariss Oil and Refinery Co., Navajo Refining Co.*, 1 FEA ¶ 20,629 (July 22, 1974).

*Interpretation*

If the Commissioner were to require that any purchaser of New Mexico royalty crude oil make payment in full no later than 20 days from the end of the month when delivery is made and pay interest on any amount unpaid after that date, the Commissioner would be imposing more stringent credit terms and payment schedules than those in effect on May 15, 1973, for the sale of that crude oil, in direct violation of DOE regulations including 10 CFR 210.62(a).

The General Allocation and Price Rules, set forth at 10 CFR Part 210 and adopted on January 14, 1974, 39 FR 1924 (January 15, 1974), were intended to set forth the provisions applicable to both the Mandatory Petroleum Allocation Regulations (10 CFR Part 211) and the Mandatory Petroleum Price Regulations (10 CFR Part 212). The allocation and price regulations were adopted to implement the statutory mandate of Section 4(a) of the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, Pub. L. No. 93–159 (November 27, 1973).[4]

Section 210.62(a) provides in relevant part: [5]

> Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product, and no supplier may modify any normal business practice so as to result in the circumvention of any provision of this chapter. . . . Credit terms other than those associated with seasonal credit programs are included as a part of the May 15, 1973 price charged to a class of purchaser under Part 212 of this Chapter. Nothing in this paragraph shall be construed to require suppliers to sell to purchasers who do not arrange proper credit or payment for allocated products, as customarily associated with that class of purchaser . . . on May 15, 1973. . . . *However, no supplier may require or impose more stringent credit terms or payment schedules on purchasers than those in effect for that class of purchaser . . . on May 15, 1973. . . .* (Emphasis added.)

Under the facts presented, the proposed changes in the administrative regulations governing payment terms for the sale of New Mexico royalty crude oil would impose more stringent credit terms and payment schedules than those in effect on May 15, 1973, and thus violate § 210.62(a). On May 15, 1973 the purchaser of New Mexico royalty crude oil was permitted to defer payment for approximately three months after delivery. Now the Commissioner would require payment within 20 days from the end of the month of delivery and assess interest charges if payment is "late." The Commissioner's proposed changes may also constitute a means to obtain a price for New Mexico's royalty crude oil that is higher than permitted by the regulations applicable to sales of that crude oil under Part 212, Subpart D, and may circumvent those regulations.[6] 10 CRF 205.202, 210.62(c). DOE and its predecessors have frequently stated that imposing more stringent credit terms and payment schedules for the sale of products subject to allocation and price controls is a violation of DOE regulations. *E.g.*, Ruling 1974–10, 39 FR 15140 (May 1, 1974); *Oil Transit Corp.*, Interpretation 1977–35, 42 FR 54269 (October 5, 1977); *Exxon Company, U.S.A.*, 2 DOE ¶ 80,150 (October 28, 1978); *Crystal Oil Co.*, 1 FEA ¶ 20,161 (October 8, 1974).

The Commissioner asserts as a justification for the proposed actions that the State is now exposed to greater financial risks because of the interval between delivery of royalty crude oil and receipt of payment and that the Commissioner possesses the necessary authority to make these changes under State law. Section § 210.62(a) does not contemplate the imposition of more stringent credit terms or payment schedules than those in existence in May 15, 1973, based upon a change in economic or financial conditions.[7] *E.g., Crystal Oil Co., supra.* That the Commissioner may have had the authority on May 15, 1973, to impose more stringent credit terms and payment schedules on the sales of New Mexico's royalty crude oil than those previously in effect does not relieve the Commissioner of the present obligation to fulfill the requirements of DOE regulations and Federal law, which have expressly limited a producer's right under State law to impose more stringent credit terms or payment schedules than those actually in effect on May 15, 1973, for sale of the crude oil. Any State regulation in conflict with DOE's regulations is preempted by Federal law and of no effect. EPAA, § 6(b); *The Public Service Commission of Delaware*, Interpretation 1978–4, 43 FR 12851 (March 28, 1978).

Based on the factors discussed above, we have concluded that the Commissioner's proposed change in the administrative regulations governing credit terms and payment schedules for sale of the State's royalty crude oil would impose more stringent credit terms and payment schedules than those in effect on May 15, 1973, for the sale of that crude oil, in violation of DOE regulations, including § 210.62(a).

[4] 15 U.S.C. 751 *et seq.* (1976).

[5] In *Marathon Oil Co.* v. *FEA*, 547 F.2d 1140 (TECA 1976), the authority of the Federal Energy Administration (FEA) and its successor, the DOE, to regulate credit terms incident to the Mandatory Petroleum Price Regulations was upheld.

[6] The Commissioner's proposed changes would not constitute a means to obtain a price higher than is permitted by the price regulations if the royalty crude oil being sold were stripper well crude oil. Such changes, even if adopted only in reference to stripper well crude oil, would still violate the other DOE regulations cited herein, since that crude oil is allocated under 10 CFR Part 211, Subpart C, and only exempt from ceiling prices under 10 CFR 212.54.

[7] If the application of DOE regulations as interpreted results in a hardship, the Commissioner may apply for exception relief to DOE's Office of Hearings and Appeals under 10 CFR Part 205, Subpart D.

Issued in Washington, D.C., on May 7, 1980.

Merrill F. Hathaway, Jr.,

*Acting Assistant General Counsel for Interpretations and Rulings.*

**Appendix B.**—*Responses to Petitions for Reconsideration*

| Petitioner | Interpretation | Date of response |
|---|---|---|
| Standard Oil Co. (Indiana). | The Lido Co. of New England, Inc., 1979–25, 44 FR 72100 (Dec. 13, 1979). | Apr. 16. |
| AMF Inc. | AMF Inc. Employees Cooperative, 1980–2, 45 FR 13045 (Feb. 28, 1980). | May 2. |

**Petition for Reconsideration**

Interpretation: The Lido Co. of New England, Inc.

Petitioner: Standard Oil Co. (Indiana).

Date: April 16.

This responds to your petition submitted on behalf of American Oil Company (Amoco), seeking reconsideration of *The Lido Company of New England, Inc.*, Interpretation 1979–25, 44 FR 72100 (December 13, 1979). For the reasons discussed below, we have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In such cases, the burden is on the petitioner to demonstrate that the Interpretation was erroneous in fact or in law, or that the result reached in the Interpretation was arbitrary or capricious. 10 CFR 205.85(f).

Interpretation 1979–25 concluded that Lido, a branded independent marketer of motor gasoline, was entitled to designate Amoco as its sole base period supplier pursuant to 10 CFR 211.105(d), because Lido had base period suppliers other than Amoco, Lido's branded supplier, on February 28, 1979.

Your petition for reconsideration raises a number of arguments to support your view that Interpretation 1979–25 is erroneous. You contend that the Interpretation is contrary to the regulatory purpose of § 211.105(d). Since the language of § 211.105(d) on its face is inconsistent with your analysis and the administrative history of the regulation does not support your position, we cannot agree with your view that § 211.105(d) was intended to apply solely to an independent marketer that changed brands. We also disagree that Interpretation 1979–25 is contrary to the policy expressed in Federal and State trademark statutes. The DOE has made no determination as to whether Lido has violated its contract with Amoco or has violated Federal or State trademark laws. Such questions cannot be resolved by the DOE.

Inasmuch as Amoco has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Amoco's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

**Petition for Reconsideration**

Interpretation: AMF Incorporated Employees' Cooperative.

Petitioner: AMF Inc.

Date: May 2, 1980.

This responds to your petition for reconsideration of *AMF Incorporated Employees Cooperative*, Interpretation 1980–2, 45 FR 13045 (February 28, 1980). For the reasons discussed below, we have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In such cases the burden is on the petitioner to demonstrate that the Interpretation was erroneous in fact or in law, or that the result reached in the Interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3).

Interpretation 1980–2 determined that under the proposed motor gasoline distribution plan the Cooperative would serve as a "wholesale purchaser-reseller" and a "supplier" as defined in 10 CFR 211.51 and would therefore be subject to the normal business practices rule, 10 CFR 210.62. The Interpretation further determined that distribution by the Cooperative of motor gasoline exclusively to its membership would constitute discrimination in violation of § 210.62(b).

Your petition for reconsideration raises several arguments to support your claim that Interpretation 1980–2 is erroneous. The first is that DOE reached an incorrect conclusion of fact in finding that an arms-length sale of motor gasoline by the Cooperative to its members would occur. The Interpretation did conclude as a matter of law that an arms-length relationship would exist between the Cooperative and its members, based on the facts AMF presented. AMF did not and could not demonstrate that a member's freedom to purchase motor gasoline on the best terms available and to consume that gasoline for whatever purpose he privately chooses would be in any way lawfully restricted by his participation in the Cooperative.

The Cooperative claims that the Interpretation prohibits "a group of individuals from banding together to do selectively and efficiently what each is entitled to do individually, namely purchase gas for his individual consumption." The result of Interpretation 1980–2 in no way prevents Cooperative members from purchasing motor gasoline on the same basis as any other member of the public, but the Cooperative's attempt to obtain preferential treatment for its members is contrary to the DOE's allocation regulations.

You further argue in your petition that DOE erred in finding that the Cooperative and its members are not part of the same firm. Under DOE's regulations as clarified in *Semarck California, Inc. and LIG California Inc.*, Interpretation 1979–16, 44 FR 50589 (August 29, 1979) and *Monsanto Company*, Interpretation 1979–22, 44 FR 60271 (October 19, 1979), common control must extend to all segments of a firm. Inasmuch as under the proposed plan the Cooperative would exercise no control whatever over the consumption of gasoline by the members, Interpretation 1980–2 correctly concluded that the Cooperative and its members are not part of the same firm.

Finally, you allege in your petition that, since the Cooperative is not a "supplier", it is not subject to 10 CFR 210.62, the normal business practices rule. We cannot agree that § 210.62 does not apply to the Cooperative, which transfers motor gasoline to its members. This transfer in itself makes the Cooperative a "supplier" under the Mandatory Price and Allocation Regulations. As a supplier, it must then make gasoline available to all potential purchasers in a non-discriminatory manner.

Inasmuch as the AMF Incorporated Employees' Cooperative has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of the Cooperative's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

**Appendix C.**—*Cases Dismissed*

| File No. | Requester | Category | Date dismissed |
|---|---|---|---|
| A–379 | Murphy Oil Co. | Price | Apr. 10. |
| A–511 | Vulcan Asphalt Refining Co. | Allocation | Apr. 14. |
| A–494 | Paul Smith Co. | Price | Apr. 26. |
| A–523 | The Alpetco Co. | Allocation | Apr. 28. |
| A–486 | CLEMCO | Price | May 6. |

[FR Doc. 80–15618 Filed 5–20–80; 8:45 am]

BILLING CODE 6450–01–M

## DEPARTMENT OF COMMERCE

## International Trade Administration

## 15 CFR Part 385

## Revision of Foreign Policy Controls on Exports to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen

**AGENCY:** Office of Export Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Interim rule.

**SUMMARY:** The Export Administration Regulations are revised to increase the scope of foreign policy review for certain applications to export goods and technology to countries supporting international terrorism. Foreign policy controls are extended to all exports of goods or technology that are already subject to national security controls to Syria, Iraq, Libya, and the People's Democratic Republic of Yemen if the export is to a military end-user or for a military end use and is valued at $7

million or more. Pursuant to section 6(i) of the Export Administration Act of 1979, such transactions will be reported to appropriate Committees of the Congress. These controls are in addition to foreign policy controls imposed in January (45 FR 1595, January 8, 1980).

**DATES:** These regulatory changes are effective 10AM EST May 16, 1980. Comments must be received by the Department of Commerce by July 16, 1980.

**ADDRESS:** Written comments (six copies when possible) should be sent to: Richard J. Isadore, Acting Director, U.S. Department of Commerce, Room 1617M, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Mr. Archie Andrews, Director, Exporters' Service Staff, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4811).

**SUPPLEMENTAL INFORMATION:**

**Regulatory Changes**

As required by section 6 of the Export Administration Act of 1979, the President determined on December 29, 1979, that certain export controls should be continued for foreign policy purposes. Consistent with the criteria contained in section 6(i), these controls included restrictions on crime control equipment (including military vehicles) and certain aircraft and helicopters destined for four countries identified by the Secretary of State as having repeatedly provided support for acts of international terrorism. Countries so identified were Libya, Iraq, the People's Democratic Republic of Yemen, and Syria.

A further review has indicated a need to expand the scope of our license review. Consequently, exports of goods or technology that are already subject to national security controls to these four countries are also made subject to foreign policy controls if the export is to a military end-user or for a military end-use and is valued at $7 million or more. In the case of the use abroad of U.S. origin parts, components, or materials the $7 million value applies to the U.S. content.

This action is taken under section 6 of the Export Administration Act of 1979 to futher significantly the foreign policy of the United States. It is based on a recommendation from the Acting Secretary of State. The Department of Commerce has consulted with appropriate persons in industry and the Congress, and has considered the criteria set forth in section 6(b) of the Act. Pursuant to section 4(c), it has been determined that, notwithstanding foreign availability, absence of these controls would be detrimental to the foreign policy of the United States. In addition, pursuant to section 6(d) and 3(8) it has been determined that reasonable efforts have been made to achieve the purposes of these controls through negotiation or other alternative means.

Consistent with the provisions of section 6(i), such transactions will be reported to appropriate Committees of the Congress.

**Rulemaking Requirements**

Section 13(a) of the Export Administration Act of 1979 (Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 et seq.) (the "Act") exempts regulations promulgated under the Act from the public participation in rulemaking procedures of the Administrative Procedure Act. Because they relate to a foreign affairs function of the United States, it has also been determined that these regulations are not subject to Department of Commerce Administrative Order 218–7 (44 FR 2082, January 9, 1979) and the Industry and Trade Administration Administrative Instruction 1–6 (44 FR 2093, January 9, 1979) which implement Executive Order 12044 (43 FR 12661, March 23, 1978), "Improving Government Regulations."

However, because of the importance of the issues raised by these regulations and the intent of Congress set forth in section 13(b) of the Act, these regulations are issued in interim form and comments will be considered in developing final regulations. The period for submission of comments will close at noon EST July 16, 1980. No comments received after the close of the comment period will be accepted or considered by the Department in the development of the final regulations. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason, will not be accepted. Such comments and materials will be returned to the submitter and will not be considered in the development of the final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, comments in written form are preferred. If oral comments are received, they must be followed by written memoranda which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the International Trade Administration, Freedom of Information Records Inspection Facility, Room 3012, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

Accordingly, § 385.4(d) of the Export Administration Regulations (15 CFR Part 385) is revised to read as follows:

**§ 385.4 Country group V.**

* * * * *

(d) Libya, Iraq, People's Democratic Republic of Yemen, and Syria. As authorized by section 6 of the Export Administration Act of 1979, a validated license is required for foreign policy purposes for the export to Libya, Iraq, People's Democratic Republic of Yemen, and Syria (countries that have repeatedly provided support for acts of international terrorism) of crime control and detection equipment (see § 376.14); of aircraft and helicopters as defined in CCL entries 1460A(a), 1460A(b) if valued at $3 million each or more, and 5460F; and of goods or technology subject to national security controls if the export is destined to military end users or for military end uses and is valued at $7 million or more. In the case of the use abroad of U.S. origin parts, components, or materials (see § 376.12) the dollar limits set forth above apply to the U.S. content. Applications for validated export licenses will be considered on a case-by-case basis to determine whether issuance of a license would be consistent with the provisions of section 6 and the applicable policies set forth in section 3 of the Act (exports subject to national security controls also must meet the national security provisions of the Act). Pursuant to the requirements in subsection 6(i) of the Act, before any application valued at $7 million or more is approved, the appropriate Congressional Committees will be notified.

(Sections 4, 6, 13, 15, Pub. L. 96–72, to be codified at 50 U.S.C. App. 2401 *et seq.*; Executive Order No. 12214 (45 FR 29783, May

6, 1980); Department Organization Order 10–3 (45 FR 6141, January 25, 1980); Department Organization Order 41–1 (45 FR 11862, February 22, 1980))

Dated: May 15, 1980.

Eric L. Hirschhorn,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 80–15455 Filed 5–16–80; 9:45 am]

BILLING CODE: 3510–25–M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34–16806]

### Exemption From Section 16 of the Securities Exchange Act of 1934 for the Acquisition of Equity Securities Pursuant to Dividend Reinvestment Plans

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting a rule which exempts from the reporting and liability provisions of Section 16 of the Securities Exchange Act of 1934 the acquisition of equity securities by officers, directors, and ten percent beneficial owners pursuant to dividend reinvestment plans. The new Rule 16a–11 will enable statutory insiders to participate in such dividend reinvestment plans on the same basis as other shareholders.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Prior to the effective date of the rule contact Mary A. Binno at (202) 272–2604; thereafter contact William E. Toomey at (202) 272–2573.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today adopted Rule 16a–11 (17 CFR 240.16a–11) under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. (1976 and supp. I 1977)] which exempts from the reporting and liability provisions of Section 16 of the Exchange Act the acquisition of equity securities by officers, directors, and ten percent beneficial owners pursuant to dividend reinvestment plans.

Proposed Rule 16a–11 was published for comment in Securities Exchange Act Release No. 34–16221 (September 26, 1979) (44 FR 56953). The proposed rule was the result of a petition by American Telephone and Telegraph Company pursuant to Section 4(a) of the Commission's Rules of Practice (17 CFR 201.4(a)) requesting an amendment to the exemptive rules promulgated under Section 16(a) of the Exchange Act which would permit officers, directors, and other persons subject to the short swing profit provisions of Section 16(a) to reinvest dividends and/or interest pursuant to a dividend reinvestment plan. The adopted rule has modified the proposed rule to indicate that purchases made as a result of cash contributions over and above the amount of dividends reinvested would not be exempted. Thus the final rule exempts from Section 16 under the Exchange Act only those acquisitions of equity securities resulting from the reinvestment of dividends and/or interest.

#### Background

Under Section 4(a) of the Commission's Rules of Practice, American Telephone and Telegraph Company ("AT&T"), in July, 1978, petitioned the Commission to adopt a rule providing for the exemption from Section 16 under the Exchange Act of equity securities acquired by officers, directors and ten percent beneficial owners through dividend reinvestment plans.[1] AT&T was concerned that its officers, directors, and ten percent beneficial owners could incur liability under Section 16 of the Act for imputed short-term trading profits if these persons participated in the company's dividend reinvestment plan and they sold any securities within a six month period before or after. Consequently, proposed Rule 16a–11 was published for comment in Release No. 34–16221 and the Commission received 110 letters of comment.

The unanimous opinion of the commentators was favorable. The commentators supported adoption of the rule because in their opinion there would be no opportunity for abuse of Section 16; it would promote equity participation in the company by officers, directors, and ten percent beneficial owners; and it would provide these persons with the same rights as other participants in the plan. A number of commentators questioned whether cash contributions were covered by the proposed rule. In response thereto, the Commission has revised the proposed rule to indicate that such contributions would not be covered.

#### Discussion

In recent years, many corporations have instituted dividend reinvestment plans for their shareholders. As was described in Release No. 34–16221, the plans are often administered by banks and, although differences may exist in administrative detail, the plans are substantively comparable.

Typically, dividend reinvestment plans contain the following features:

(a) All stockholders of record are eligible to participate;

(b) Cash dividends on a participant's shares are automatically reinvested in additional shares on a quarterly or semi-annual basis;

(c) The price of additional shares purchased for participants may be discounted as an incentive for participation;

(d) A participant may withdraw from the plan at any time;

(e) No brokerage commission or service fee is charged to the participant.

Directors, officers, and ten percent beneficial owners are often confronted with the dilemna of being "locked" into such plans because as long as they acquire shares under the plan on a quarterly or semi-annual basis they can never sell any shares of the company stock (whether acquired under the plan or otherwise) without incurring liability for imputed short-term trading profits under Section 16(b) of the Exchange Act.[2] That section provides that any profit resulting from a purchase and a sale or a sale and a purchase by any officer, director, or ten percent beneficial owner within a six month period shall inure to the benefit of the issuer. The imputed short-term trading profit could be realized in two ways: as a result of the purchase at a discount below prevailing market prices or through market fluctuations which could potentially occur within six months before or after the sale.

Courts have interpreted Section 16(b) so that a sale price must be matched against the lowest purchase price occurring within six months before or after the date in order to determine the recoverable profit.[3] Consequently, unless the market price is absolutely stable for a period of twelve months, or the director or officer sells at a time when the market price is lower than any

[1] Panhandle Eastern Pipeline Company filed a similar request.

[2] Section 16(b) provides in pertinent part: "For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer, by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months."

[3] See *Smolowe* v. *Delendo*, 136 F. 2d 231, 239 (2d Cir. 1943)

acquisition price during the twelve month period, in all likelihood at least one dividend reinvestment will exist based on a market price lower than that price at which the director or officer sold. Thus, officers and directors who sell securities acquired through a dividend reinvestment plan at a profit must tender to the issuer the difference between the market price at the time of sale and the acquisition price, which would include the discount. Proposed Rule 16a–11 was intended to alleviate such problems. After reviewing the comment letters received in connection with the proposed rule the Commission has determined to adopt Rule 16a–11.

Rule 16a–11 exempts acquisitions of securities under dividend reinvestment plans purchased only through the reinvestment of dividends and/or interest from the reporting requirements of Section 16(a) [4] and the liability provisions of Section 16(b). Securities acquired through individual cash contributions which may be permitted under the plan are not covered by the rule and must therefore be reported under Section 16(a) and would be subject to Section 16(b)'s liability provisions. In addition, the final rule is restricted to dividend reinvestment plans whose terms are available to all security holders in the class for which the dividends or interest are being paid.

**Certain Findings**

As required by Section 23(a)(2) of the Exchange Act, the Commission has specifically considered the impact which the new rule would have on competition and has concluded that it imposes no significant burden on competition. In any event, the Commission has determined that any possible burden will be outweighed by, and is necessary and appropriate to achieve, the benefit of this rule to investors and registrants.

[4] Section 16(a) reads in pertinent part: "Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national security exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission . . . of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission . . . a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

**Text of Amendment**

Accordingly, 17 CFR Part 240 is amended by adding a new § 240.16a–11 to read as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

**§ 240.16a–11 Exemption for acquisitions under dividend reinvestment plans.**

Any acquisition of securities resulting from reinvestment of dividends or interest shall be exempt from section 16 if it is made pursuant to a plan providing for the regular reinvestment in such securities of dividends payable thereon or of dividends or interest payable on other securities of the same issuer, *Provided*, That the plan is made available on the same terms to all holders of securities of the class on which the reinvested dividends or interest are being paid.

(Secs. 16, 23(a), 48 Stat. 896, 901; 15 U.S.C. 78p, 78w(a))

The Commission is adopting this rule pursuant to the Securities Exchange Act of 1934, particularly sections 16 and 23(a).

By the Commission.

**Shirley Hollis,**

*Assistant Secretary.*

May 14, 1980.

[FR Doc. 80–15563 Filed 5–20–80; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 292

**[Dockets Nos. RM79–54 and RM79–55]**

## Small Power Production; Order Granting in Part and Denying in Part Rehearing of Orders Nos. 69 and 70, and Amending Regulations

Issued: May 15, 1980.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order granting in part and denying in part rehearing of order Nos. 69 and 70, and amending regulations.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) hereby adopts an order granting in part and denying in part petitions for amendment of Order Nos. 69 and 70. The Order amends four sections of the Commission's rules involving small power production. The amendments involve the definition of "total energy input," general requirements for qualification of new dual-fuel cogeneration facilities, fuel use criteria for qualifying small power production facilities, and the exemption of qualifying facilities from sections 19 and 20 of the Federal Power Act.

**EFFECTIVE DATE:** May 15, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Adam Wenner, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–9338, or

Glenn Berger, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 357–8364.

**SUPPLEMENTARY INFORMATION:**

In the matter of Small Power Production and Cogeneration Facilities—Rates and Exemptions, Qualifying Status; order granting in part and denying in part rehearing of order Nos. 69 and 70, and amending regulations.

On February 19, 1980, the Federal Energy Regulatory Commission (Commission) issued Order No. 69, the "Final Rule Regarding the Implementation of Section 210 of the Public Utility Regulatory Policies Act of 1978" (PURPA) in Docket No. RM79–55.[1] The Commission received six applications for rehearing or reconsideration.[2]

[1] 45 *Fed. Reg.* 12214 (February 25, 1980).

[2] Southern Company Services, Inc. (March 14, 1980), Essex Development Association (March 14, 1980), American Electric Power Service Corporation (March 14, 1980), Edison Electric Institute (March 20, 1980), Consolidated Edison Company and Boston Edison Company (March 20, 1980), and Colorado-Ute Electric Association, Inc. (April 11, 1980).

The Commission notes that, while there is no express statutory right to rehearing of rules issued under section 210 of PURPA, there is a statutory right to rehearing of rules issued under section 201 of PURPA, which amended the Federal Power Act (FPA) by adding sections 3(17)–3(22). The Commission's view is that Congress, in incorporating by reference the enforcement provision of the Federal Power Act (Section 210h of PURPA), intended also to incorporate by reference the rehearing and judicial review provision of the Federal Power Act.

In addition, a case involving the Natural Gas Act and the Natural Gas Policy Act of 1978, the Court observed that

> * * * it is often not possible to draw a precise line separating the boundaries of the two Acts. Implementation of many NGPA Provisions requires conduct by FERC authorized under both Acts. As a result, the promulgation of rules may entail the exercise of authority under both the NGA and the NGPA. *Ecee, Inc.* v. *Federal Energy Regulatory Commission*, 611 F.2d 554, 564–566 (5th Cir. 1980).

The Commission notes that section 210 of PURPA and sections 3(17)–3(22) of the FPA, as added by section 201 of PURPA, are, to a large extent, interrelated. Section 201 of PURPA establishes the criteria and procedures by which a cogeneration or small power production facility can become a "qualifying" facility; section 210 of PURPA establishes rates for sales and purchases of electric power between qualifying facilities and electric

Footnotes continued on next page

On March 13, 1980 the Commission issued, in Docket No. RM79–54, Order No. 70, the "Final Rule Establishing Requirements and Procedures for a Determination of Qualifying Status for Small Power Production and Cogeneration Facilities." [3] That rule established criteria and procedures whereby small power production and cogeneration facilities could determine if they were eligible to receive the rate benefits and exemptions set forth in the Commission's rules implementing section 210 of PURPA.

The Commission received four petitions for rehearing of Docket No. RM79–54.[4]

With the exception of arguments discussed below, these applications raised no new matters of fact or law.

**Order No. 69**

*Interconnection* § 292.303(c). Consolidated Edison Company (Con Ed), Boston Edison Company, and Edison Electric Institute (EEI) recommended that the Commission determine that the interconnection procedures set forth in sections 210 and 212 of the Federal Power Act (FPA) are applicable to qualifying facilities, rather than requiring electric utilities to interconnect with a qualifying facility as an act included within the obligation to purchase, and not requiring an evidentiary hearing and the rendering of certain findings required under sections 210 and 212 of the FPA. In the final rule, the Commission observed that section 212(e) of the FPA provides that no provision of section 210 of the FPA should be treated as an exclusive means of obtaining relief.[5] The Commission interpreted this provision to mean that the existence of any authority under section 210 of the FPA to require interconnection should not be interpreted as exclusive of any other interconnection authority available under any other law. The Commission interpreted section 210(a) of PURPA as providing a broad grant of authority to prescribe rules necessary to encourage cogeneration and small power production, including the authority to require interconnection.

In their application, Con Ed and Boston Edison argued that the fact that Congress prohibited the Commission from exempting any qualifying facility from the provisions of sections 210 or 212 of the FPA renders moot or irrelevant the express ability of the Commisison to resort to other authority to require interconnections. They state that while section 210(a) of PURPA provides the FERC with a broad mandate to prescribe rules as it determines necessary, the Congress, in section 210(e) specifically prohibited the Commission from exempting any qualifying facility from the provisions of sections 210 or 212 of the FPA. As a result, Con Ed and Boston Edison claim that to read section 210(a) of PURPA as granting the "very authority specifically denied in section 210(e) of PURPA is to render the latter subsection utter surplusage."

The primary question arising from these claims is the proper interpretation of section 210(e)(3)(B) of PURPA, which provides that qualifying facilities cannot be exempted from sections 210, 211, and 212 of the FPA.

Section 210 of the FPA grants to electric utilities, Federal power marketing agencies, and qualifying congenerators any small power producers the right to apply for a Commission order requiring interconnection. The "target" of such an interconnection order can be "any cogeneration facility, and small power production facility, or the transmission facilities of any electric utility."[6]

Thus, in the procedures set forth in sections 210 and 212 of the FPA, qualifying facilities may either be applicants for interconnection orders, or targets of such interconnection orders. These sections confer upon qualifying facilities the right to apply for interconnection orders; they also impose on qualifying facilities the obligation and liability to be subjected to interconnection orders.

Section 210(e) of PURPA sets forth categories of State and Federal laws from which qualifying facilities can be exempted. The intent of this exemption is to remove the burden associated with being subjected to regulations as an electric utility under the FPA, the Public Utility Holding Company Act, and State laws regulating rates and financial organizations of electric utilities. The Joint Explanatory Statement of the Committee of Conference (Conference Report) accompanying PURPA states that rate regulation of qualifying facilities is to be done in a "less burdensome manner than traditional utility-rate regulation." [7] It further notes that

> [t]he establishment of utility type regulation over (cogeneration and small power production facilities) would act as a significant disincentive to firms interested in cogeneration and small power production.[8]

Thus, by exempting qualifying facilities from this type of regulation, Congress relieved them from liabilities and requirements to which others (*viz.*, non-qualifying facilities) are subject. Use of the word "exempt" in this context is consistent with its definition: "to release or deliver from some liability or requirement to which others are subject."[9] To "exempt" qualifying facilities does not mean to deny them a privilege or right to which they would otherwise be entitled; to exempt means to relieve of undesirable responsibility or obligation.

Sections 210 and 212 provide that, if the Commission makes certain determinations, it can impose obligations on qualifying facilities, including requiring the physical connection of the qualifying facility with the applicant, the sale or exchange of electric energy, or an increase in transmission capacity necessary to carry out these provisions. The Commission believes it is from these obligations that section 210(e)(3)(B) provides that qualifying facilities may not be exempted. Unlike the interpretation proffered by Con Ed and Boston Edison this reading comports with the plain meaning of the statute and with the accepted use of the language. And because qualifying facilities remain liable to being a target to an order under sections 210 and 212 of the FPA, section 210(e)(3)(B) is not "render[ed] utter surplusage." [10]

Under Con Ed's and Boston Edison's reading, section 210(e)(3)(B) of PURPA would also mean that qualifying facilities may not be exempted from applying under section 210 of the FPA to the Commission for an order requiring

Footnotes continued from last page
utilities, and exempts qualifying facilities from certain State and Federal regulation. The relationship between the FPA and PURPA in this proceeding is thus similar to that between the NGA and the NGPA. For the reasons set forth in *Ecee*, the issues will be more clearly delineated, and the task of separating interrelated sections will be obviated, if these rulemakings are subject to review in the same forum. The Commission expects that any review of its order on rehearing in Docket Nos. RM79–54 and RM79–55, would occur in the Courts of Appeal, pursuant to section 313(b) of the FPA.

[3] 45 FR 17959 (March 20, 1980).

[4] Southern Company Services, Inc. (April 11, 1980), Consolidated Edison Company (April 14, 1980), Southern California Gas Company (April 14, 1980), Elizabethtown Gas Company (April 14, 1980).

[5] Section 212(e) of the FPA states that no provision of section 210 of the FPA shall be treated "(1) as requiring any person to utilize the authority of such section 210 or 211 in lieu of any authority of law, or (2) as limiting, impairing, or otherwise affecting any other authority of the Commisson under any other provision of law.

[6] Section 210(a)(1)(A), Federal Power Act.

[7] Conference Report in H.R. 4018, Public Utility Regulatory Policies Act of 1978, H.R. Rep. No. 1750, 95th Cong., 2d Sess. 97 (1978).

[8] *Id.*

[9] Webster's Third New International Dictionary (1976).

[10] Petition for Rehearing and Reconsideration, Con Ed and Boston Edison, *supra* note 1, *mimeo* at 6.

interconnection. The Commission notes that the ability to *apply* for an interconnection order is not a duty, liability, or requirement to which a qualifying facility is subject; it is a grant of standing to request the Commission to impose an obligation on another party (viz., a target of an interconnection order).[11]

Under Con Ed's reading, the Commission may not "exempt" a qualifying facility from this statutory privilege. Since, as noted previously, to exempt means to relieve of liabilities, and not be excluded from rights or privileges, this interpretation does not seem consonant with the plain meaning of the statutory language.

*Transmission* § 292.303(d). Southern Company Services, Inc. (Southern Company), stated that § 292.303(d) appears to prohibit an electric utility transmitting from a qualifying facility to another electric utility from levying a transmission charge. This interpretation is not the one intended by the Commission. The sentence in question states that "[t]he rate for purchase by the electric utility to which such energy is transmitted * * * shall not include any charges for transmission." This phrase is intended to limit the amount that the utility to which electric energy is ultimately delivered must pay. This sentence provides that the purchasing utility need purchase this energy at a rate which reflects the costs it can avoid as a result of making such a purchase, and that any costs incurred to deliver the energy to it are the responsibility of the selling qualifying facility. (The transmitting utility may, however, agree to bear some or all of the transmission costs.)

The Commission does intend that an electric utility which *transmits* energy from a qualifying facility to another electric utility be permitted to receive reimbursement for this transmission service. As noted by Southern Company Services, this intent is expressed in the preamble, where the Commission stated:

> In the case of electric utilities not subject to the jurisdiction of this Commission, these (transmission) charges should be determined under applicable State law or regulation which may permit agreement between the qualifying facility and any electric utility which transmits energy or capacity with the consent of the qualifying facility. For utilities subject to the Commission's jurisdiction under Part II of the Federal Power Act, these charges will be determined pursuant to Part II.[12]

Southern Company recommends that these provisions be added to section 292.303(d), in place of the sentence which provides that rates for purchases shall not include any charges for transmission. The Commission believes that the provision as issued is acceptable. With this clarification, the proper interpretation should be clear.

*Exemptions* § 292.601(b). On March 19, 1980, Essex Development Associates (Essex) filed a Motion for Clarification of Order No. 69. Essex observed that the Commission did not exempt qualifying facilities from sections 19 and 20 of the Federal Power Act (FPA or Act). Essex stated that these sections provide the Commission with discretionary jurisdiction to regulate rates and the issuance of securities by licensees under Part I of the Federal Power Act. Essex contends that the intent of section 210 of PURPA and of Order No. 69, is to eliminate utility-type regulation of cogenerators and small power producers, without regard to the status of the facility as a licensee under Part I of the Federal Power Act. Essex requests that the Commission amend Order No. 69 to exempt qualifying facilities from sections 19 and 20 of the FPA, or that the Commission waive its rights under sections 19 and 20 to regulate a qualifying small power producer.

It should be noted that section 210(e)(3)(C) of PURPA provides that no qualifying facility may be exempted from

> * * * any license or permit requirement under Part I of the Federal Power Act, any provision under such Act related to such a license or permit requirement, or the necessary authorities for enforcement of any such requirement.

The threshold question is whether this section should be interpreted to prevent the exemption of qualifying facilities from sections 19 and 20 of the Federal Power Act.

The intent of section 210(e) of PURPA, and of § 292.601 of the Commission's regulations (exemption to qualifying facilities from the Federal Power Act), is to remove the disincentive associated with utility-type regulation.[13] In Order No. 69, the Commission exempted qualifying facilities from cost-of-service regulation of rates, and from regulation of securities to which jurisdictional public utilities are subject under Part II of the Federal Power Act. In addition, within the statutory parameters, the Commission exempted qualifying facilities from regulation as electric utilities under the Public Utility Holding Company Act, and from State regulation of rates and financial organization.

Regulation under Part II of the Federal Power Act chiefly involves regulation of rates and financial organization, while regulation under Part I of the Act concerns the licensing of hydroelectric projects. A licensed project under Part I of the Federal Power Act may also be a qualifying small power producer, if it meets the size and ownership requirements set forth in Order No. 70.[14]

In pertinent part, section 19 of the Federal Power Act provides that, as a condition of a license, a licensee "developing, transmitting, or distributing power for sale or use in public service," shall abide by the rate and service regulation of any duly constituted agency of the State in which such service is provided. If power is provided in a State in which there is no authorized regulatory commission to regulate the rates for sales of power, or the issuance of securities by a licensee, jurisdiction is conferred on the Commission to regulate these matters.

Section 20 of the FPA provides that, with regard to power from a licensed project that enters interstate or foreign commerce, the rate charged shall be "reasonable, nondiscriminatory, and just to the customer," and all "unreasonable discriminatory and unjust rates" are prohibited. It provides that if any State affected has not established a commission to enforce these requirements, or to regulate the issuance of securities, or if any parties or States are unable to agree on appropriate regulation, jurisdiction is conferred on the Commission to regulate these activities.

The Commission observes that most of the provisions of Part I of the Act impose conditions and restrictions on the construction and operation of hydroelectric facilities, which require that licensed projects comply with comprehensive development of the nation's waterways. As a result, the Commission perceives no inconsistency

[11] Indeed, the ability to apply for an order imposing an obligation to wheel or transmit power was not conferred upon qualifying facilities; thus exclusion from being an applicant is an important distinction between sections 210 and 211 of the FPA.

[12] Order No. 70 *supra, mimeo* at 32.

[13] Conference Report in H.R. 4018, Public Utility Regulatory Policies Act of 1978, H.R. Rep. No. 1750, 95th Cong., 2nd Sess. 98 (1978).

[14] Section 292.206 of the Commission's rules provides that a facility cannot qualify if more than 50 percent of the equity interest in the facility is held by an electric utility or utilities, or public utility holding companies. Section 292.204(a) provides that the power production capacity of a qualifying facility may not exceed 80 megawatts. Pursuant to § 292.601 (Order No. 69), only small power production facilities of 30 mw or less are exempted from the Federal Power Act, the Public Utility Holding Company Act, and State regulation, except biomass facilities between 30 and 80 megawatts, which are exempt from State regulation and from the Public Utility Holding Company Act.

in exempting licensed projects that are qualifying facilities from State and Federal regulation of rates and financial organization, and maintaining Federal regulation of the physical structure of such facilities, and their manner of operation. The Commission believes that the limitation on exemption from the Federal Power Act set forth in section 210(e)(3)(C) of PURPA was intended to ensure that licensees comply with the requirements concerning comprehensive development of waterways, and ensure that they do not build or operate hydroelectric projects in a manner inconsistent with the public interest.

Nowhere in the legislative history of section 210, or in the Conference Report, does there appear any indication that qualifying facilities that are licensed hydroelectric projects were intended to be singled out for utility-type rate or securities regulation. To subject these licensed projects to such regulation would be inconsistent with the intent of this section of PURPA—to encourage cogeneration and small power production. Thus, the Commission finds no basis to subject small power producer licensees to regulation under sections 19 and 20 of the Act, when they would otherwise be exempted from utility-type regulation at both the Federal and State levels.[15]

Moreover, the Commission finds no basis to believe that section 210 of PURPA was intended to grant exemption from the regulations of rates and financial organization, and yet to retain the authority to impose regulation of rates and the issuance of securities for one class of small power producers.

Rules of statutory construction indicate that the Commission should look to the object to be accomplished, and the evils sought to be remedied.[16] Moreover, a statute should be construed so as to effect its purpose.[17] The Commission has cited the reference in the Conference Report regarding its disincentives associated with "utility type regulation." It further cites the Conference Report statement that

> [I]t is not the intention of the conferees that cogeneration and small power producers become subject * * * to the type of examination that is traditionally given to electric utility rate applications to determine what is the just and reasonable rate that they should receive for their electric power.[18]

The authority contained in sections 19 and 20 of the Federal Power Act would reserve to the Commission the authority to impose this type of utility regulation on qualifying small power producer licensees. The possibility that such regulation will be imposed could reduce the encouragement of development of small power production which the Congress, in section 210 of PURPA, and the Commission, in Order No. 69, intended to provide. For the reasons set forth, the Commission finds it appropriate to exempt qualifying facilities from these sections of the Federal Power Act.

Accordingly, the Commission amends § 292.601(b)(1), so as to exempt qualifying facilities from sections 19 and 20 of the Federal Power Act.

**Order No. 70**

*Definitions* § 292.202. Sections 292.202(i) and 292.202(j), define the "total energy output" and "total energy input" of a qualifying facility. Dividing the total energy output by the total energy input indicates the efficiency of the facility.

In § 292.202(j) of the final rule, energy obtained from supplementary firing was inadvertently excluded from the definition of total energy input. Since energy from supplementary firing was not excluded from the definition of total energy *output*, the rule would distort the efficiency of facilities in which large amounts of energy are supplied from supplementary firing, making them appear more efficient than they are.

To correct this unintended result, the Commission is amending the definition of total energy input so that it includes energy supplied from supplementary firing. This change will be accomplished by deleting the clause "other than supplementary firing" from the definition of total energy input.

*Ownership* § 292.206(b). Southern California Gas Company (SCGC) and Elizabethtown Gas Company (Elizabethtown) contend that § 292.206(b) of the Commission's rules erroneously exclude from qualifying status facilities owned by public utility holding companies that are not engaged in the generation or sale of electricity other than from cogeneration facilities or small power production facilities. Elizabethtown states that the rules do not prohibit a gas distribution utility from owning a qualifying facility.

Sections 17(C)(ii) and 18(B)(ii) of the Federal Power Act require the Commission to limit qualifying status to facilities "owned by persons not primarily engaged in the generation or sale of electric power." Section 292.206 of the Commission's rules prohibits public utility holding companies from owning more than 50 percent of the equity interest of a qualifying facility.

The Commission did not intend to prohibit companies without any electric utility interests from owning qualifying facilities. However, because public utility holding companies are subject to many special restrictions, before changing this provision of its rules, the Commission believes it appropriate to consult with the Securities and Exchange Commission to determine whether permitting gas holding companies to own qualifying facilities is consistent with that agency's regulation of holding companies.

*Fuel Use* § 292.204(b)(1). Southern Company takes exception to the fuel use criteria employed by the Commission in defining a qualifying small power production facility under § 292.204(b) of the rules. In the proposed rule, the term "primary energy source" was not defined. In response to several comments that standards should be established for determining the primary energy source, the Commission required in § 292.204(b)(1) of the final rule that more than 50 percent of the total energy input of a qualifying facility be from biomass, waste, renewable resources, or any combination thereof.

Southern Company states that a small power production facility which utilizes biomass, waste, or renewable resources as its "primary energy source" no more than 51 percent of the time, complies with the "sole" use requirement of the PURPA definition. Southern Company contends that this standard should be eliminated in favor of a standard which requires a small power production

[15] The Commission observes that even if exemption from these provisions were not granted, the residual grant of authority to the Commission set forth in sections 19 and 20 is consistent with the rate and exemption provisions of section 210 of PURPA, and with Order No. 69. Section 210(b) provides that rates for purchases from qualifying facilities shall be "just and reasonable to the electric consumers of the electric utility and in the public interest, and shall not discriminate against qualifying facilities." Section 292.304(a) repeats these statutory requirements. Section 210(f) of PURPA and § 292.401 of the Commission's rules require that, within one year after the Commission's rules take effect, each State regulatory authority is to implement the rules issued by the Commission regarding rates for purchases and sales of electric energy and capacity between qualifying facilities and electric utilities. After State implementation takes place, compliance with section 19—whether viewed as State regulation in the first instance or residual Federal regulation—would be accomplished through the State's program implementing section 210 of PURPA, and Order No. 69. Similarly, the requirements set forth in section 20 regarding the rates for power from licensed projects are not inconsistent with the requirements of section 210 of PURPA, or Order No. 69. Again, regulation under section 210 of PURPA would constitute the vehicle for regulation under section 20 of the Act. (For qualifying small power production facilities greater than 30 mw, where the facility is subject to Commission jurisdiction under Part II of the Federal Power Act, the Commission will establish rates for purchase in accordance with the avoided cost principles set forth in § 292.304.)

[16] 82 C. J. S. *Statutes* § 323.

[17] *Id.*

[18] Conference Report, *supra* note 13, at 97.

facility to use a higher percentage of renewable resources, waste, or biomass.

Two provisions of the rules are involved in this issue. Section § 292.204(b)(2) provides that the oil, natural gas, and coal used by a qualifying facility may not, in the aggragate, exceed 25 percent of the total energy imput of the facility during any calendar year. As discussed in the preamble [19] comments received indicated that effective use of biomass or waste as fuels can require that as much as 25 percent of the heat input be from fossil fuel. To assure that these renewable resources qualify for the statutory benefits, the Commission adopted the "25 percent rule."

As noted above, § 292.204(b)(1)(i) provides that more than 50 percent of the total energy input to a qualifying small power production facility must be biomass, waste, renewable resources, or any combination thereof.

At this time, the Commission believes that there are virtually no eligible fuels which are feasible for use by a qualifying facility to fill the hiatus if it derives 50 percent of its energy input from biomass, waste or renewable reosurces, and 25 percent from oil, natural gas and coal. The Commission will accordingly amend this provision of its rule to require that at least 75 percent of the total energy input of a qualifying small power production facility be from biomass, waste, renewable resources, or any combination thereof.

§ 292.204(b)(2). Southern Company also contends that the Commission's 25 percent limit on fossil fuel use by qualifying facilities is too broad, and is inconsistent with national energy policy. Southern Company argues that the Commission should adopt individual standards for each category of fossil fuel use listed in section 201 of PURPA, as appeared in the notice of proposed rulemaking.[20]

The Commission rejects this petition. The Commission based the 25 percent standard on the comments filed which generally favored a uniform aggregate standard. Commenters argued that separate standards for startups, flame stabilization and outages are unnecessarily burdensome. They also claimed that some small power production technologies would be severely constrained by one of the standards while requiring little or no fossil fuel for other purposes.

Additionally, the Commission belives that to the extent oil and natural gas remain more expensive than other energy sources available to small power producers, there is an economic disincentive to use more fossil fuel than is absolutely necessary.

Southern Company stated that the Commission's rules are inconsistent with standards promulgated under the Powerplant and Industrial Fuel Use Act of 1978 (FUA). The Commission notes that the FUA is intended to encourage the burning of coal in conventional power plants and industrial fuel burning plants. In contrast, sections 201 and 210 of PURPA are intended to encourage the cogeneration and electric generation through the use of biomass, waste, and renewable resources. Coal may not be used by a qualifying small power production facility as a primary energy source. Southern Company argues that the Commission should adopt, in its rules, the definition of "primary energy source" set forth in the interim rules implementing the FUA. These rules provide that a facility's consumption of oil and gas may not exceed five percent of the facility's annual Btu output. While the use of five percent gas or oil may be sufficient in combination with coal fuel, the burning of biomass or waste can require a greater use of gas or oil. Comments indicate that if the Commission were to adopt the more stringent five percent standard, the operation of many of these energy sources would not be feasible. Consequently, the Commission does not find that its rules are inconsistent with FUA standards, and rejects this proposed revision of the rules.

§§ *292.203(b) and 292.205.* Southern Company and Con Ed submit that the Commission's rules are inconsistent with national energy policy in that they allow cogeneration facilities to burn oil and natural gas. Both petitioners request that the Commission amend its rules to include fuel use criteria for cogeneration facilities which the Commission determines to be qualifying cogeneration facilities. The result, they contend, of the Commission's failure to include fuel use restrictions is to authorize the burning of oil or natural gas for generation of electricity in cogeneration units, which will displace electricity generated by coal, nuclear or hydro power.

Numerous comments on this issue were submitted during the rulemaking process. First, the Commission notes that these rules do not authorize any facility to burn oil or gas in contravention of any applicable Federal, State or local laws or regulations. Rather, their effect is to make facilities, some of which may be authorized to burn fossil fuels under other statutory authority, such as the FUA, eligible for the rate and exemption privileges set forth in section 210 of PURPA.

As noted in the preamble [21] the Commission believes that the legislative history, Congressional intent, and national energy policy support the use of oil and gas in cogeneration facilities. Section 206(c)(3) of the Natural Gas Policy Act, authorized the Commission to exempt gas used by qualifying cogeneration facilities from incremental pricing surcharges.

Furthermore, the Commission believes that economics will make the displacement of nuclear coal or hydro generated electricity by a cogenerator using oil or natural gas a rare occurrence. In most cases, electricity generated by a cogenerator using oil or gas fuels is more expensive than electricity generated by nuclear, coal or hydro facilities. As a result, market forces, rather than an additional layer of Federal fuel use regulation, can effectively determine the appropriate use of oil or gas. For the above reasons the Commission denies the petition for amendment of this section of the rule.

*Notice* § 292.207. Southern Company and Con Ed petitioned the Commission to amend § 292.207 of its rules. This provision requires all qualifying facilities to furnish notice to the Commission of their status as qualifying facilities, and to provide a brief description of the facility and other pertinent data. The petitioners requested that the Commission require an applicant for certification of qualifying status intending to interconnect with a utility to furnish notice to the appropriate State regulatory authority and the utility with which it would interconnect.

The Commission has recently amended § 292.207(b)(6) of its rules. [22] This amendment requires that all applications for Commission certification of qualifying status include a notice of such request for publication in the **Federal Register.** The Commission believes that publication will provide adequate notice of applications for qualifying status. The Commission, therefore, rejects the petitions for amendment of § 292.207 of its rules.

Southern Company also petitioned the Commission to amend § 292.207(c) of the rule. This paragraph states that an electric utility is not required to

[19] Order No. 70, *supra*, mimeo at 38–40.

[20] These categories include fuel used for ignition, startup, testing, flame stabilization, and control uses, and fuel used to alleviate or present unanticipated equipment outages and emergencies that would affect public health, safety or walfare. Section 3(17)(B), FPA.

[21] Order No. 70, *supra, mimeo* at 24–26.

[22] Amendment to Final Rule Providing That Applications For Commission Certification of Qualifying Status Contain a Notice for Publication in the Federal Register, Order No. 70–A, Docket No. RM79–54, May 5, 1980.

purchase electric energy from a qualifying facility of 500 kilowatts or more until 90 days after the facility notifies the utility that it qualifies, or that it has applied to the Commission for qualification. Southern Company contended that this section implies that a utility is derelict if it does not begin purchasing power from a qualifying facility over 500 kilowatts within 90 days after the facility has notified the utility or applied to the Commission for certification as a qualifying facility. Southern Company believes that 90 days is not a sufficient time period in which it can adjust its system to receive the generation output of the qualifying facility. Southern Company requested amending § 292.207(c) to allow for a "reasonable time" in which it must begin purchasing power from a qualifying facility.

Southern Company has erroneously interpreted § 292.207(c). Section 292.207(c) must be read in conjuction with § 292.207(b)7 and § 292.306. These sections provide that a utility is required to purchase power from a qualifying facility only if the facility meets all safety requirements, and pays for the appropriate interconnection costs as determined by the State regulatory authority. The 90-day requirement set out in § 292.207(c) establishes a minimum time period in which a utility must purchase power from a qualifying facility which has met all other applicable safety and interconnection requirements of the regulations. A utility need not purchase power from a qualifying facility until it meets these requirements, even if the 90-day period has elapsed. The Commission believes this interpretation of the regulation allows for a reasonable time period in which a utility must purchase power from a qualifying facility. Therefore, the Commission rejects the petition for amendment of this section.

*Procedures for Obtaining Qualifying Status* § 292.207. Con Ed states that the self-certifying procedure for obtaining qualifying status fails to inform utilities whether a particular facility is qualified. Under the proposed rule, all determinations of qualifications would have required Commission action on a case-by-case basis. Comments received indicated that when no affected party questions the eligibility of a facility, there is no need to require filing for qualification. As noted in the preamble to Order No. 70, the initiation of negotations concerning purchase and sale arrangements allows for the flow of information between potential qualifying facilities and affected electric utilities.[23] If a utility considers that a facility does not qualify, it is not obligated to purchase its electric output. In such cases, the facility may seek Commission certification under § 292.207(b). The Commission expects that, for the great majority of facilities requesting that utilities purchase their electric output, there will be no disagreement as to their eligibility. In questionable cases, the rules as issued provide for Commission determination of the facility's status. Thus, the Commission perceives no need to require additional paperwork in uncontested determinations.

§ *292.206(d).* Con Ed requested that the Commission amend § 292.206(d) to include a mechanism for monitoring facilities to assure that the requirements for obtaining qualifying status continue to be met.

The Commission believes that the administrative costs associated with monitoring large numbers of qualifying facilities would be prohibitive. The Commission notes that section 201 of PURPA amended the Federal Power Act, and that these rules fall under the ambit of the enforcement provisions of sections 314 and 316 of the FPA. Under these provisions, an applicant that ceases to meet the requirements for qualifying status, and fails to notify the Commission pursuant to § 292.207(d)(2) may be subject to civil and criminal penalties. The Commission will investigate any complaints that qualifying requirements are not being met. As a result, the Commission believes it is not necessary to establish a monitoring system.

*Environmental Effects* § 292.203(c). In the Environmental Assessment (EA) issued with Docket No. RM79–54 [24], the Commission determined that the incentives provided in this program will encourage the development of only one technology, commercial cogeneration primarily by new diesel engines, at a level where significant environmental effects may occur in the near-term. Con Ed contended that spark ignition and dual-fuel cogeneration engines will also be widely used in commercial applications and will produce a substantial environmental impact.

Con Ed's petition does not refer to the discussion contained in the Appendices to the EA, referred to in the Commission's Notice accompanying the EA. In Appendix C the Commission stated:

> Dual-fuel engines and diesel engines are likely to be the primary equipment choice for commercial cogeneration. Combustion turbines are large (greater than about 1 MW) and cost about $900 to $1,000/Kw. Thus, investors would be facing equipment costs of about $1,000,000 to install one of these units. Spark ignition engines (similar to large gasoline-fuel truck engines) are insufficiently sturdy to warrant their use in continuous duty cogeneration. Despite the low capital costs for spark ignition engines compared with those for diesel engines, repair and maintenance costs for the former are substantially higher.
>
> Commercial cogeneration users will use natural gas as a fuel for dual-fuel engines whenever gas is available or less expensive than diesel fuel. In rural areas and in some urban areas of the Middle Atlantic region, natural gas is not available and distillate fuel use is expected. Thus, in these areas cogenerators will choose diesel engines. In large urban areas, because natural gas is available for potential cogenerators, cogenerators will install dual-fuel engines to take advantage of low-priced natural gas, even though a dual-fuel engine costs 20% to 30% more initially. We cannot precisely estimate the percent of the 2,500 MW of capacity that will be found in large urban areas. We estimate, however, that cogeneration in larger urban regions may account for 25 percent to 75 percent of the total.[25]

If gas is available for commercial or residential use in urban areas in the Middle Atlantic region, the installation of a great number of dual-fuel cogeneration engines in these areas might adversely affect the environment. Pending further environmental analysis, the Commission has decided to require that dual-fuel cogeneration facilities obtain qualification on a case-by-case basis, pursuant to the procedures set forth in section 292.207(b) of the Commission's rules. Before permitting new dual-fuel facilities to qualify, the Commission will consider the emission characteristics of the facility, and the number of qualifying cogeneration facilities in the vicinity of the applicant.

*The Commission Orders:* (A) To the extent not granted above, the applications for rehearing and reconsideration of Order Nos. 69 and 70 filed by Southern Company Services, American Electric Power Service Corporation, Edison Electric Institute, Consolidated Edison Company, Boston Edison Company, Colorado-Ute Electric Association, Inc., Elizabethtown Gas Company and Southern California Gas Company are denied.

(B) Sections 292.202, 292.203, 292.204, and 292.601 are amended as set forth below effective on May 15, 1980.

(Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601, *et seq.*; Energy Supply

[23] Order No. 70, *supra*, *mimeo* at 19.

[24] Notice of No Significant Impact and Notice of Intent to Prepare Environmental Impact Statement, issued March 31, 1980, Docket No. RM79–54, *mimeo* at 44.

[25] EA, *supra*, Appendix C, *mimeo* at 7.

and Environmental Coordination Act, 15 U.S.C. § 791 *et seq.*; Federal Power Act, as amended, 16 U.S.C. § 792 *et seq.*, Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*; E.O. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission amends Part 292 of Chapter I, Title 18, Code of Federal Regulation, as set forth below, effective May 15, 1980.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

1. Section 292.202 is amended in paragraph (j), to read as follows:

**§ 292.202 Definition.**

* * * * *

(j) "total energy input" means the total energy of all forms supplied from external sources.

* * * * *

2. Section 292.203 is amended in paragraph (c) by adding at the end thereof new subparagraphs (3) and (4) to read as follows.

**§ 292.203 General requirements for qualification.**

* * * * *

(c) *Interim exclusion.* * * *

(3) Pending further Commission action, any cogeneration facility which is a new dual-fuel cogeneration facility which seeks to obtain qualifying status must follow the procedures set forth in § 292.207(b) of this section.

(4) A new dual-fuel cogeneration facility is a cogeneration facility:

(i) which derives its useful power output from an internal combustion piston engine capable of changing automatically between gas and oil operation, and

(ii) the installation of which began on or after May 15, 1980.

* * * * *

3. Section 292.204 is amended in paragraph (b)(1)(i) to read as follows:

**§ 292.204 Criteria for qualifying small power production facilities.**

* * * * *

(b) *Fuel use.* (1)(i) The primary energy source of the facility must be biomass, waste, renewable resources, or any combination thereof, and more than 75 percent of the total energy input must be from these sources. * * *

4. Section 292.601 is amended in paragraph (b)(1), to read as follows:

**§ 292.601 Exemption to qualifying facilities from the Federal Power Act.**

* * * * *

(b) *General rule.* Any qualifying facility described in paragraph (a) shall be exempt from all sections of the Federal Power Act, except:

(1) Sections 1–18, and 21–30; * * *

[FR Doc. 80-15608 Filed 5-20-80; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 19 CFR Part 355

### Leather Handbags From Brazil; Revocation of Countervailing Duty Order

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Revocation of countervailing duty order.

**SUMMARY:** This notice is to advise the public that the countervailing duty order on leather handbags from Brazil is being revoked under section 104 of the Trade Agreements Act of 1979.

**EFFECTIVE DATE:** May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Stephen Nyschot, U.S. Department of Commerce, International Trade Administration, Office of Compliance, Room 1126, Washington, D.C. 20230; telephone (202) 377–2209.

**SUPPLEMENTARY INFORMATION:** A notice entitled "Countervailing Duties; Leather Handbags from Brazil," T.D. 76–3, was published in the **Federal Register** of January 12, 1976 (41 FR 1741). The notice stated that it had been determined that exports of leather handbags from Brazil were provided bounties or grants, within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303).

Accordingly, imports of leather handbags from Brazil were subject to countervailing duties. On July 13, 1976, a notice entitled "Waiver of Countervailing Duties," T.D. 76–192, concerning the subject merchandise was published in the **Federal Register** (41 FR 28787). The notice stated that the assessment of countervailing duties had been waived based on actions taken by the Government of Brazil to phase out the bounties or grants determined to exist.

Under the provisions of section 104 of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note, 93 Stat. 190), the subject case was entitled to expeditious injury consideration by the U.S. International Trade Commission (ITC). However, the original petitioner for the investigation, the National Handbags Association, informed the ITC that it wished to withdraw its petition and requested that the investigation be terminated. The ITC published a notice in the **Federal Register** of March 5, 1980 (45 FR 15348), accepting the withdrawal of the petition and terminating its investigation. Commerce was then informed of the ITC's action in this matter.

Given the request of the petitioner and the action taken by the ITC, and in accordance with section 104 of the Trade Agreements Act, Commerce hereby revokes T.D. 76–3 with respect to all entries of dutiable leather handbags from Brazil which have not been liquidated, or the liquidation of which has not become final, on or after May 21, 1980.

Customs officers will be instructed to proceed with liquidation of all such entries without regard to countervailing duties. All previous entries of this merchandise are still eligible for the waiver of countervailing duties.

The table in section 355, Annex III, Commerce Regulations (19 CRF 355, Annex III, 45 FR 4949), is amended under the country heading "Brazil", by deleting from the column headed "Commodity", the words "Leather handbags"; from the column headed "Treasury Decision", the numbers "76–3"; and from the column headed "Action", the words "Bounty declared-rate".

Dated: May 16, 1980.

**John D. Greenwald,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 80-15592 Filed 5-20-80; 8:45 am]

BILLING CODE 3510-25-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Parts 203, 204, 213, 220, 235 and 240

**[Docket No. R-79-687]**

### Mutual Mortgage Insurance and Insured Home Improvement Loans

**AGENCY:** Department of Housing and Urban Development (HUD).

**ACTION:** Final rule.

**SUMMARY:** HUD is issuing a final rule which will enable the Department to facilitate the improvement and rehabilitation of existing one-to-four unit homes through the insurance of mortgage loans, including advances during the rehabilitation period. Mortgages may be used to: (1) rehabilitate an existing one-to-four unit structure which would be used for

residential purposes; (2) rehabilitate such a structure and refinance the outstanding indebtedness on such structure and the real property on which the structure is located; (3) rehabilitate such a structure and the purchase of the structure and the real property on which it is located.

**EFFECTIVE DATE:** June 20, 1978.

**FOR FURTHER CONTACT:** John J. Coonts, Acting Director, Single Family Development Division, Room 9270, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6720. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:**

**Background**

These regulations have been developed to comply with Public Law 95-557, Section 101(c)(1) of the Housing and Community Development Act of 1978, which amended Section 203(k) of the National Housing Act of 1934. This legislation revised the Section 203(k) loan program from simply an insured home improvement loan to a broader insured rehabilitation loan which may also include refinancing or acquisition of the property to be rehabilitated. The maximum mortgage amount, mortgage term, and interest rate will be the same as permitted under Section 203(b). These loans will be available for one-to-four family properties.

To compensate the lender for the additional cost of partial mortgage disbursements and inspections of rehabilitation, the lender may charge a two and one-half percent loan origination fee or $350, whichever is greater, for the portion of the loan which is allocated to rehabilitation. Also, the borrower is permitted to pay fees in the nature of discounts on the rehabilitation portion of the loan. This is necessary because there will be no seller to absorb the charges applicable to the rehabilitation portion of the loan. Proposed regulations were published on August 9, 1979. The final regulations contain five significant changes from the proposed regulations, all of which were made in response to issues raised by both Departmental and public comment.

Within the sixty day public comment period the Department received five letters of comment. The major comments were the following:

1. *Comment:* The proposed six month limit on the period of rehabilitation will not be sufficient in all cases.

*Response:* The Department recognizes the need for flexibility in certain rehabilitation endeavors and has deleted the time limit from the final regulations. It is the responsibility of the lender and the borrower to see that the rehabilitation is completed in a timely manner.

2. *Comment:* The insurance of advances should be permitted on second mortgages.

*Response.* From a lending and insuring position, there is a higher degree of risk involved in the insuring of the mortgage during the rehabilitation of a property. Because of this risk, it is believed that the Department should hold a first mortgage position during the rehabilitation phase when this risk is greatest. This position will be reviewed once the Department has gained some experience with the program.

3. *Comment:* The proposed regulations require the loan amount to be based upon the HUD estimate of value. Value is to be determined as the lesser of (a) the value of the property before rehabilitation plus the costs of the rehabilitation, or (b) the estimate of the value of the property after rehabilitation. This rule requiring the lesser of the two should be changed to the greater of the two, to provide a suitable margin to make the program viable.

*Response:* A lack of demand, and therefore market value, could result in certain situations where rehabilitation would not be economically feasible. At the same time, the Department believes that a rehabilitation endeavor could be an acceptable risk in circumstances where the cost exceeds the market value of the property. In situations where the value of the property before rehabilitation plus the costs of rehabilitation were to substantially exceed the market value of the property upon completion, this discrepancy of indebtedness greater than market value would place the mortgagor and the Department in a potentially harmful situation. In response to this comment, and to comments from within the Department, a change from the proposed regulations has been made to the method of determining the maximum mortgage amount. The loan amount will be based on the HUD estimate of value. Value is to be determined as the lesser of (a) the value of the property before rehabilitation plus the costs of the rehabilitation, or (b) 110 percent of the estimate of the value of the property afer rehabilitation. Additionally, the final regulations provide for circumstances under which the market value limitation on the maximum mortgage amount would not be applicable.

Two changes were made as a result of Departmental and public comments received after the sixty day comment period. The two issues raised by these comments were the following:

1. *Comment:* The proposed regulations permit the lender to charge a two and one-half percent loan origination fee or $250, whichever is greater, for the portion of the loan which is allocated to rehabilitation. The $250 is not adequate compensation to cover the cost to a lender who originates a mortgage with less than $10,000 allocated to rehabilitation.

*Response:* The final regulations have been changed to permit the lender to charge a fee of two and one-half percent or $350, whichever is greater, for the portion of the loan which is allocated to rehabilitation.

2. *Comment:* The proposed regulations stipulate that the rehabilitation work must be completed within a six month period, during which time the borrower would pay an additional two percent interest. The amortization of the mortgage would not begin until completion of the rehabilitation, or the end of the six month period, whichever comes first. These provisions would prevent a significant number of mortgage lenders from originating 203(k) mortgages because the additional two percent interest is insufficient compensation to the mortgage lender who must borrow the mortgage proceeds for the period beginning with mortgage origination through the start of amortization. To effect a viable program the lender must be permitted to charge a rehabilitation interest rate high enough to cover the lender's cost of funds.

*Response.* The Department agrees that current money market conditions would preclude many mortgage lenders from originating a 203(k) mortgage at the HUD single family rate plus two percent. To accommodate both the mortagage lender who originates for sale to investors, and the lender who originates for his own portfolio, each of whom may obtain rehabilitation funds at different costs, the final regulations stipulate that the 203(k) amortization provisions will be the same as the standard Section 203(b) mortgage. In this regard the borrower will not pay a higher interest rate during the rehabilitation period.

The final regulations reflect the applicability of Section 203.18a, Solar Energy System, to the Section 203(k) mortgage. Section 203.18a allows for an increase in the maximum mortgage amount of up to twenty percent for residences in which solar energy equipment has been installed.

The regulations have been consolidated by deleting the former 203(k) regulations (§ 203.51 through § 203.102) and changing other parts of

Section 203 to reflect the new 203(k) program requirements.

Several format changes were required in Section 213, Section 220, and Section 240 to reflect the deletion of the former 203(k) regulations since these programs have many of the same requirements as the former 203(k). The regulations for these Sections have thus been rewritten to reflect appropriate cross references in Section 203. Several provisions formerly located in Section 203 have been moved since they are no longer appropriate to that program, but continue to be required by Section 220 or 240. However, no substantive changes in these programs are being proposed.

Section 235.15 is changed to permit insurance of a mortgage under the Section 235 program if it involves a property substantially rehabilitated under the Section 203(k) program.

A Finding of Inapplicability with respect to the National Enviromental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, Chapter II is amended as follows:

1. The title of Part 203 is amended to read as follows:

## PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

2. Section 203.27 is amended by revising (a)(2)(ii) and (a)(4)(ii) to read as follows:

**§ 203.27 Maximum charges, fees or discounts.**

(a) * * *

(2) * * *

(ii) $350 or 2½ percent of the original principal amount of the mortgage, whichever is the greater, with respect to mortgages on property under construction or to be constructed where the mortgagee makes partial disbursements and inspections of the property during the progress of construction.

* * * * *

(4) * * *

(ii) Constructing, repairing or rehabilitating a dwelling for his own occupancy; or

3. Section 203.28 is amended by adding paragraph (f) to read as follows:

**§ 203.28 Economic soundness of projects.**

* * * * *

(f) To a rehabilitation loan of the character described in § 203.50.

4. Section 203.43c is amended by revising (a) to read as follows:

**§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development**

* * * * *

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43b, 203.44, 203.45 and 203.50 of this part shall not apply to mortgages insured under Section 203(n) of the National Housing Act.

* * * * *

5. Delete center caption "Open End Advances" appearing before § 203.44.

6. Section 203.45 is amended by revising (e) to read as follows:

**§ 203.45 Eligibility of graduated payment mortgage.**

* * * * *

(e) Sections 203.21, 203.43, 203.43a, 203.43b, and 203.44 shall not be applicable to this section.

* * * * *

7. Delete center caption "Insured Home Improvement Loans" appearing before § 203.50.

8. Section 203.50 is revised to read as follows:

**§ 203.50 Eligibility of rehabilitation loans.**

A rehabilitation loan which meets the requirements of this subpart, except as modified by this section, shall be eligible for insurance under Section 203(k) of the National Housing Act.

(a) For the purpose of this section—

(1) The term 'rehabilitation loan' means a loan, advance of credit, or purchase of an obligation representing a loan or advancement of credit, made for the purpose of financing—

(i) The rehabilitation of an existing one-to-four unit structure which will be used primarily for residential purposes;

(ii) The rehabilitation of such a structure and refinancing of the outstanding indebtedness on such structure and the real property on which the structure is located; or

(iii) The rehabilitation of such a structure and the purchase of the structure and the real property on which it is located; and

(2) The term 'rehabilitation' means the improvement (including improvements designed to meet cost-effective energy conservation standards prescribed by the Secretary and improvements for accessibility to the handicapped) or repair of a structure, or facilities in connection with a structure, and may include the provision of such sanitary or other facilities as are required by applicable codes, a community development plan, or a statewide property insurance plan to be provided by the owner or tenant of the project.

(b) The provisions of §§ 203.18 (except as otherwise provided in §§ 203.50(f) (1) and (2)), 203.43b and 203.43c shall not apply to loans insured under this section.

(c) The loan shall cover a dwelling which was completed more than one year preceding the date of the application for mortgage insurance and which was approved for mortgage insurance prior to the beginning of rehabilitation.

(d)(1) The buildings on the mortgaged property must, upon completion of rehabilitation, conform with standards prescribed by the Secretary.

(2) Improvements or repairs made under this section must be designed to meet cost-effective energy conservation standards prescribed by the Secretary.

(e) The loan transaction shall be an acceptable risk as determined by the Commissioner.

(f) The loan shall not exceed an amount which, when added to any outstanding indebtedness of the borrower which is secured by the property, creates an outstanding indebtedness in excess of the lesser of:

(1) The limits prescribed in §§ 203.18(a) (1) and (2), 203.18(c), and 203.18a, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation, or

(2) The limits prescribed in §§ 203.18(a) (1) and (2), 203.18(c), and 203.18a, based upon 110 percent of the Commissioner's estimate of value of the property after rehabilitation.

(g) The loan limitation prescribed by paragraph (f)(2) of this section shall not be applicable where a unit of local government demonstrates to the satisfaction of the Commissioner that:

(1) The property is located within an area which is subject to a community sponsored program of concentrated redevelopment or revitalization, and,

(2) The loan limitation prescribed by paragraph (f)(2) prevents the utilization of the program to accomplish rehabilitation in the subject area, and,

(3) The interests of the mortgagor and the Commissioner are adequately protected.

(h) The Commissioner may issue a commitment for the insurance of advances made during rehabilitation or

for insurance upon completion of rehabilitation.

(i) Rehabilitation loans which do not involve the insurance of advances, the refinancing of outstanding indebtedness or the purchase of the property need not be a first lien on the property but shall not be junior to any lien other than a first mortgage. The provisions of §§ 203.15, 203.19, 203.23, 203.24 and 203.26 shall not be applicable to such loans.

(j) The Commissioner may insure advances made by the mortgagee during rehabilitation if the following conditions are satisfied:

(1) The mortgage shall be a first lien on the property.

(2) The mortgagor and the mortgagee shall execute a rehabilitation loan agreement, approved by the Commissioner, setting forth the terms and conditions under which advances will be made.

(3) The advances shall be made as provided in the commitment.

(4) The principal amount of the mortgage shall be held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor pending advancement to the mortgagor or his creditors as provided in the rehabilitation agreement.

(5) The loan shall bear interest at the rate prescribed in § 203.20 on the amount advanced to the mortgagor or his creditors and the amount held in an account or trust for the benefit of the mortgagor.

**§§ 203.51–203.102 [Reserved]**

9. Sections 203.51 through 203.102 are deleted.

10. Amend the center caption, "Insured Home Improvement Loans" appearing before § 203.440 to read "Rehabilitation Loans."

11. Section 203.441 is amended to read as follows:

**§ 203.441 Insurance of loan.**

Upon compliance with the commitment, the Commissioner shall insure the loan evidencing the insurance by the issuance of an insurance certificate which will identify the regulations under which the loan is insured and the date of insurance.

12. Section 203.477 is amended by adding a new paragraph (c) as follows:

**§ 203.477 Certificate by lender when loan assigned.**

* * * * *

(c)(1) The mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances, or defects which may arise except such liens or other matters as may have been approved by the Commissioner; or

(2) The mortgage transaction did not involve the insurance of advances, the refinancing of outstanding indebtedness or the purchase of the property and the mortgage is prior to all mechanics' and materialmen's liens filed of record, regardless of when such liens attach, and prior to all liens and encumbrances other than a first mortgage, or defects which may arise except such liens or other matters as may have been approved by the Commissioner.

## PART 204—COINSURANCE

13. Part 204 is amended by revising the list of excepted provisions appearing in § 204.1 to read as follows:

**§ 204.1 Incorporation by reference.**

* * * * *

Sec.
203.18 (c), (d), (e) and (f) Maximum mortgage amounts.
203.43 Eligibility of miscellaneous-type mortgages.
203.43a Eligibility of mortgages covering housing in certain neighborhoods.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.44 Eligibility of open-end advances.
203.50 Eligibility of rehabilitation loans.

## PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

14. Section 213.1 is amended by revising (n) to read as follows:

**§ 213.1 Definitions.**

* * * * *

(n) "Lender" means a financial institution meeting the requirements of §§ 203.1–203.4 and 203.6–203.8.

15. Section 213.39 is amended to read as follows:

**§ 213.39 Qualifications.**

The provisions of §§ 203.1–203.4 and 203.6–203.9 shall apply and govern the eligibility, qualifications and requirements of mortgagees and lenders under this subpart.

## PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

16. Part 220 is amended by deleting §§ 220.100 through 220.125 and substituting therefor, the following:

**§ 220.100 Incorporation by reference.**

(a) All of the provisions of Subpart A, Part 203 of this chapter covering mortgages insured under § 203 of the National Housing Act shall apply to insured home improvement loans on one-to-eleven-family dwellings under § 220(h) of the Act except the following:

Sec.
203.14 Builder's warranty.
203.15 Certification of appraisal amount.
203.17 Mortgage provisions.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.23 Mortgagor's payments to include other charges.
203.24 Application of payments.
203.26 Mortgagor's payments when mortgage is executed.
203.28 Economic soundness of projects.
203.32 Mortgage lien.
203.37 Nature of title to realty.
203.38 Location of dwelling.
203.40 Location of property.
203.42 Rental properties.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.
203.45 Eligibility of graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.

(b) References to "mortgage" in Part 203 shall be construed to refer to "loan" in §§ 220.100 et seq.

(c) For purposes of §§ 220.100 et seq., "outstanding indebtedness relating to the property" means the total outstanding amount of unsecured obligations of the borrower incurred in connection with improving, repairing or maintaining the property and outstanding mortgages or obligations constituting liens on the title to the property to be improved.

**§ 220.101 Mortgage provisions.**

(a) The lender shall present for insurance a note and security instrument on forms approved by the Commissioner for use in the jurisdiction in which the property covered by the security instrument is situated. Prior to endorsement, the entire principal amount of the loan shall have been disbursed to the borrower or to his creditors for his account and with his consent.

(b) The loan shall:

(1) Come due on the first of the month.

(2) Involve a principal obligation in multiples of $50.

(3) Have an amortization of either 5, 7, 10, 12, 15, 17, or 20 years by providing for either 60, 84, 120, 144, 180, 204, or 240 monthly amortization payments.

(4) Provide for payments to interest and principal to begin not later than the first day of the month following 60 days from the date the lender's certificate on the commitment was executed.

(c) The loan shall have a maturity satisfactory to the Commissioner not less than 5 nor more than 20 years from the date of the beginning of amortization

or three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

**§ 220.102 Maximum amount.**

(a) The principal amount of the loan shall not exceed:

(1) The Commissioner's estimate of the cost of improvements, $40,000 or $12,000 per family unit, whichever is the lesser; or

(2) An amount which, when added to any outstanding indebtedness related to the property, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 220.25 and 220.30 for mortgages on properties other than new construction; or

(3) Where the proceeds are to be used for the purpose indicated in § 220.105(a)(2), an amount which when added to the aggregate principal balance of any outstanding insured home improvement loans which were obtained for the purposes indicated in § 220.105(a)(2), creates an aggregate indebtedness for such purposes of not to exceed $12,000.

(b) In any geographical area where the Commissioner finds the cost levels so require, he may increase by not to exceed 45 percent the $12,000 per family unit limitation set forth in paragraphs (a) (1) and (3) of this section.

**§ 220.103 Type and location of property.**

The property to be improved shall:

(a) Constitute real property located within the United States, its territories, or possessions;

(b) Contain an existing structure or structures;

(c) Be located in one of the urban renewal areas specified in § 220.5.

**§ 220.104 Cost certification requirements.**

A loan for the improvement of a structure which is used, or upon completion of the improvements will be used, as a dwelling for five-to-eleven families shall be subject to the provisions of paragraphs (a) through (c) of this section as follows:

(a) The lender shall submit with the application for commitment an agreement on a form prescribed by the Commissioner, executed by the borrower and the lender, in which:

(1) The borrower agrees to execute upon completion of the improvements a certificate of the actual cost of the improvements.

(2) The borrower and the lender agree that if the actual cost of the improvements is less than the amount authorized in the commitment, the amount of the loan shall not exceed the actual cost of the improvements, and that the amount of the loan shall be further adjusted to the lowest $50 multiple where the amount is not in excess of $12,000 or adjusted to the lowest $100 multiple where the amount exceeds $12,000.

(b) No loan shall be insured unless in accordance with the agreement between the borrower and the lender.

(1) The required certification of actual cost is made by the borrower; and

(2) The amount of the loan is adjusted to reflect the actual cost of the improvements.

(c) The term "actual cost of the improvements" shall mean the cost to the borrower of the improvements after deducting the amount of any kickbacks, rebates, or trade discount received in connection with the improvements, and including:

(1) The amounts paid under any contract for the improvements, labor, materials, and for any other items of expense approved by the Commissioner; and

(2) A reasonable allowance for contractor's profit, in an amount approved by the Commissioner, where the Commissioner determines that there is an identity of interest between the borrower and the contractor.

(d) Any agreement, undertaking, statement or certification required in connection with cost certification shall specifically state that it has been made, presented and delivered for the purpose of influencing an official action of the Commissioner and may be relied upon as a true statement of the facts contained therein.

(e) Upon the Commissioner's approval of the borrower's certification, such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the borrower.

(f) The borrower shall keep and maintain adequate records of all costs of any construction improvements or other cost items not representing work under the general contract and shall require the builder to keep similar records and, upon request by the Commissioner, shall make available for examination such records, including any collateral agreements.

**§ 220.105 Use of proceeds.**

(a) The proceeds of the loan shall be used only for the following purposes:

(1) To finance improvements that result in or are in connection with the conservation, repair, restoration or refurbishing of the basic livability or utility of an existing structure, including the property on which the structure is located, or in the conversion, alteration, enlargement, remodeling, or expansion of such structure, including a change in the living accommodations or the number of family dwelling units located therein.

(2) To pay that part of the cost of the construction or installation of sidewalks, curbs, gutters, street paving, street lights, sewers, or other public improvements, adjacent to or in the vicinity of the borrower's property, which is assessed against the borrower or for which he is otherwise legally liable as the property owner.

(b) No loan proceeds shall be used to finance individual equipment items except those relating to heating, ventilating or plumbing or those items determined by the Commissioner to be necessary and incident to improvements as outlined in paragraph (a) of this section.

(c) The structure in connection with which the improvements are to be made shall:

(1) Constitute a structure which is used or will be used upon completion of the improvements, primarily for residential purposes by not more than eleven families; and

(2) Have been constructed not less than ten years prior to the date of the application for commitment unless, as determined by the Commissioner, the proceeds of the loan are or will be used primarily for major structural improvements, or to correct defects which are not known at the time of the completion of the structure or which were caused by fire, flood, windstorm or other casualty.

**§ 220.106 Nature of borrower's ownership.**

To be eligible for insurance, the property to be improved shall be owned by the borrower, or be leased by the borrower under a lease for not less than 99 years which is renewable, or be under a lease with an expiration date in excess of 10 years later than the maturity date of the loan.

**§ 220.107 Certification as to outstanding indebtedness relating to the property.**

The loan application shall be accompanied by a certificate by the borrower on a form prescribed by the Commissioner setting forth the total amount of outstanding indebtedness relating to the property.

**§ 220.108 Acceptable risk.**

The loan transaction shall, in the opinion of the Commissioner, constitute an acceptable risk.

## PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

17. Section 235.15(a) is amended by adding subparagraph (8) to read as follows:

**§ 235.15 Eligible types of dwellings.**

* * * * *

(a) * * *

(8) A substantially rehabilitated single family dwelling that is security for a mortgage which was endorsed for mortgage insurance under § 203.50 not more than twelve months prior to the application for a firm commitment is eligible under this part.

* * * * *

## PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

18. Section 240.1 is amended to read as follows:

**§ 240.1 Incorporation by reference.**

A mortgage for the purchase of fee simple title which meets the requirements of this subpart and Subpart A of Part 203, except as modified by § 240.1 et seq., shall be eligible for insurance under Section 240 of the National Housing Act, except the following provisions:

Sec.
203.14 Builders warranty.
203.15 Certification of appraisal amount.
203.16a Mortgagor and mortgagee requirement for maintaining insurance coverage.
203.17 Mortgage provisions.
203.18 Maximum mortgage amounts.
203.19 Mortgagor's minimum investment.
203.23 Mortgagor's payments to include other charges.
203.24 Application of payments.
203.26 Mortgagor's payments to include other charges.
203.28 Economic soundness of projects.
203.32 Mortgage lien.
203.37 Nature of title to realty.
203.38 Location of dwelling.
203.39 Standards for buildings.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43c Eligibility of mortgages involving a dwelling unit in a cooperative development.
203.45 Eligibility of graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.

* * * * *

19. A new § 240.16 is added to read as follows:

**§ 240.16 Mortgage provisions.**

(a) *Mortgage form.* The mortgage shall be executed upon a form approved by the Commissioner for use in the jurisdiction in which the property covered by the mortgage is situated. The mortgage shall be a first lien upon the fee simple title and a second lien on the leasehold. The entire principal amount of the mortgage must have been disbursed to the mortgagor or to his creditors for his account and with his consent.

(b) The mortgage shall:

(1) Come due on the first of the month.

(2) Involve a principal obligation in multiples of $50.

(3) Have an amortization of either 5, 7, 10, 12, 15, 17, or 20 years by providing for either 60, 84, 120, 144, 180, 204 or 240 monthly amortization payments.

(4) Provide for payments to interest and principal to begin not later than the first day of the month following 60 days from the date the lender's certificate on the commitment was executed.

(c) *Maturity of mortgage.* The mortgage shall have a maturity satisfactory to the Commissioner but not less than five years nor more than 20 years from the date of the beginning of amortization or three-quarters of the Commissioner's estimate of the remaining economic life of the structure, whichever is the lesser.

20. Section 240.251 is amended by revising (a) to read as follows:

**§ 240.251 Incorporation by reference.**

(a) All of the provisions of §§ 203.440 et seq. of this chapter covering rehabilitation loans under Section 203(k) of the National Housing Act shall apply to mortgages for the purchase of the fee simple title to property which are insured under Section 240 of the Act.

* * * * *

(Sec. 211 of the National Housing Act (12 U.S.C. 1709, 1715); Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Issued at Washington, D.C. May 14, 1980.

**Lawrence B. Simons,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 80-15585 Filed 5-20-80; 8:45 am]

BILLING CODE 4210-01-M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[T. D. 7699]**

## Treatment of Proceeds From Bingo Games

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the treatment of proceeds from bingo games conducted by tax-exempt organizations. Changes in the applicable tax law were made by the Act of October 21, 1978. The regulations provide tax-exempt organizations with the guidance needed to comply with that Act and would affect tax-exempt organizations that conduct bingo games.

**DATE:** The regulations are effective for taxable years beginning after December 31, 1969.

**FOR FURTHER INFORMATION CONTACT:** Charles Kerby of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:EE-180-78 (202-566-3422) (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On August 28, 1979, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 513 and 527 of the Internal Revenue Code of 1954 (44 FR 50361). The amendments were proposed to conform the regulations to sections 301 and 302 of the Act of October 21, 1978 (92 Stat. 1702). Three comments were received from the public. No hearing was held. After consideration of all comments, the proposed regulations under section 513 are adopted as revised by this Treasury decision. The proposed amendments to the regulations under section 527 remain as proposed regulations. It is intended that the proposed amendments will be adopted by the Treasury decision to be published with respect to the proposed regulations under section 527 that were published in the **Federal Register** on November 24, 1976 (41 FR 51840).

### Comments on the Proposed Regulations

Two of the three comments received from the public objected to Example (1)(ii) of § 1.513-5(c)(3) of the proposed regulations. That example illustrates § 1.513-5(c)(1) of the proposed regulations and provides that where the laws of a State prohibit all forms of gambling activity, including bingo games, a bingo game conducted by a tax-exempt organization in the State constitutes unrelated trade or business regardless of whether, or to what degree, the State law is enforced. The commentators suggested that bingo should not be considered an illegal activity if State gambling statutes are not generally enforced against tax-exempt organizations that conduct bingo games.

To determine whether bingo is illegal in a given State, the Internal Revenue Service must necessarily look to State statutes and decisions of the State courts interpreting those statutes. It would not be appropriate for the Internal Revenue Service to independently determine that a statute proscribing gambling is, nevertheless, not the law of the State. In the legislative history of the Act of October 21, 1978, Congress specified that the requirement of section 513(f)(2) that an organization not conduct bingo games in violation of State or local law was "designed to ensure that no Federal tax benefit is provided for activities which are conducted illegally." H. Rep. No. 95–1608, 95th Cong., 2nd Sess. 6 (1978), 1978–2 C.B. 395, 397. Accordingly, the final regulations are not materially different from the proposed regulations on this point.

The other comment received from the public suggested that the regulations contain a clear, concise example of a bingo game that would be excluded from the term "unrelated trade or business" under section 513(f). The final regulations contain such an example. In addition, the examples in the final regulations have been clarified.

**Drafting Information**

The principal author of this regulation is Charles Kerby of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**Adoption of Amendments to the Regulations**

Accordingly, § 1.513–5, as set forth in the August 28, 1979, notice of proposed rulemaking is adopted, except that paragraph (c)(3) thereof is revised to read as follows:

*§ 1.513–5 Certain bingo games not unrelated trade or business.*

* * * * *

(c) *Limitations.* * * *

(3) *Examples.* The application of this paragraph is illustrated by the examples that follow. In each example, it is assumed that the bingo games referred to are operated by individuals who are compensated for their services. Accordingly, none of the bingo games would be excluded from the term "unrelated trade or business" under section 513(a)(1).

*Example (1).* Church Z, a tax-exempt organization, conducts weekly bingo games in State O. State and local laws in State O expressly provide that bingo games may be conducted by tax-exempt organizations. Bingo games are not conducted in State O by any for-profit businesses. Since Z's bingo games are not conducted in violation of State or local law and are not the type of activity ordinarily carried out on a commercial basis in State O, Z's bingo games do not constitute unrelated trade or business.

*Example (2).* Rescue Squad X, a tax-exempt organization, conducts weekly bingo games in State M. State M has a statutory provision that prohibits all forms of gambling including bingo games. However, that law generally is not enforced by State officials against local charitable organizations such as X that conduct bingo games to raise funds. Since bingo games are illegal under State law, X's bingo games constitute unrelated trade or business regardless of the degree to which the State law is enforced.

*Example (3).* Veteran's organizations Y and X, both tax-exempt organizations, are organized under the laws of State N. State N has a statutory provision that permits bingo games to be conducted by tax-exempt organizations. In addition, State N permits bingo games to be conducted by for-profit organizations in city S, a resort community located in county R. Several for-profit organizations conduct nightly bingo games in city S. Y conducts weekly bingo games in city S. X conducts weekly bingo games in county R. Since State law confines the conduct of bingo games by for-profit organizations to city S, and since bingo games are regularly carried on there by those organizations, Y's bingo games conducted in city S constitute unrelated trade or business. However, X's bingo games conducted in county R outside the city S do not constitute unrelated trade or business.

* * * * *

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: April 21, 1980.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

## PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Section 1.513–5 is added as follows:

**§ 1.513–5 Certain bingo games not unrelated trade or business.**

(a) *In general.* Under section 513(f), and subject to the limitations in paragraph (C) of this section, in the case of an organization subject to the tax imposed by section 511, the term "unrelated trade or business" does not include any trade or business that consists of conducting bingo games (as defined in paragraph (d) of this section).

(b) *Exception.* The provisions of this section shall not apply with respect to any bingo game otherwise excluded from the term "unrelated trade or business" by reason of section 513(a)(1) and § 1.513–1(e)(1) (relating to trades or businesses in which substantially all the work is performed without compensation).

(c) *Limitations*—(1) *Bingo games must be legal.* Paragraph (a) of this section shall not apply with respect to any bingo game conducted in violation of State or local law.

(2) *No commercial competition.* Paragraph (a) of this section shall not apply with respect to any bingo game conducted in a jurisdiction in which bingo games are ordinarily carried out on a commercial basis. Bingo games are "ordinarily carried out on a commercial basis" within a jurisdiction if they are regularly carried on (within the meaning of § 1.513–1(c)) by for-profit organizations in any part of that jurisidiction. Normally, the entire State will constitute the appropriate jurisdiction for determining whether bingo games are ordinarily carried out on a commercial basis. However, if State law permits local jurisdictions to determine whether bingo games may be conducted by for-profit organizations, or if State law limits or confines the conduct of bingo games by for-profit organizations to specific local jurisdictions, then the local jurisdiction will constitute the appropriate jurisdiction for determining whether bingo games are ordinarily carried out on a commercial basis.

(3) *Examples.* The application of this paragraph is illustrated by the examples that follow. In each example, it is assumed that the bingo games referred to are operated by individuals who are compensated for their services. Accordingly, none of the bingo games would be excluded from the term "unrelated trade or business" under section 513 (a) (1).

*Example (1).* Church Z, a tax-exempt organization, conducts weekly bingo games in State O. State and local laws in State O expressly provide that bingo games may be conducted by tax-exempt organizations. Bingo games are not conducted in State O by any for-profit businesses. Since Z's bingo games are not conducted in violation of State or local law and are not the type of activity ordinarily carried out on a commercial basis in State O, Z's bingo games do not constitute unrelated trade or business.

*Example (2).* Rescue Squad X, a tax-exempt organization, conducts weekly bingo games in State M. State M has a statutory provision that prohibits all forms of gambling including bingo games. However, that law generally is not enforced by State officials against local charitable organizations such as X that conduct bingo games to raise funds. Since bingo games are illegal under State law, X's bingo games constitute unrelated trade or business regardless of the degree to which the State law is enforced.

*Example (3).* Veteran's organizations Y and X, both tax-exempt organizations, are organized under the laws of State N. State N has a statutory provision that permits bingo games to be conducted by tax-exempt organizations. In addition, State N permits bingo games to be conducted by for-profit organizations in city S, a resort community located in county R. Several for-profit organizations conduct nightly bingo games in city S. Y conducts weekly bingo games in city S. X conducts weekly bingo games in county R. Since State law confines the conduct of bingo games by for-profit organizations to city S, and since bingo games are regularly carried on there by those organizations, Y's bingo games conducted in city S constitute unrelated trade or business. However, X's bingo games conducted in county R outside of city S do not constitute unrelated trade or business.

(d) *Bingo game defined.* A bingo game is a game of chance played with cards that are generally printed with five rows of five squares each. Participants place markers over randomly called numbers on the cards in an attempt to form a preselected pattern such as a horizontal, vertical, or diagonal line, or all four corners. The first participant to form the preselected pattern wins the game. As used in this section, the term "bingo game" means any game of bingo of the type described above in which wagers are placed, winners are determined, and prizes or other property is distributed in the presence of all persons placing wagers in that game. The term "bingo game" does not refer to any game of chance (including, but not limited to, keno games, dice games, card games, and lotteries) other than the type of game described in this paragraph.

(e) *Effective date.* Section 513(f) and this section apply to taxable years beginning after December 31, 1969.

[FR Doc. 80-15609 Filed 5-20-80; 8:45 am]
BILLING CODE 4830-01-M

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**26 CFR Part 1**

**[T.D. 7698]**

## Income Tax; Taxable Years Beginning After December 31, 1953; Exemption From Taxation of Certain Cemetery Companies and Crematoria; Exempt Title Holding Companies

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations under sections 501(c)(2) and 501(c)(13) of the Internal Revenue Code of 1954, relating to exempt title holding companies and to exempt cemetery companies and crematoria, respectively. These regulations make clerical changes in the regulations under section 501(c)(2), so as to reflect the revision of section 514 by the Tax Reform Act of 1969 (Pub. L. 91-172, 83 Stat. 543) and to reflect changes made in section 501(c)(13) by the Act of December 31, 1970 (Pub. L. 91-618, 84 Stat. 1855), exempting certain crematoria from the corporate income tax. The regulations under section 501(c)(13) also clarify the standards for exemption from income tax and help identify when certain transfers to cemetery companies and crematoria are in exchange for equity interests rather than for debt obligations. Furthermore, the regulations correct two clerical errors contained in Treasury Decision 7229, published December 21, 1972, relating to unrelated debt-financed income of certain tax-exempt organizations. These regulations provide necessary guidance to the public for compliance with these Acts, and affect certain title holding companies and certain cemetery companies and crematoria that are exempt from taxation.

**DATE:** The regulations are effective for various taxable years as specified in the regulations.

**FOR FURTHER INFORMATION CONTACT:** Harry Beker of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:EE) (202-566-6212) (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

On July 8, 1975, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 501(c)(2) and 501(c)(13) of the Internal Revenue Code of 1954 (40 FR 28613). The amendments were proposed to conform the regulations to the Tax Reform Act of 1969 (83 Stat. 543) and to the Act of December 31, 1970 (84 Stat. 1855). On November 29, 1978, the **Federal Register** published proposed amendments to the proposed regulations under section 501(c)(13) (43 FR 55797). A public hearing was held on March 29, 1979. After consideration of all comments regarding the proposed amendments, those amendments are adopted, as revised, by this Treasury decision.

The comments received with respect to the proposed amendments generally concerned three issues relating to exempt cemetery companies and crematoria. First, it was recommended that § 1.501(c)(13)-1(a) be revised to permit mutual cemeteries to be exempt even if operated for profit. As proposed on July 8, 1975, § 1.501(c)(13)-1(a) makes it clear that only nonprofit mutual cemetery companies would be exempt. It has been concluded that the phrase "or which are not operated for profit" was added to section 501(c)(13) not as a separate qualification for exemption, but to take care of mutual cemetery companies that would not be operating "exclusively" for the benefit of members because of additional charitable activities, such as the burial of paupers. Additional support for this position is contained in section 170(c)(5), the counterpart to section 501(c)(13) for purposes of charitable contributions. Section 170(c)(5) reflects the emphasis placed by Congress on the "quasi charitable" nature of the type of organizations intended to be exempt under section 501(c)(13) by providing that only contributions to nonprofit mutual cemetery companies and nonprofit cemetery corporations are deductible. Accordingly, no change has been made to § 1.501(c)(13)-1(a) in the final regulations.

Second, it was recommended that § 1.501(c)(13)-1(c)(1), relating to the issuance of preferred stock, be withdrawn or substantially modified so that the use of preferred stock could continue to be available to tax-exempt cemeteries and crematoria. As proposed on November 29, 1978, § 1.501(c)(13)-1(c)(1) provides that a cemetery company or crematorium which issues preferred stock on or after November 28, 1978, will not be exempt from income tax. It has been concluded that the rule which permitted the issuance of preferred stock was inconsistent with the requirement of section 501(c)(13) that no part of the net earnings of an organization otherwise described in that section may inure to the benefit of any private shareholder or individual. The amendments, however, recognize the continued exempt status of cemeteries and crematoria which, prior to November 28, 1978, issued preferred stock meeting certain restrictions. The general prohibition on the issuance of preferred stock has been retained.

The comments relating to preferred stock also suggested that, if the amendment barring the use of preferred stock is adopted, § 1.501(c)(13)-1(c)(2) (the transitional rule) should be modified to include a clause protecting those cemeteries and crematoria which, prior to November 28, 1978, were in the process of issuing such stock. This recommendation has been adopted in new § 1.501(c)(13)-1(c)(3) which provides that a cemetery company or crematorium shall not fail to be exempt solely because it issues preferred stock on or after November 28, 1978, if such stock meets certain restrictions and is

issued pursuant to a plan which had been reduced to writing and adopted prior to November 28, 1978.

Third, it was recommended that § 1.501(c)(13)–1(d) be revised to indicate that where the vendor of property to a cemetery company does not control the cemetery, tax-exempt status should not be denied merely because the payments do not take the form of a traditional debt obligation. As proposed on July 8, 1975, § 1.501(c)(13)–1(d) provides that a cemetery company or crematorium is not exempt from income tax if property is transferred to such organization in exchange for an equity interest so long as the equity interest remains outstanding.

Section 1.501(c)(13)–1(d) previously listed several factors that would be considered in determining whether a bona fide debt obligation existed. The factors previously listed have been eliminated and paragraph (d) now simply provides that no person may have any interest in the net earnings of a tax-exempt cemetery company or crematorium, including any interest that constitutes equity under section 385 or the regulations thereunder.

Finally, minor technical clarifications have been made to reflect the fact that section 501(c)(13) does not grant exemption but merely describes organizations which are exempt under section 501(a).

**Drafting Information**

The principal author of these regulations is Harry Beker of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is amended as follows:

**Paragraph 1.** Section 1.501(c)(2)–1(a) is amended to read as follows:

**§1.501(c)(2)–1 Corporations organized to hold title to property for exempt organizations.**

(a) A corporation described in section 501(c)(2) and otherwise exempt from tax under section 501(a) is taxable upon its unrelated business taxable income. For taxable years beginning before January 1, 1970, see § 1.511–2(c)(4). Since a corporation described in section 501(c)(2) cannot be exempt under section 501(a) if it engages in any business other than that of holding title to property and collecting income therefrom, it cannot have unrelated business taxable income as defined in section 512 other than income which is treated as unrelated business taxable income solely because of the applicability of section 512(a)(3)(C); or debt financed income which is treated as unrelated business taxable income solely because of section 514; or certain interest, annuities, royalties, or rents which are treated as unrelated business taxable income solely because of section 512(b) (3)(B)(ii) or (13). Similarly, exempt status under section 501(c)(2) shall not be affected where certain rents from personal property leased with real property are treated as unrelated business taxable income under section 512(b)(3)(A)(ii) solely because such rents attributable to such personal property are more than incidental when compared to the total rents received or accrued under the lease, or under section 512(b)(3)(B)(i) solely because such rents attributable to such personal property exceed 50 percent of the total rents received or accrued under the lease.

* * * * *

**§ 1.1501(c)(13) [Deleted]**

**Par. 2.** Section 1.501(c)(13) is deleted.

**Par. 3.** Section 1.501(c)(13)–1 is amended to read as follows:

**§ 1.501(c)(13)–1 Cemetery companies and crematoria.**

(a) *Nonprofit mutual cemetery companies.* A nonprofit cemetery company may be entitled to exemption if it is owned by and operated exclusively for the benefit of its lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale. A mutual cemetery company which also engages in charitable activities, such as the burial of paupers, will be regarded as operating in conformity with this standard. Further, the fact that a mutual cemetery company limits its membership to a particular class of individuals, such as members of a family, will not affect its status as mutual so long as all the other requirements of section 501(c)(13) are met.

(b) *Nonprofit cemetery companies and crematoria.* Any nonprofit corporation, chartered solely for the purpose of the burial, or (for taxable years beginning after December 31, 1970) the cremation of bodies, and not permitted by its charter to engage in any business not necessarily incident to that purpose, is exempt from income tax, provided that no part of its net earnings inures to the benefit of any private shareholder or individual.

(c) *Preferred stock*—(1) *In general.* Except as provided in subparagraph (3) of this paragraph, a cemetery company or crematorium is not described in section 501(c)(13) if it issues preferred stock on or after November 28, 1978.

(2) *Transitional rule for preferred stock issued prior to November 28, 1978.* In the case of preferred stock issued prior to November 28, 1978, a cemetery company or crematorium which issued such stock shall not fail to be exempt from income tax solely because it issued preferred stock which entitled the holders to dividends at a fixed rate, not exceeding the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration for which the stock was issued, if its articles of incorporation require:

(i) That the preferred stock be retired at par as rapidly as funds therefor become available from operations, and

(ii) That all funds not required for the payment of dividends upon or for the retirement of preferred stock be used by the company for the care and improvement of the cemetery property.

The term "legal rate of interest" shall mean the rate of interest prescribed by law in the State of incorporation which prevails in the absence of an agreement between contracting parties fixing a rate.

(3) *Transitional rule for preferred stock issued on or after November 28, 1978.* In the case of preferred stock issued on or after November 28, 1978, a cemetery company or crematorium shall not fail to be exempt from income tax if its articles of incorporation and the preferred stock meet the requirements of subparagraph (2) and if such stock is issued pursuant to a plan which has been reduced to writing and adopted prior to November 28, 1978. The adoption of the plan must be shown by the acts of the duly constituted responsible officers and appear upon the official records of the cemetery company or crematorium.

(d) *Sales to exempt cemetery companies and crematoria.* Except as provided in paragraph (c)(2) or (c)(3) of this section (relating to transitional rules for preferred stock), no person may have any interest in the net earnings of a tax-exempt cemetery company or crematorium. Thus, a cemetery company or crematorium is not exempt from tax if property is transferred to such organization in exchange for an interest in the net earnings of the organization so long as such interest remains outstanding. An interest in a cemetery company or crematorium that constitutes an equity interest within the

meaning of section 385 will be considered an interest in the net earnings of the cemetery. However, an interest in a cemetery company or crematorium that does not constitute an equity interest within the meaning of section 385 may nevertheless constitute an interest in the net earnings of the organization. Thus, for example, a bond or other evidence of indebtedness issued by a cemetery company or crematorium which provides for a fixed rate of interest but which, in addition, provides for additional interest payments contingent upon the revenues or income of the organization is considered an interest in the net earnings of the organization. Similarly, a convertible debt obligation issued by a cemetery company or crematorium after July 7, 1975, is considered an interest in the net earnings of the organization.

**§ 1.514(c)–1 [Amended]**

Par. 4. Section 1.514(c)–1 is amended by striking out from the second sentence of paragraph (f) "section 221(d)(3) (12 U.S.C. 1715(d)(3)) or section 236 (12 U.S.C. 1715x–1)" and inserting in lieu thereof "section 221(d)(3) (12 U.S.C. 1715 (*l*)(d)(3)) or section 236 (12 U.S.C. 1715z–1)".

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: April 25, 1980.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 80–15610 Filed 5–20–80; 8:45 am]

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## 26 CFR Part 301

**[T.D. 7697]**

## Offshore Oil Pollution Compensation Fund

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the collection of fees for the purpose of funding an Offshore Oil Pollution Compensation Fund. Changes to the applicable law were made by the Outer Continental Shelf Lands Act Amendments of 1978. The regulation will provide the public with the guidance needed to comply with the portion of the Act that relates to the collection of fees and will affect all owners of oil obtained from the Outer Continental Shelf.

**DATE:** The regulations at §§ 301.9001–1, 301.9001–2, and 301.9001–3 are effective on July 25, 1979, at 7:00 a.m., local time. If, however, the established practice has been to gauge oil production at a time other than 7:00 a.m. the effective date is July 25, 1979, at the time production has been gauged.

**FOR FURTHER INFORMATION CONTACT:** Kyllikki Kusma of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T, 202–566–3287, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 20, 1979, the **Federal Register** published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301). The amendments were proposed to conform the regulations to section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 672). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

### Explanation of the Regulations

Section 302 of the Outer Continental Shelf Lands Act Amendments of 1978 (Act) establishes an Offshore Oil Pollution Compensation Fund (Fund). Under section 302(d) of the Act, this fund consists of money generated by a fee of not more than 3 cents per barrel imposed on oil obtained from the Outer Continental Shelf (OCS), and is to be paid by the owner of the oil as defined in § 301.9001–1(a)(2) of these regulations. Failure to pay the fee subjects the owner of the oil to a civil penalty. These regulations describe the collection procedure which is to be used in collecting this fee.

### Owner of Oil

The proposed regulations stated that the owner of oil is the person in whom is vested ownership of the oil as it is produced at the wellhead without regard to the existence of contractual arrangements for the sale or other disposition of the oil. Under this rule, the Federal government is not an owner of oil at the time of production with respect to its entitlement to royalty oil. Several commentators suggested that the final regulations be amended to treat the Federal government as part owner of the OCS oil when it is produced and to exclude the portion of the OCS production that is attributable to the Federal government entitlement to royalty oil from calculations determining the amount of the fee to be paid by the owner of the oil.

This suggestion is not adopted. Under the Act, the Coast Guard has the major responsibility for establishing policies, procedures, and administrative practices regarding the overall management and general operation of the Fund. Their final regulations, which were promulgated prior to publication of this notice of proposed rulemaking, specify that the per barrel fee applies at the time OCS oil is produced and state that the Federal Government is not the owner of the oil at the time of production. See 33 CFR 135.103. Similar questions were raised by commentators with respect to the Coast Guard's position on this issue but were not adopted. See 44 FR 16860 for the Coast Guard's discussion of the issue.

### Condensate

One commentator believed that the term "oil" should not include condensate. Once again 33 CFR 135.5(b)(6) includes condensate in the definition of "oil". See 44 CFR 16861 for the Coast Guard's discussion of this question.

### Barrels Subject to the Fee

Two commentators suggested that a sentence be added to the regulations which would clarify that the data found on Form 9–153 (Monthly Report of Sales and Royalty) is the information to be utilized in computing the number of barrels subject to the fee. The final regulations reflect this comment at § 301.9001–1(a)(1) with the addition of a new sentence between sentence 2 and sentence 3.

### Semimonthly Deposit

Under the proposed regulations a semimonthly deposit of fees was required if the owner of oil is liable for more than $2,000 of fees for any month of a calendar quarter. Many commentators stated that this proposal creates numerous accounting problems because reliable data normally is not available. This means that two reports must be prepared in which estimated production data must be utilized. Because the semimonthly deposit requirement is consistent with Treasury policy in related collection areas, the final regulations are not changed to reflect these comments.

### Power of Attorney

The regulations at § 301.9001–1(d) state that the fee must be paid either by the owner of the oil or by a person authorized to act for the owner under an acceptable power of attorney. Several of the commentators stated that the

requirement of obtaining and filing a power of attorney with the Internal Revenue Service would be duplicative since the provisions of operating agreements between operators and nonoperator owners of oil-producing properties authorize the operator to make payments on behalf of nonoperator owners of oil. In accordance with these comments, the final regulations permit an operating agreement to be considered an acceptable power of attorney if it authorizes the payment by the operator of the fee imposed by the Act.

**Drafting Information**

The principal author of this regulation is Kyllikki Kusma of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service, Treasury Department, and Coast Guard participated in developing the regulation, both on matters of substance and style.

**Adoption of amendments to the regulations**

Accordingly, the proposed amendments to the regulations (26 CFR Part 301) as published in the **Federal Register** on July 20, 1979 (44 FR 42719) are adopted with changes as set forth below:

**Paragraph 1.** Section 301.9001–1 is amended as follows:

(a) A new sentence is added to § 301.9001–1(a)(1) between the second and third sentences to read as stated below.

(b) The phrase "Gulf of Mexico" is added to the third sentence from the end between the words "Shelf" and "Order" at § 301.9001–1(a)(1).

(c) The first sentence of § 301.9001–1(a)(2) is amended by deleting the words "these regulations" and by adding "§§ 301.9001–1, 301.9001–2, and 301.9001–3," to replace the deleted words.

(d) The word "reserved" is deleted and two new sentences are added at §301.9001–1(a)(5) to read as stated below.

(e) Section 301.9001–1(c)(2) is amended by adding the phrase, "or a person authorized to act for the owner" between the words "owner" and "may".

(f) Section 301.9001–1(c)(3) is amended first by adding the phrase, "or a person authorized to act for the owner" between the words "owner" and "must" and is amended secondly by adding the phrase "following the month of production." after the word "month" at the end of the sentence.

(g) A new sentence is added after the sentence currently at § 301. 9001–1(d)(1) to read as stated below.

§ *301. 9001–1 Collection of fee.*

(a) *Imposition of fee*—(1) *In general.* * * * The barrels subject to the fee shall be those barrels reported by the owner of the oil (§ 301. 9001–1(a)(2)), or a person authorized to act for the owner, on the monthly royalty reports, Form 9–153, filed with the U.S. Geological Survey as required by 30 CFR 250.94.

* * * * *

(5) Effective date. The provisions of §§ 301.9001–1, 301.9001–2, and 301.9001–3 are effective on July 25, 1979, at 7:00 a.m., local time. If, however, the established practice has been to gauge oil production at a time other than 7:00 a.m., the effective date is July 25, 1979, at the time production has been gauged.

* * * * *

(d) *Responsibility for payment of fee*—(1) *In general.* * * * For the purposes of the regulations at § 301.9001–1, 301.9001–2, and 301.001–3, an operating agreement between the operator of the oil-producing facility and the owner of the oil is considered an acceptable power of attorney if the operating agreement expressly states that the operator is authorized to pay the fee imposed by section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978.

**Par. 2.** Section 301.9001–2 is amended as follows:

(a) The first sentence of § 301.9001–2 is amended by deleting the words "these regulations" and by adding "§§ 301.9001–1, 301.9001–2, and 301.9001–3" to replace the deleted words.

This Treasury decision is issued under the authority contained in section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 672) and in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: May 2, 1980.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The following new sections are inserted to follow § 301.9000–1:

**§ 301.9001 Statutory provisions; Outer Continental Shelf Lands Act Amendments of 1978.**

Section 302 of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) provides as follows:

Sec. 302. (a) There is hereby established in the Treasury of the United States an Offshore Oil Pollution Compensation Fund in an amount not to exceed $200,000,000, except that such limitation shall be increased to the extent necessary to permit any moneys recovered or collected which are referred to in subsection (b)(2) of this section to be paid into the Fund. The Fund shall be administered by the Secretary [1] and the Secretary of the Treasury as specified in this title. The Fund may sue and be sued in its own name.

(b) The Fund shall be composed of—

(1) All fees collected pursuant to subsection (d) of this section; and

(2) All other moneys recovered or collected on behalf of the Fund under section 308 or any other provision of this title.

(c) The Fund shall be immediately available for—

(1) Removal costs described in section 301(22);

(2) The processing and settlement claims under section 307 of this title (including the costs of assessing injury to, or destruction of, natural resources); and

(3) Subject to such amounts as are provided in appropriation Acts, all administrative and personnel costs of the Federal Government incident to the administration of this title, including, but not limited to, the claims settlement activities and adjudicatory and judicial proceedings, whether or not such costs are recoverable under section 308 of this title.

The Secretary is authorized to promulgate regulations designating the person or persons who may obligate available money in the Fund for such purposes.

(d)(1) The Secretary shall levy and the Secretary of the Treasury shall collect a fee of not to exceed 3 cents per barrel on oil obtained from the Outer Continental Shelf, which shall be imposed on the owner of the oil when such oil is produced.

(2) The Secretary of the Treasury, after consulting with the Secretary, may promulgate reasonable regulations relating to the collection of the fees authorized by paragraph (1) of this subsection and, from time to time, the modification thereof. Any modification shall become effective on the date specified in the regulation making such modification, but no earlier than the ninetieth day following the date such regulation is published in the **Federal Register.** Any modification of the fee shall be designed to insure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000. No regulation that sets or modifies fees, whether or not in effect, may be stayed by any court pending completion of judicial review of such regulation.

(3)(A) Any person who fails to collect or pay any fee as required by any regulation promulgated under paragraph (2) of this subsection shall be liable for a civil penalty not to exceed $10,000, to be assessed by the Secretary of the Treasury, in addition to the fee required to be collected or paid and the interest on such fee at the rate such fee would have earned if collected or paid when due and invested in special obligations of the United States in accordance with subsection (e)(2) of this section. Upon the failure of any person so liable to pay any penalty, fee, or interest upon demand, the Attorney General

[1] Secretary wherever used in this section means the Secretary of Transportation.

may, at the request of the Secretary of the Treasury, bring an action in the name of the Fund against that person for such amount.

(B) Any person who falsifies records or documents required to be maintained under any regulation promulgated under this subsection shall be subject to prosecution for a violation of section 1001 of title 18, United States Code.

(4) The Secretary of the Treasury may, by regulation, designate the reasonably necessary records and documents to be kept by persons from whom fees are to be collected pursuant to paragraph (1) of this subsection, and the Secretary of the Treasury and the Comptroller General of the United States shall have access to such records and documents for the purpose of audit and examination.

(e)(1) The Secretary shall determine the level of funding required for immediate access in order to meet potential obligations of the Fund.

(2) The Secretary of the Treasury may invest any excess in the Fund above the level determined under paragraph (1) of this subsection, in interest-bearing special obligations of the United States. Such special obligations may be redeemed at any time in accordance with the terms of the special issue and pursuant to regulations promulgated by the Secretary of the Treasury. The interest on, and the proceeds from the sale of, any obligations held in the Fund shall be deposited in and credited to the Fund.

(f) If at any time the moneys available in the Fund are insufficient to meet the obligations of the Fund, the Secretary shall issue to the Secretary of the Treasury notes or other obligations in the forms and denominations, bearing the interest rates and maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or other obligations shall be made by the Secretary from moneys in the Fund. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of comparable maturity. The Secretary of the Treasury shall purchase any notes or other obligations issued under this subsection and, for that purpose, he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act. The purpose for which securities may be issued under that Act are extended to include any purchase of such notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

**§ 301.9001-1 Collection of fee.**

(a) *Imposition of fee*—(1) *In general.* Under section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (Act), the Internal Revenue Service is authorized to collect a fee of not more than 3 cents per barrel on oil that is obtained from the Outer Continental Shelf. This fee is established by the Commandant, United States Coast Guard, and is imposed on the owner of the oil as defined in paragraph (a)(2) of this section. The barrels subject to the fee shall be those barrels reported by the owner of the oil (§ 301.9001-1 (a) (2)), or a person authorized to act for the owner, on the monthly royalty reports, Form 9-153, filed with the U.S. Geological Survey as required by 30 CFR 250.94. For the purpose of computing this fee, the owner of the oil shall measure the Outer Continental Shelf oil production by employing the criteria of the U.S. Geological Survey contained in 30 CFR 250.60 and Outer Continental Shelf Gulf of Mexico Order 13. No reduction in the amount due will be permitted by reason of theoretical or actual oil lost in transit. To ensure that the Fund is maintained at a level of not less than $100,000,000 and not more than $200,000,000, the Commandant, United States Coast Guard, may modify the amount of this fee.

(2) *Owner of oil.* For the purposes of §§ 301.9001-1, 301.9001-2, and 301.9001-3, the owner of oil is the person in whom is vested ownership of the oil as it is produced at the wellhead without regard to the existence of contractual arrangements for the sale or other disposition of the oil between such a person and third parties. Under this rule, the Federal government entitlement to royalty oil does not constitute ownership of oil by the Federal government at the time of production.

(3) *Example.* The provisions of paragraph (a)(2) of this section may be illustrated by the following example:

*Example.* X is the owner of oil produced on the Outer Continental Shelf. During one reporting period, 10,000 barrels of oil were obtained from this location. X will use a portion of this oil to make a royalty payment to the United States government. X also has a contract with Y to sell Y the remaining barrels of oil. For the purpose of the Act, X is the owner of the oil and must pay a fee of 3 cents per barrel on all 10,000 barrels of oil.

(4) *Cross-references.* See § 301.9001-2(a) for the definition of barrel, § 301.9001-2(b) for the definition of oil, and § 301.9001-2(c) for the definition of person.

(5) *Effective Date.* The provisions of §§ 301.9001-1, 301.9001-2, and 301.9001-3 are effective on July 25, 1979, at 7:00 a.m., local time. If, however, the established practice has been to gauge oil production at a time other than 7:00 a.m., the effective date is July 25, 1979, at the time production has been gauged.

(b) *Collection of fee.* The Internal Revenue Service shall collect the fee imposed by section 302(d) of the Act. Administrative procedures for the collection of this fee shall be prescribed from time to time by the Commissioner. The Commissioner may designate the reasonably necessary records and documents to be kept by the person or persons from whom the fee is collected. See also the regulations under 33 CFR 135.103 for additional rules relating to the implementation of the Act.

(c) *Time and place for payment of the fee*—(1) *In general.* Payment of the fee shall be made in accordance with the rules established in paragraph (c)(2), (3) and (4) of this section. When a deposit is required by these rules, it must be filed with the Internal Revenue Service Center, Austin, Texas 73301 using Form 6008, Fee Deposit for Offshore Oil. Adjustments required in the amount paid during the calendar quarter to reflect the actual amount due for the quarter shall be made on Form 6009, Quarterly Report of Fees Due. Form 6009 must be filed on or before the last day of the month following the end of the calendar quarter with the Austin Service Center. The rules under section 7502, relating to the treatment of timely mailing as timely filing and paying, and section 7503, relating to the time for performance of acts where the last day falls on Saturday, Sunday, or legal holiday are applicable to the filing of Form 6009.

(2) *$100 or less of fees.* If the owner of oil is liable in any calendar quarter for $100 or less of fees, the owner or a person authorized to act for the owner may either deposit this amount or pay the full amount of the fee when Form 6009 is filed.

(3) *More than $100 of fees.* If the owner of oil is liable in the first or second month of the calendar quarter for more than $100 of fees and is not required to make a semimonthly deposit (see paragraph (c)(4) of this section), the owner or a person authorized to act for the owner must deposit the amount on or before the last day of the following month following the the month of production.

(4) *More than $2000 of fees.* The owner of oil who is liable for more than $2000 of fees for any month of a calendar quarter must deposit fees for the following quarter (regardless of amount) on a semimonthly basis. The deposit must be made on or before the ninth day following the semimonthly period for which it is reportable. The first deposit for a month may be reasonably estimated when an accounting of oil production is normally done by the month. Under these

circumstances, the second for that month deposit should be adjusted to reflect the total barrels produced in that month.

(d) *Responsibility for payment of fee*—(1) *In general.* Form 6009, Quarterly Report of Fees Due, must be filed and the fee must be paid either by the owner of the oil (§ 301.9001–1(a)(2)) or by a person authorized to act for the owner of the oil under an acceptable power of attorney filed with the Austin Service Center. For the purposes of the regulations at §§ 301.9001–1, 301.9001–2, and 301.9001–3, an operating agreement between the operator of the oil-producing facility and the owner of oil is considered an acceptable power of attorney if the operating agreement specifically states that the operator is authorized to pay the fee imposed by section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

*Example.* W, X, Y, and Z are oil companies that own equal interests in oil produced on the Outer Continental Shelf. W was selected to be the operator of the offshore facility. Additionally, X, Y, and Z authorized W to file Form 6009 and to pay the fee imposed by section 302(d) of the Act on the oil produced at this facility. Pursuant to this authorization, W paid a fee of $16,600. Since the ownership of the oil is divided equally among W, X, Y, and Z, each company's share of the fee is $4,150.

(e) *Penalty and Interest.* Failure to collect or pay the fee shall result in a civil penalty assessed by the Secretary of the Treasury. The amount of the penalty is not to exceed $10,000 in addition to the fee and the interest on the unpaid fee that would have been earned if paid when due and invested in the special Treasury securities which are to be purchased by the fund. The computation of the rate of interest to be levied on underpayment of fees shall be based on the average interest rate earned by the interest-bearing special obligations of the United States in the fund for each calendar quarter for which there is underpayment. Unless it can be shown that the failure to collect or pay the fee is due to reasonable cause and not due to the willful neglect, the amount of the penalty is the lesser of—

(1) $10,000 or

(2) The amount of the fee.

**§ 301.9001–2 Definitions.**

The terms enumerated in this section are to be defined for the purposes of §§301.9001–1, 301.9001–2, and 301.9001–3 in the following manner:

(a) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(b) "Oil" means petroleum, including crude oil or any fraction or residue therefrom, and natural gas condensate, except that the term does not include natural gas.

(c) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, or governmental entity.

(d) "Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of title 43 and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control;

**§ 301.9001–3 Cross reference.**

See the Coast Guard regulations under 33 CFR Parts 135 and 136 for rules relating to the implementation of the Act.

**Note.**—This Treasury decision is issued under the authority contained in section 302(d) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 672) and in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917: 26 U.S.C. 7805).

[FR Doc. 80–15612 Filed 5–20–80; 8:45 am]

BILLING CODE 4830–01–M

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## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 19

**[T.D. ATF–69]**

## Distilled Spirits Plants—Reduced Bond Penal Sums for Limited Distilled Spirits Operations

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Temporary rule (Treasury decision).

**SUMMARY:** This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96–39). This temporary rule provides for reduced operations bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations.

**EFFECTIVE DATE:** The effective date of this temporary regulation is May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Edward J. Sheehan, E. J. Ference, John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202–566–7626.

**SUPPLEMENTARY INFORMATION:** This temporary rule revises 27 CFR 19.245 to provide for reduced maximum operations bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations (i.e., storage operations or storage and processing operations). Section 19.245 was published in its entirety in the **Federal Register** (44 FR 71612) as both a temporary rule, T.D. ART–62, and a notice of proposed rulemaking for final regulations, Notice No. 329. This temporary regulation as revised by this document will remain in effect until superseded by final regulations. In addition, Notice No. 329, a notice of proposed rulemaking for final regulations providing for submission of written comments, applies to this revised temporary regulation.

### New Provision

Prior to January 1, 1980, 27 CFR 201.211(b) (2) and (3) provided for reduced maximum bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations. However, under current temporary regulations, § 19.245 provides that the maximum operations bond penal sums for storage operations and for storage and processing operations are $200,000 and $250,000, respectively, regardless of the size of operations. This Treasury decision revises § 19.245(a)(1) (ii) and (v) by providing a lower maximum operations bond penal sum of $50,000 for limited storage operations or limited storage and processing operations. This regulation should provide relief for small distilled spirits plant proprietors who may have difficulty in obtaining operations bonds at the higher penal sums previously required by § 19.245.

### Drafting Information

The principal author of this document is Edward J. Sheehan of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing this document, both on matters of substance and style.

### Effective Date

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553(b) and in compliance with the effective date limitation in 5 U.S.C. 553(d) is impracticable and not in the public interest because revisions in the bonding provisions, 27 CFR, Part 19, Subpart H, have created unintended hardships and inequities for small distilled spirits plants conducting certain limited distilled spirits operations. The Bureau has been advised that such

plants have been unable to obtain bonds at the maximum penal sum and thereby have been seriously hampered in conducting the same business engaged in prior to January 1, 1980, and unless granted relief substantial business damage will result. Immediate action is necessary to rectify the inequities and prevent substantial harm to such plants. This amendment reestablishes reduced maximum operations bond penal sums to ease qualification requirements for proprietors of small distilled spirits plants conducting certain limited distilled spirits operations who have difficulty in obtaining operations bonds at the higher penal sums.

Accordingly, this Treasury decision becomes effective on May 21, 1980.

### Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

## PART 19—DISTILLED SPIRITS PLANTS

Section 19.245 is amended to read as follows:

### § 19.245 Bonds and penal sums of bonds.

The bonds, and the penal sums thereof, required by this subpart, are as follows:

**Penal Sum**

| Type of bond | Basis | Minimum | Maximum |
|---|---|---|---|
| (a) Operations bond: | | | |
| (1) One plant bond— | | | |
| (i) Distiller | The amount of tax on spirits produced during a period of 15 days. | $5,000 | $100,000 |
| (ii) Warehouseman: | | | |
| (A) General | The amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises. | 5,000 | 200,000 |
| (B) Limited to storage of not over 500 packages, and to a total of not over 50,000 proof gallons. | ....do | 5,000 | 50,000 |
| (iii) Distiller and warehouseman | The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises. | 10,000 | 200,000 |
| (iv) Distiller and processor | The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises. | 10,000 | 200,000 |
| (v) Warehouseman and processor: | | | |
| (A) General | The amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises. | 10,000 | 250,000 |
| (B) Limited to storage of not over 500 packages, and to a total of not over 50,000 proof gallons, and processing of spirits so stored. | ....do | 10,000 | 50,000 |
| (vi) Distiller, warehouseman, and processor | The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises. | 15,000 | 250,000 |
| (2) Adjacent bonded wine cellars— | | | |
| (i) Distiller and bonded wine cellar | The sum of the amount of tax calculated in (a)(1)(i) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit. | 6,000 | 150,000 |
| (ii) Distiller, warehouseman and bonded wine cellar. | The sum of the amount of tax calculated in (a)(1)(iii) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit. | 11,000 | 250,000 |
| (iii) Distiller, processor and bonded wine cellar. | The sum of the amount of tax calculated in (a)(1)(iv) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit. | 11,000 | 250,000 |
| (iv) Distiller, warehouseman, processor and bonded wine cellar. | The sum of the amount of tax calculated in (a)(1)(vi) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit. | 16,000 | 300,000 |
| (b) Area operations bond: | The penal sum shall be calculated in accordance with the following table: | | |

| Total penal sums as determined under (a) | Requirements for penal sum of area operations bond. |
|---|---|
| Not over $300,000 | 100 percent. |
| Over $300,000 but not over $600,000 | $300,000 plus 70 percent of excess over $300,000. |

**Penal Sum—Continued**

| Type of bond | Basis | Minimum | Maximum |
|---|---|---|---|
| Over $600,000 but not over $1,000,000 | $510,000 plus 50 percent of excess over $600,000. | | |
| Over $1,000,000 but not over $2,000,000 | $710,000 plus 35 percent of excess over $1,000,000. | | |
| Over $2,000,000 | $1,060,000 plus 25 percent of excess over $2,000,000. | | |
| (c) Withdrawal bond: | | | |
| (1) One plant qualified for distilled spirits operations. | The amount of tax which, at any one time, is chargeable against such bond but has not been paid. | 1,000 | 1,000,000 |
| (2) Two or more plants in a region qualified for distilled spirits operations. | Sum of the penal sums for each plant calculated in (c)(1) of this section. | [1] | [2] |
| (d) Unit bond: | | | |
| (1) Both operations at a distilled spirits plant (and any adjacent bonded wine cellar) and withdrawals from the bonded premises of the same distilled spirits plant. | Total penal sums of (a) and (c)(1) of this section. | 6,000 | 1,300,000 |
| (2) Both operations at two or more distilled spirits plants (and any adjacent bonded wine cellar) within the same region and withdrawals from the bonded premises of the same distilled spirits plants. | Total penal sums of (b) and (c)(2) of this section in lieu of which given. | [3] | [4] |

[1] Sum of the minimum penal sums required for each plant covered by the bond.
[2] Sum of the maximum penal sums required for each plant covered by the bond (The maximum penal sum for one plant is $1,000,000).
[3] Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.
[4] Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(Sec. 805(c), Pub. L. 96–39, 93 Stat. 276 (26 U.S.C. 5173))

Signed: March 10, 1980.

**G. R. Dickerson,**

*Director.*

Approved: April 22, 1980.

**Richard J. Davis,**

*Assistant Secretary (Enforcement and Operations).*

[FR Doc. 80–15604 Filed 5–20–80; 8:45 am]

BILLING CODE 4810–31–M

## 27 CFR Parts 179, 194, 197, 245, 250, 251, and 252

**[T.D. ATF–70]**

## Special Tax

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule liberalizes and updates regulations governing payment of special tax, and payment of interest on delinquent or unpaid special tax. Under the amended regulations, special tax may be paid with a single form (Internal Revenue Service Form 11), even though several rates of special tax are involved. Current regulations require separate Forms 11 to be prepared for each rate of special tax involved. The interest rate on special tax which is unpaid on or after February 1, 1978, is updated to reflect the current rate, in accordance with applicable law.

**EFFECTIVE DATE:** May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Steven C. Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044; (202) 566–7626.

**SUPPLEMENTARY INFORMATION:** On January 1, 1979, an amended version of Internal Revenue Service Form 11 took effect. Under this form, as amended, taxpayers with multiple locations who wish to pay special tax with a single form may do so, even though they may be subject to several rates of special tax. The former version of Form 11 required taxpayers to submit separate forms for each rate of special tax being paid. Amendment of ATF regulations is necessitated by the amendment of Form 11, because these regulations include instructions for preparation of this form. The amendments do not affect the amount of special tax that is due. Also, separate Forms 11 will still be required if different time periods are involved.

In Revenue Ruling 77–411 (1977–2 C.B. 480), the Commissioner of Internal Revenue announced a reduced interest rate of 6 percent, applicable to special tax which is unpaid on or after February 1, 1978. Later, in Revenue Ruling 79–366, published in Internal Revenue Bulletin No. 1979–45 (Nov. 5, 1979), this interest rate was raised to 12 percent for taxes unpaid on or after February 1, 1980. Consequently, the ATF regulations in 27 CFR Parts 194 and 252 which refer to this interest rate are amended by this document.

In addition to the amendments relating to special tax, the amended sections contain some non-substantive stylistic, terminology, and clarifying changes. Regulations calling for Forms 11 to be filed with IRS district directors (in contradiction with directions printed on the revised form) are corrected to instruct taxpayers to file these forms with the directors of the appropriate IRS service centers.

Because these regulatory amendments are merely procedural and interpretive of the changes relating to special tax already made by the Internal Revenue Service, notice of opportunity for public comment is not required by the Administrative Procedure Act (5 U.S.C. 553). Furthermore, since these changes should be instituted as soon as possible, compliance with the usual 30-day effective date limitation of 5 U.S.C. 553(d) is found to be unnecessary and contrary to the public interest. Consequently, the amendments made by this document shall become effective May 21, 1980.

The drafter of this document was Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, supervisors and reviewers from both the Bureau and the Office of the Secretary of the Treasury exercised control over development of the regulations, both on matters of substance and style.

These amendments are made under the authority contained in 26 U.S.C. 7805. Accordingly, the regulations in 27 CFR Parts 179, 194, 197, 245, 250, 251, and 252 are amended as follows:

## PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

**Paragraph A.** The regulations in 27 CFR Part 179 are amended as follows:

1. Section 179.34 is amended to remove the requirement that a separate Form 11 be filed for each place of business. Since Forms 11 are now filed exclusively with the internal revenue service centers (except for hand carrying), § 179.34 is amended accordingly. As amended, § 179.34 reads as follows:

### § 179.34 Registration, return, and payment of special (occupational) taxes.

(a) *General.* Each person, prior to commencing any business taxable under 26 U.S.C. 5801, shall prepare, sign, and file a return (IRS Form 11), and pay the proper tax. The Form 11 with tax shall be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business is located. Thereafter, the taxpayer shall file Form 11 and pay the proper tax on or before the 1st day of July each year during which he continues in business. If a person has

paid special (occupational) taxes for a taxable year he will be furnished a return (Form 11) which shall be filled out and signed for registration and tax payment for the succeeding taxable year if that person intends to continue in business. Properly completing, signing, and timely filing of a return (Form 11) constitutes compliance with 26 U.S.C. 5802. A person doing business under a style or trade name shall give his own name, followed by his style or trade name. In the case of a partnership, unincorporated association, firm, or company, other than a corporation, its style or trade name shall be given, also the name of each member and his residence address. In the case of a corporation, its style or trade name shall be given, also the name of each responsible officer and his residence address. The class of business, as described in § 179.32, and the period for which special (occupational) tax is due, shall also be stated. The Form 11 shall be signed under penalties of perjury.

(b) *Hand carrying.* Notwithstanding the provisions of this part relating to the filing of returns of Form 11 for special (occupational) tax, such returns which are filed by hand carrying shall be filed with the district director of the internal revenue district in which the taxpayer's principal place of business is located. (68A Stat. 752, as amended (26 U.S.C. 6091))

2. A clarifying amendment is made in § 179.42 to cover the situation where a change of ownership affects a business having more than one location. In this situation, the amended regulations specify that the new return must be filed with the proper IRS official serving the business' principal location. As amended, § 179.42 reads as follows:

**§ 179.42 Changes through death of owner.**

Whenever any person who has paid special (occupational) tax dies, the surviving spouse or child, or executors or administrators, or other legal representatives, may carry on this business for the remainder of the term for which tax has been paid and at the place (or places) for which the tax was paid, without any additional payment, subject to the following conditions. If the surviving spouse or child, or executor or administrator, or other legal representative of the deceased taxpayer continues the business, such person shall, within 30 days after the date on which the successor begins to carry on the business, file a new return, IRS Form 11, with the director of the service center serving the internal revenue district in which the business is located. If the business has multiple locations, the new return shall be filed with the director of the service center serving the internal revenue district in which the deceased taxpayer's principal place of business is located. The return thus executed shall show the name of the original taxpayer, together with the basis of the succession. (As to liability in case of failure to register, see § 179.49.)

## PART 194—LIQUOR DEALERS

**Par. B.** The regulations in 27 CFR Part 194 are amended as follows:

1. The implied requirement for separate Forms 11 to cover different rates of special tax is removed from § 194.104. As amended, § 194.104 reads as follows:

**§ 194.104 Time for filing return.**

Every person who intends to engage in a business subject to special tax under the provisions of this part shall, on or before the date such business is commenced, file a special tax return, IRS Form 11, with payment of tax; and every taxpayer who continues into a new tax year a business subject to special tax under the provisions of this part shall file a Form 11 with tax on or before July 1 of the new tax year. A taxpayer subject to special tax for the same period at two or more locations shall file one special tax return, Form 11, prepared as provided in § 194.106, with payment of tax to cover all such locations. If the return and tax are received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return shall be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used the date of registration shall be accepted as the postmark date.

(68A Stat. 732 as amended, 749 as amended (26 U.S.C. 6011, 6071); Sec. 201, Pub. L. 85–859, 72 Stat. 1346 as amended (26 U.S.C. 5142))

2. Section 194.106 is amended to eliminate the requirement for separate Forms 11 covering different rates of special tax. As amended, § 194.106 reads as follows:

**§ 194.106 Special tax returns.**

(a) *General.* Special tax returns shall be made on IRS Form 11, which may be obtained from the director of the service center, from any internal revenue district director, or from an ATF regional office. If a taxpayer files Form 11 as provided in paragraph (c) of this section and thereafter in the period covered thereby starts at one or more locations one or more new businesses, he shall make a return on Form 11 with payment of tax and an attached list showing the name, trade name (if any), and the address of each location covered by the return in the manner prescribed in paragraph (c) of this section. A single return may not cover periods of liability commencing on different days.

(b) *Special tax return covering a single location.* In the case of a special tax return filed for a single location, the taxpayer shall disclose the following information in the spaces provided on the return:

(1) If the dealer is an individual or a corporation, the true name of this individual or corporation.

(2) In the case of a partnership, the true name of every person comprising the partnership.

(3) If a trade name is used, the exact trade name under which the business is conducted, in addition to information required in paragraph (b)(1) or (b)(2) of this section.

(4) The employer identification number (see §§ 194.106a–194.106c).

(5) The exact location of the place of business, by name or number of building and street or, where these do not exist, by some particularization in addition to the post office address.

(6) The kind of liquor business carried on, as classified in §§ 194.23–194.27.

(7) All other information provided for on the form.

(c) *Special tax return covering multiple locations.* In the case of a special tax return filed for multiple locations, the taxpayer shall disclose the following information in the spaces provided on the return:

(1) The name, trade name (if any), and address of his principal place of business, or principal office, in the manner prescribed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(5) of this section.

(2) The employer identification number (see §§ 194.106a–194.106c).

(3) The kind of liquor business carried on, as classified in §§ 194.23–194.27.

(4) The number of locations covered by the return.

(5) All other information provided for on the form.

In addition to the above, the taxpayer shall prepare, in duplicate, a list identified with his name, address, employer identification number, class of tax, and period covered by his return. The list shall show, by States, the name, trade name, if any, and address of each location (including taxpayer's principal

place of business, or principal office, if subject to special tax) covered by the return. Each address shall be disclosed on the list in the manner prescribed in paragraph (b)(5) of this section. The original of the list shall be attached to the Form 11, as a part of his return, and the copy shall be retained by the taxpayer as part of the records required by this part.

(68A Stat. 732 as amended, 846 as amended, (26 U.S.C. 6011, 7011); Sec. 1, Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

3. The interest rate adjustments announced by the Commissioner of Internal Revenue are reflected by an amendment to § 194.110. As amended, § 194.110 reads as follows:

**§ 194.110 Interest on unpaid special tax.**

(a) *General.* * * *

(b) *Rates of Interest.* (1) An annual rate of 6 percent shall apply to interest accruing before July 1, 1975.

(2) An annual rate of 9 percent shall apply to interest accruing within the period commencing July 1, 1975, through January 31, 1976.

(3) An annual rate of 7 percent shall apply to interest accruing within the period commencing February 1, 1976, through January 31, 1978.

(4) An annual rate of 6 percent shall apply to interest accruing within the period commencing February 1, 1978, through January 31, 1980.

(5) An annual rate of 12 percent shall apply to interest accruing on or after February 1, 1980. This rate shall apply to interest accruing up to the effective date of any subsequent adjusted rate of interest established under 26 U.S.C. 6621.

(6) Subsequent adjusted interest rates shall apply when established by the Secretary of the Treasury or his delegate pursuant to 26 U.S.C. 6621. Such adjusted rates shall continue in effect until the effective date of any further adjustment.

(c) *Example.* * * *

* * * * *

(Sec. 7, Pub. L. 93-625, 88 Stat. 2114 as amended (26 U.S.C. 6621), 68A Stat. 817 as amended (26 U.S.C. 6601))

4. The implied requirement for separate Forms 11 to cover different rates of special tax is removed from § 194.124. As amended, § 194.124 reads as follows:

**§ 194.124 Stamps for passenger trains, aircraft, and vessels.**

Special tax stamps may be issued in general terms "in the United States" to persons who will carry on the business of retail dealers in liquors or retail dealers in beer, on trains, aircraft, boats or other vessels, engaged in the business of carrying passengers. If sales of liquors are made at the same time on two or more passenger carriers, a special tax stamp shall be obtained for each such carrier. However, a dealer may transfer any such stamp from one passenger carrier to another on which he conducts his business, without registering the transfer with the Internal Revenue Service, and he may conduct such business throughout the passenger carrying train, aircraft, boat or other vessel, to which the stamp is transferred. A person subject to special tax on two or more passenger carriers shall file one Form 11, prepared in the manner prescribed in § 194.106(b), with payment of tax, to cover all such carriers and shall specify on the Form 11 the number of passenger carriers for which special tax is being paid.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1344 as amended, 1347 as amended (26 U.S.C. 5123, 5143))

## PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

**Par. C.** The regulations in 27 CFR 197.28 are amended to remove the implication that separate Forms 11 are necessary if different rates of special tax are to be paid. As amended, § 197.28 reads as follows:

**§ 197.28 Filing of return and payment of special tax.**

(a) *General.* Returns shall be filed on IRS Form 11, with payment of tax, with the director of the service center serving the internal revenue district in which the place of manufacture is located.

(b) *Multiple locations.* If a taxpayer is subject to special (occupational) tax at two or more locations, he shall file one special tax return Form 11 (prepared in the manner prescribed in § 197.29), with payment of tax to cover all such locations. The return with tax shall be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located. In addition, he shall prepare, in duplicate, a list identified with his name, address, employer identification number, class of tax, and period covered by his return. The list shall show, by States, the name (and trade name, if any) and address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list shall be attached to the Form 11, as a part of his return, and the copy shall be retained by the taxpayer for a period of not less than 2 years.

## PART 245—BEER

**Par. D.** The regulations in 27 CFR 245.76 are amended to remove the implied requirement for separate Forms 11 covering different rates of special tax. As amended, § 245.76 reads as follows:

**§ 245.76 Special tax return.**

(a) *General.* Every person required to pay special tax shall prepare a return on IRS Form 11. The return shall be filed, with payment of tax, with the director of the service center serving the internal revenue district in which the taxpayer's business is located.

(b) *Multiple locations.* A taxpayer subject to special (occupational) tax for the same period at two or more locations shall file one special tax return Form 11 (prepared in the manner prescribed in § 245.76a) with payment of tax to cover all such locations. The return with tax shall be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located. In addition, the taxpayer shall prepare, in duplicate, a list identified with his name, address, employer identification number, class of tax, and period covered by his return. The list shall show, by States, the name and address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list shall be attached to the Form 11, as a part of his return, and the copy shall be retained by the taxpayer for a period of not less than 2 years.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1346 (26 U.S.C. 5142))

## PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

**Par. E.** The regulations in 27 CFR Part 250 are amended as follows:

1. Section 250.44 is amended to require IRS Forms 11 to be filed with the director of the service center in all instances. Previously, there were some situations in which these forms had been required to be filed with the district director. As amended, § 250.44 reads as follows:

**§ 250.44 Liquor dealer's special taxes.**

Every person bringing liquors into the United States from Puerto Rico, who sells, or offers for sale, such liquors shall file IRS Form 11 with the director of the service center serving the internal

revenue district in which the business is located, and pay special (occupational) tax as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with the law and regulations governing the payment of such special taxes (Part 194 of this chapter).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

1. Section 250.210 is amended to require IRS Forms 11 to be filed with the director of the service center in all instances. Previously, there were some instances in which these forms had been required to be filed with the district director. As amended, § 250.210 reads as follows:

**§ 250.210 Liquor dealer's special taxes.**

Every person bringing liquors into the United States from the Virgin Islands, who sells, or offers for sale, such liquors shall file IRS Form 11 with the director of the service center serving the internal revenue district in which the business is located, and pay special (occupational tax as a wholesale dealer in liquor or as a retail dealer in liquor, in accordance with the laws and regulations governing the payment of such special taxes (Part 194 of this chapter).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

## PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEERS

Par. F. The regulations in 27 CFR 251.30 are amended to require Forms 11 to be filed with the director of the service center in all instances. Previously, there were some situations in which these forms had been required to be filed with the district director. Non-substantive stylistic changes are also made. As amended, § 251.30 reads as follows:

**§ 251.30 Special (occupational) tax.**

Importers engaged in the business of selling, or offering for sale, distilled spirits, wines or beer are subject to the provisions of Part 194 of this chapter relating to special (occupational) taxes. Part 194 requires that the special tax return, IRS Form 11, with payment of the tax, shall be filed with the director of the service center serving the internal revenue district in which the business is located, before commencing business. Subsequently, Form 11 with tax shall be filed each year on or before July 1, as long as the proprietor continues in business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

## PART 252—EXPORTATION OF LIQUORS

Par. G. The regulations in 27 CFR 252.332 are amended to update the reference to the rate of interest due on money owed to the United States and to make stylistic changes. As amended, § 252.332 reads as follows:

**§ 252.332 Claim against bond.**

When any claim supported by a bond has been allowed and changed against the bond under the provisions of § 252.331, and the original of the claim properly executed by the appropriate customs official or armed services officer as required by this part is not received by the regional regulatory administrator within three months of the date the claim was allowed, or where the distilled spirits or wines are not otherwise accounted for in accordance with this part, the regional regulatory administrator shall advise the claimant of the facts, and notify him that unless the original of the claim, properly executed as required by this part, is received by the regional regulatory administrator within 30 days, a written demand will be made upon the principal and the surety for repayment to the United States of the full amount of the drawback, plus interest at the rate prescribed by law from the time the drawback was paid. However, the regional regulatory administrator may, if in his opinion the circumstances warrant it, grant the claimant any additional extension of time beyond 30 days as may be necessary to accomplish the required filing.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336 as amended, (26 U.S.C. 5062))

Signed: April 7, 1980.

**G. R. Dickerson,**

*Director.*

Approved: April 23, 1980.

**Richard J. Davis,**

*Assistant Secretary of the Treasury (Enforcement and Operations).*

[FR Doc. 80-15605 Filed 5-20-80; 8:45 am]

BILLING CODE 4810-31-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1495-5]

### Approval and Promulgation of State Implementation Plans; Revision to the New York State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this notice is to approve conditionally certain specific portions of a revision to the New York State Implementation Plan (SIP) for the New York City metropolitan area (New York City and Nassau, Suffolk, Westchester and Rockland Counties). It deals only with those portions of the SIP revision not related to mass transit improvements. This SIP revision was prepared by the State to meet the requirements of Part D ("Plan Requirements for Nonattainment Areas") of the Clean Air Act.

For applicable portions of the SIP revision, today's notice provides the final determination arrived at by EPA based on its review of all information submitted. It defines some further actions required of the State to obtain full unconditional approval of its SIP.

**EFFECTIVE DATE:** This action is effective May 21, 1980.

**ADDRESSES:** Copies of the SIP revision submitted by New York State, supplementary information, and public comments are available for inspection at the following addresses:

Environmental Protection Agency, Region II, 26 Federal Plaza, Room 1642, New York, New York 10007.

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

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10007, (212) 264-2517.

**SUPPLEMENTAL INFORMATION:**

### I. General Information

*A. Background to Today's Action*

Pursuant to the requirements of Section 107(d) of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) published in the **Federal Register** (44 FR 5119, January 25, 1979) a list of the attainment status designations

with respect to each national ambient air quality standard for every area within New York State. These designations represent revisions, corrections and elaborations to designations originally published in the March 3, 1978 issue of the **Federal Register** at 43 FR 8962. Additional revisions to ozone designations in New York State which do not affect the New York City metropolitan area (New York City and Nassau, Suffolk, Westchester and Rockland Counties) were published on December 7, 1979 (44 FR 70466). The reader is referred to the January 25, 1979 **Federal Register** for a detailed description of the nonattainment designations for the New York City metropolitan area. Generally they are as follows:

Carbon Monoxide:
The City of New York;
The City of Yonkers;
The City of Mount Vernon;
The County of Nassau (southwestern).
Ozone:
The entire New York City metropolitan area.
Particulate Matter (Secondary Standard):
The Borough of Manhattan;
The Borough of Brooklyn (part);
The Borough of Queens (part);
The Borough of the Bronx (part);
The Borough of Staten Island (part).

An additional general description of these nonattainment areas is contained in revisions to § 52.1682, "Attainment dates for national standards," which is being promulgated today. This and other changes to federal regulations appear at the end of today's notice.

The 1977 Amendments to the Clean Air Act added Part D to Title I of the Act. This new Part requires that for each area within a state designated as not meeting a national ambient air quality standard, a revision to the State Implementation Plan (SIP) must be adopted by the State and submitted for approval to EPA by January 1, 1979. The SIP revision is to provide for attainment of the contravened standard by December 31, 1982 or, for ozone and carbon monoxide, under certain conditions specified by the Act, no later than December 31, 1987.

The required content of the SIP revisions mandated by the Clean Air Act is described in Part D and, more generally, in Section 110(a) of the Act. These requirements are further discussed and elaborated upon in a "General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Revisions for Nonattainment Areas" published in the April 4, 1979 issue of the **Federal Register** at 44 FR 20372. The reader is referred to this **Federal Register** notice for a complete discussion of SIP revision requirements; these are not repeated in great detail in this notice.

The reader is also referred to several supplements to this April 4, 1979 notice which were published in the **Federal Register** of July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 38583), September 17, 1979 (44 FR 53761), and November 23, 1979 (44 FR 67182).

In response to these requirements, on May 16, 1979 the Governor of the State of New York submitted a revision to the New York SIP. Additional documentation was also subsequently submitted in support of the original document. On December 10, 1979 EPA published in the **Federal Register** (44 FR 70754) a notice of proposed rulemaking with regard to this revision request. That notice also discussed SIP revision requirements and the degree to which, in EPA's judgement, the New York SIP revision met those requirements. Also in that notice, the public was advised that EPA would accept comments on its proposal during a 60-day period which ended on February 8, 1980. The reader is referred to this notice for a detailed description of the material submitted.

*B. Summary of SIP Contents*

Subsequent to EPA's December 10, 1979 notice of proposed rulemaking, on January 11, February 6, February 20, and March 12, 1980 additional supplemental material with respect to the May 24, 1979 proposed SIP revision was submitted. This material is discussed as applicable in Sections II and III of today's notice.

In general, the New York City metropolitan area SIP revision, which is the subject of today's action, contains the following regulations and provisions aimed at attainment of the ozone and carbon monoxide national ambient air quality standards:

- Normal replacement of old automobiles by newer vehicles ("vehicle turnover").
- Adequate legal authority for and a commitment to develop and implement an automobile emission inspection and maintenance program.
- Regulatory requirements for the control of volatile organic compounds, as follows:

—Part 200, General Provisions (as revised)
—Part 204, Hydrocarbon Emissions From Storage and Loading Facilities—New York City Metropolitan Area (as currently approved—a State request to revoke this regulation is disapproved by EPA (see Subsection I.C.1 of this notice))
—Part 205, Photochemically Reactive Solvents and Organic Solvents From Certain Processes—New York City Metropolitan Area (as revised)
—Part 211, General Prohibitions (as revised)
—Part 212, Process and Exhaust and/or Ventilation Systems (as revised in part (see Subsection I.C.1 of this notice))
—Part 223, Petroleum Refineries (as revised)
—Part 226, Solvent Metal Cleaning Processes (new)
—Part 228, Surface Coating Processes (new)
—Part 229, Gasoline Storage and Transfer (new)

- Regulatory requirements for the review of major new sources and major modifications as contained in Part 231, "Major Facilities," and complementing administrative provisions.
- Plans, programs, projects, studies and other actions for the development, commitment and implementation of various transportation control measures. In addition, to those measures noted above, the SIP includes the following transportation control measures:

—Transit Improvements (Subject to EPA approval at a later time (see Subsection I.C.1 of this notice))
—Land Use and Development Controls
—Parking Restrictions
—Freight Transportation
—Heavy Duty Gasoline Truck Retrofit
—Express Bus and Carpool Lanes
—Pedestrian Priority Zones
—Traffic Flow Improvements for Arterials
—Traffic Flow Improvements for Limited Access Highways
—Alternate Work Schedules
—Bicycle Lanes and Storage Facilities
—Employer Based Programs
—Private Car Restrictions
—Park-and-Ride and Fringe Parking.

Specific actions related to each measure will be clarified by the State in response to the conditions promulgated in this notice. The measures include the following demonstration projects:

—Limitation on Authorized Parking
—42nd Street Transitway
—Eastside Avenue Exclusive Local Bus Lane
—Business District Peripheral Parking Facilities
—49th–50th Streets Corridor: Improved Service for Public Transportation Vehicles
—Bike Lanes.

*C. Summary of EPA's Action*

1. *Carbon monoxide and ozone.* In its December 10, 1979 notice of proposed rulemaking EPA did not address the SIP's provisions with regard to mass transit improvements. In that notice it was indicated that the plan's ability to meet the requirements of Sections 172, 110(a)(3)(D) and 110(c)(5) of the Clean Air Act would be addressed in a separate notice of proposed rulemaking.

Such a notice has not been published to date.

Nevertheless, in order to avoid further delay, in today's notice EPA is promulgating conditional approval of the SIP provision summarized in the preceding section (Section I.B) except as related to mass transit improvements or as noted in that section (the concept of conditional approval is discussed in Subsection I.D of this notice). However, at this time EPA is taking no action with regard to the SIP's ability to meet fully the requirements of Part D of the Clean Air Act.

It should be further noted that, as part of this promulgation, appropriate provisions of the State's revision are being incorporated into the current New York SIP for the New York City metropolitan area. These provisions are summarized in Section I.B. of this notice. However, EPA action with regard to two of these provisions warrants further explanation as follows. Both of these issues were discussed in EPA's December 10, 1979 notice of proposed rulemaking.

*Part 204*—EPA is denying the State's request to delete Part 204, "Hydrocarbon Emissions From Storage and Loading Facilities—New York City Metropolitan Area," from its SIP. EPA recognizes that the emissions subject to control under Part 204 are now also regulated under Part 229, "Gasoline Storage and Transfer." However, as discussed in Section I.E. of this notice, it is EPA policy that a new requirement should not supersede or replace an existing requirement until regulated sources achieve compliance with the new requirement. In the interim, compliance with the existing requirement must be maintained.

*Part 212*—EPA, in its review of the SIP revision, noted that Part 212, "Process and Exhaust and/or Ventilation Systems," had been revised to a greater extent than indicated by the State. This apparent discrepancy resulted from the fact that Part 212 had been previously revised by the State without incorporation of these revisions into the SIP. While the State has submitted, as a SIP revision, this regulation in its entirety, only those revisions to Part 212 exempting processes covered by revised or new regulations are being approved at this time.

2. *Particulate matter.* EPA proposed to extend for 18 months the deadline for submitting plan revisions implementing attainment of the particulate matter secondary national ambient air quality standard in New York City. Today EPA is promulgating this extension until July 1, 1980 in Section 52.1672, "Extensions"; this is further reflected in Section 52.1682, "Attainment dates for national standards."

*D. Conditional Approval*

A discussion of conditional approval and its practical effect appear in a July 2, 1979 (44 FR 38583) and in a November 23, 1979 (44 FR 67182) supplement to EPA's "General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Revisions for Nonattainment Areas." The conditional approval action taken today requires the State to submit to EPA additional material by the deadlines specified in today's notice. There will be no extensions of the conditional approval deadlines which are being promulgated in this notice. EPA will follow the following procedures in determining if the State has satisfied a condition:

1. When the State submits required documentation showing that a condition was met on schedule, EPA will publish a notice in the **Federal Register** announcing receipt of the material. The notice of receipt will also announce that the conditional approval is continued pending EPA's final action on the submission.

2. EPA will evaluate the State's submission to determine if the condition was fully met. After review is complete, a **Federal Register** notice will be published either proposing or taking final action to find that either the condition has been met and the plan can be approved, or to find that the condition has not been met and that conditional approval is withdrawn and the plan is disapproved. If the plan is disapproved, the Section 110(a)(2)(I) restrictions on new major source construction will come into effect.

3. If the State fails to submit the required material needed to meet a condition in a timely fashion, EPA will publish a **Federal Register** notice shortly after the expiration of the deadline for submission. The notice will announce that the conditional approval is withdrawn, the SIP is disapproved and that Section 110(a)(2)(I) restrictions on growth are in effect.

In Section 52.1674, "Part D—Conditions on approval," appearing at the end of this notice, deadlines by which conditions must be met are being promulgated.

*E. Attainment Dates and Compliance Deadlines*

Revisions to Section 52.1682, "Attainment dates for national standards," which are promulgated at the end of today's notice, list the deadlines for attaining each national ambient air quality standard in the various areas of the State of New York. The version of this list appearing in the 1978 edition of the Code of Federal Regulations does not reflect the new deadlines provided for by Section 172(a) of the Clean Air Act, as amended in 1977. Today's notice updates this list where later dates were provided by the State in its SIP revision and where these later dates were approved by EPA.

Among the provisions of the New York SIP revision that are now being approved are extensions of the attainment dates for the carbon monoxide and ozone standards. As provided for in the Clean Air Act, New York has included in its SIP revision the demonstration necessary to request extension of these attainment dates, where applicable, from December 31, 1982 to no later than December 31, 1987. This request is approved by EPA and is formally incorporated into § 52.1672, "Extensions," through the promulgation appearing at the end of this notice.

However, sources subject to plan requirements and deadlines established prior to the 1977 Amendments to the Clean Air Act remain obligated to comply with those requirements as well as with the new Section 172 plan requirements. Congress established new attainment dates under Section 172(a) to provide additional time for previously regulated sources to comply with new, more stringent requirements and to permit previously uncontrolled sources to comply with newly applicable emission limitations. These new deadlines were not intended to give sources that failed to comply with pre-1977 plan requirements by the earlier deadlines more time to comply with those requirements. As stated by Congressman Paul Rogers in discussing the 1977 Amendments:

> Section 110(a)(2) of the Act made clear that each source had to meet its emission limits "as expeditiously as practicable" but not later than three years after the approval of a plan. This provision was not changed by the 1977 Amendments. It would be a perversion of clear congressional intent to construe Part D to authorize relaxation or delay of emission limits for particular sources. The added time for attainment of the national ambient air quality standards was provided, if necessary, because of the need to tighten emission limits or bring previously uncontrolled sources under control. Delays or relaxation of emission limits were not generally authorized or intended under Part D. (123 Cong. Rec. H11958, daily ed. November 1, 1977.)

To implement Congress' intention that sources remain subject to pre-existing plan requirements, sources cannot be granted variances extending compliance dates beyond attainment dates established prior to the 1977 Amendments. EPA cannot approve such compliance date extensions even though

a Section 172 plan revision with a later attainment date has been approved. Even when a new requirement is being added to a SIP, the existing requirement may not ordinarily be relaxed or revoked. The new requirement does not supersede or replace the old requirement. Instead the existing requirement must remain an enforceable provision of the SIP, and must co-exist with the new requirement in the applicable implementation plan. The present emission control requirement must be retained because the source must be prevented from operating without controls (or with less stringent controls) while it is moving toward compliance with (or challenging) the new requirement.

There are some exceptions, however. As discussed again in Subsection III.A of this notice, a state may submit a relaxation or revocation of an existing requirement (or, for an existing requirement promulgated by EPA, have EPA relax or revoke it) if the requirement is in one or more of the following categories:

- Any existing requirement that conflicts with a new, more stringent requirement, making it highly impractical for a source to comply with the old requirement. Any exemption granted must be drawn as narrowly as possible, on a case-by-case basis, and will be acted upon by EPA as a SIP revision.
- Any federally promulgated indirect source review program and any bridge toll requirement revocable under Section 110(c)(5)(A) of the Clean Air Act.
- Any existing motor vehicle emission inspection and maintenance program or transportation control measure to the extent the measure is demonstrated not to be reasonably available, if the revised SIP satisfies all Part D requirements.
- Any new requirement in a 1979 SIP submittal designed for the previous 0.08 ppm ozone standard as long as the control measures in the revised SIP satisfy all requirements for the currrent 0.12 ppm standard.

A relaxation or revocation is also permissible if it will not contribute to concentrations of pollution where there is a violation of an ambient air quality standard or of a prevention of significant deterioration increment. Where relaxation of a requirement is allowed, but where the deadline for compliance is not relaxed, the new requirement must call for compliance no later than the existing deadline for compliance so that there is no gap in enforceability.

*F. Requirement for Additional Stationary Source Controls.*

As noted in the General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas (44 FR 20376, April 4, 1979), the minimum acceptable level of stationary source control for SIPs developed to meet the ozone standard, such as New York's, includes the reasonably available control technology (RACT) requirement for volatile organic compound stationary sources covered by Control Technique Guidelines (CTGs) the EPA issued by January 1978 and schedules to adopt and submit by each future January additional requirements for sources covered by CTGs issued by the previous January. The submittal date for the first set of additional RACT regulations was revised from January 1, 1980 to July 1, 1980 by a **Federal Register** notice of August 28, 1979 (44 FR 50371). This was done in recognition of the fact that state regulatory adoption procedures are more lengthy than was first anticipated. Today's action of the ozone portion of the New York plan is contingent on the submittal of the additional RACT regulations which are due July 1, 1980 (for CTGs published between January 1978 and January 1979). In addition, by each January, beginning January 1, 1981, RACT requirements for CTGs published by the preceding January must be adopted and submitted to EPA. The above requirements are set forth in Section 52.1673, "Approval status," revised at the end of this notice. If the RACT requirements are not adopted and submitted to EPA according to the time frame set forth in the rule, EPA will take appropriate remedial action.

*G. Effective Date*

EPA finds that good cause exists for making the action taken in this notice immediately effective for the following reasons:

(1) Implementation plan revisions are already in effect under State law and EPA approval imposes no additional regulatory burden, and

(2) EPA has a responsibility under the Clean Air Act to take final action on the portion of the SIP which addresses Part D requirements by July 1, 1979, or as soon thereafter as possible.

**II. Disposition of Proposed Conditions for Approval**

This section is devoted to a discussion of the plan provisions for which conditional approval had been proposed by EPA, an identification of the supplemental SIP revision material submitted by the State on February 6, February 20 and March 12, 1980, and a discussion of a comment submitted by the Tri-State Regional Planning Commission on February 8, 1980 which pertain to these provisions.

*A. Conditions Being Promulgated as Proposed*

No comments were received on the majority of the proposed conditions on approval discussed in EPA's December 10, 1979 notice of proposed rulemaking. Therefore, these conditions are being promulgated as proposed in § 52.1674, "Part D—Conditions on approval," which appears at the end of this notice. The following conditions, which are identified by the numbers used previously in Section IV, "Summary of Unfilled Requirements," of EPA's proposal (44 FR 70775, December 10, 1979), are so affected:

1. *Proposed Condition (1).* On or before August 1, 1980 the State must submit to EPA key milestones (actions and dates) associated with projects relating to the transportation control measures which are a part of its SIP. Measures which have a particular need for the identification of additional milestones with regard to their proposed actions include:

- Parking Restrictions,
- Freight Transportation,
- Limitation on Authorized Parking,
- Bike Lanes (Demonstration Project),
- Express Bus and Carpool Lanes,
- Pedestrian Priority Zones,
- Traffic Flow Improvements for Arterials,
- Traffic Flow Improvements for Limited Access Highways,
- Employer Based Programs,
- Private Car Restrictions,
- Alternate Work Schedules,
- Bicycle Lanes and Storage Facilities, and
- Park and Ride and Fringe Parking.

2. *Proposed Condition (3).* On or before August 1, 1980, the State must submit to EPA additional documentation to support its determination that the measure, "Controls on Extended Vehicle Idling," is not reasonably available. If such additional documentation cannot be provided, this measure must be recategorized.

3. *Proposed Condition (5).* On or before August 1, 1980 the State must submit to EPA SIP revision criteria and procedures for making changes to transportation projects contained in the SIP. Criteria for a "significant" change to a project should consider the degree of change in a project's scope, cost, schedule for implementation and status as to its "reasonableness." SIP revision procedures should provide for changes to a measure's categorization and the

failure to include a project in the Transportation Improvement Program.

4. *Proposed Condition (6).* On or before August 1, 1980 the State must submit to EPA SIP revision criteria and procedures for making changes to transportation studies contained in the SIP.

5. *Proposed Condition (7).* On or before May 1, 1981 the State shall submit to EPA either acceptable justification for retaining the provisions of 6 NYCRR Part 211, "General Prohibitions," which exempt from control cutback asphalt used in the manufacture of asphalt emulsions with low volatile organic compound content or an adopted revised regulation which corrects this apparent deficiency.

6. *Proposed Condition (9).* On or before January 1, 1981 the State must submit to EPA an organic compound emissions inventory of sufficient comprehensiveness and quality to meet the requirement specified by EPA.

7. *Proposed Condition (10).* On or before April 1, 1980 the State must adopt and submit to EPA revisions to Sections 231.6(a) and 231.9(d) of 6 NYCRR Part 231, "Major Facilities," to reflect its interpretation that the provisions of Part 231 apply to new major sources and major modifications locating in attainment areas, but significantly impacting the air quality of nonattainment areas.

Proposed condition (10), which appeared as follows in EPA's notice of proposed rulemaking, is being promulgated as proposed although the deadline for corrective action has expired. This is a reflection of the fact that Part 231 has Statewide applicability and rulemaking has already been promulgated with respect to other areas (Capital District and Town of Catskill, Rochester, Syracuse, and Southern Tier—45 FR 7803, February 5, 1980). The State has committed to carry out corrective action within the time frame identified and a submission is imminent.

8. *Proposed Condition (11).* On or before August 1, 1980 the State must adopt and submit to EPA revisions to § 231.3(b) of 6 NYCRR indicating that, regardless of whether or not a source will have a "significant" impact on the area's air quality, LAER control technology is required on new major sources or existing sources undergoing major modification if such sources are located in an area where standards are actually violated.

9. *Proposed Condition (12).* On or before August 1, 1980 the State must adopt and submit to EPA a revision to Section 200.1(pp) of Part 200, "General Provisions," which defines "owner" in a manner consistent with Section 173 of the Clean Air Act.

10. *Proposed Condition (13).* Proposed Condition (13), which appeared as follows in EPA's notice of proposed rulemaking, is also being promulgated as proposed; however, unlike the preceding conditions, one comment was received.

On or before August 1, 1980 the State must submit to EPA identification of the resources necessary to carry out the transportation planning process and the following transportation elements of the SIP:

- Parking Restrictions,
- Freight Transportation,
- Heavy Duty Gasoline Truck Retrofit,
- Express Bus and Carpool Lanes,
- Pedestrian Priority Zones,
- Traffic Flow Improvements for Arterials,
- Employer Based Programs,
- Park-and-Ride and Fringe Parking,
- Alternate Work Schedules.

In its February 6, 1980 letter the State recommended a wording change so that this condition would read "* * * identification of the resources necessary to carry out the transportation planning process *on* the following transportation elements of the SIP * * *" However, EPA does not accept the wording change recommended by the State. This would change the condition's intent. In its review of the SIP, EPA found that a further identification and commitment of resources to carry out the transportation planning process and to implement certain elements of the SIP are needed. EPA believes that the wording of the condition, as proposed, properly reflects this concern.

*B. Conditions Being Deleted or Promulgated with Changes*

1. *Proposed Condition (2).* This condition was proposed by EPA as follows:

On or before February 1, 1980 the State must submit to EPA an improved program of study for the broader application of the following measures:

- Freight Transportation,
- Express Bus and Carpool Lanes,
- Pedestrian Priority Zones,
- Employer Based Programs,
- Private Car Restrictions,
- Alternate Work Schedules,
- Bicycle Lanes and Storage Facilities.

In addition, each new and existing study's schedule, its funding source, its anticipated products, its relationship to measures, projects and other studies, and procedures for tracking its progress and reporting on its findings must be submitted to EPA.

*Comment No. 1*

In a February 6, 1980 letter the State indicated that some measures identified by EPA as requiring an improved program of study currently have an adequate program. The State committed to providing additional documentation to support this claim when it responds to this condition.

*EPA response:* Upon its review of the additional documentation to be provided by the State, EPA will reassess its initial finding. However, at this time EPA finds that the basis for this condition still exists.

*Comment #2*

In its February 6, 1980 letter the State also indicated that some studies contained in the SIP will not be essential to the development of the further revision to the New York SIP which is required to be submitted by July 1, 1982 (Section 129(c) of PL 95-95). The State recommended that EPA classify the relationship of each study to 1982 SIP development requirements based on information it submits in response to this condition.

*EPA response:* EPA welcomes the State's commitment to identify a study program for the development of the 1982 SIP. However, it is the State's responsibility not EPA's to develop a 1982 SIP revision. In developing this SIP revision the studies will aid the State in making its selections among control strategies.

*Comment #3*

In a February 8, 1980 letter the Tri-State Regional Planning Commission (the Metropolitan Planning Organization for the New York City metropolitan area) suggested that EPA modify its position that all studies identified in the current SIP submittal are essential to the development of the 1982 SIP. Tri-State believes that consideration should be given to the possibility that future local review, citizen input, or technical analysis might reveal that certain SIP studies are infeasible and should be dropped or replaced by others.

*EPA response:* EPA recognizes the possibility that, based on the factors indicated by Tri-State, certain SIP studies may be determined to be infeasible. In such cases the SIP may be revised through the revision process established by the Clean Air Act. This is one purpose of the study program addressed by this condition.

*Comment #4*

In its February 8, 1980 letter Tri-State also requested that the February 1, 1980 date proposed by EPA for meeting this

condition be extended to August 1, 1980. Tri-State claims that this extension will provide for better local agency involvement and citizen consultation, to be performed in coordination with development of the 1980–1981 Unified Planning Work Program.

*EPA response:* EPA appreciates Tri-State's concern for adequate consultation and coordination in the development of an adequate program of study. On this basis, EPA therefore is extending the deadline for carrying out the necessary corrective action to August 1, 1980, as requested.

*Comment #5*

In its February 6, 1980 letter the State requested that the date for meeting this condition be the same as that for meeting the proposed condition (4) regarding the listing of studies and projects, which is discussed in Subsection II.B.2 of this notice. According to the State, this date should be no sooner than 60 days after EPA announces the availability of "second round" Urban Air Quality Planning Grant funds authorized under Section 175 of the Clean Air Act and after publication of the information documents called for under Section 108(f) of the Clean Air Act.

*EPA response:* The State did not explain the relationship of these two events to its ability to meet the proposed condition. Nevertheless, it should be noted that EPA has announced in the March 6, 1980 **Federal Register** the availability of "second round" Section 175 funds (45 FR 14774), and copies of recently available Section 108(f) documents were transmitted to the State on March 24, 1980. Consequently, since the State substantially has in its possession the requested information, EPA believes that its decision (as just discussed under Comment #4) to establish August 1, 1980 as the date by which this condition must be met adequately responds to the State's concerns. As previously discussed, conditional approval must be premised on strong assurance from appropriate State officials that deficiencies will be corrected by a specific point in time.

In summary, in § 52.1674, "Part D—Conditions on approval," appearing at the end of this notice, EPA is promulgating proposed condition (2) unchanged except that its date for completion has been extended from February 1, 1980 to August 1, 1980. EPA finds that for good cause additional notice and comment on this action are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act). The State is the party responsible for meeting the deadlines and, as discussed in this subsection the State's comments have been taken into consideration by EPA. In addition, the public has had an opportunity to comment generally on the concept of conditional approval, on the substance of this specific condition, and on the deadlines applicable to this condition.

2. *Proposed Condition (4).* This condition was proposed by EPA as follows:

On or before February 1, 1980, the State must submit to EPA three separate listings covering, respectively, all of the transportation related studies, demonstration projects and permanent projects committed to in the SIP.

*Comment #1*

In its February 6, 1980 letter the State noted that it has begun to clarify the contents of Volume I and Volume II of its SIP. It recognizes that because of the need for local support with respect to certain commitments, it is essential that the understandings and conditions contained in Volume II be respected. Therefore, the State questions EPA's statement in the notice of proposed rulemaking that in cases of conflict it will be assumed that Volume I takes precedence over Volume II. The State commits to resolving all conflicts between Volume I and Volume II in the process of clarifying its SIP commitments.

*EPA response:* EPA welcomes the State's action in eliminating conflicts contained in the SIP, but finds that the basis for this condition still exists.

*Comment #2*

In its February 8, 1980 letter Tri-State requested that the February 1, 1980 date proposed by EPA for submitting a list of studies committed to in the SIP be extended to May 1, 1980. Tri-State claims that in order to allow sufficient time for review this extension is necessary. Tri-State noted that it transmitted a draft list of studies to appropriate agencies in January 1980.

*EPA response:* EPA agrees with Tri-State on the need for more time to develop the list of study commitments and believes that May 1, 1980 is a reasonable submittal date for meeting this condition.

*Comment #3*

As noted in the discussion of the State's comments regarding the proposed condition (2) relating to the study of the broader application of certain measures, which is discussed in Subsection II.B.1 of this notice, the State requested in its February 6, 1980 letter that the date for meeting this proposed condition be no sooner than 60 days after EPA announces the availability of "second round" Urban Air Quality Planning Grant (Section 175) funds and after publication of the information documents called for under Section 108(f) of the Clean Air Act.

*EPA response:* EPA can find no direct relationship between information on "second round" Section 175 funds or Section 108(f) documents and the ability of the State to develop a list of study commitments contained in the SIP revision document which it submitted to EPA. Although EPA recognizes that changes to the nature of study commitments might be appropriate upon receipt of additional financial, technical or other information, the listing of commitments contained in the SIP is not. Nevertheless, as noted in the discussion in Subsection II.B.1 of this notice under Comment #5, EPA has published a notice of availability of "second round" Section 175 funds and has transmitted recently available Section 108(f) documents to the State. Consequently, EPA sees no reason to delay the date for submittal of the required listing beyond the May 1, 1980 date established on the basis of Tri-State's request discussed under Comment #2.

*Comment #4*

In its February 6, 1980 letter the State requested that the submittal date for the listings of demonstration and project commitments required by this condition be extended to no earlier than April 1, 1980 so as to provide adequate time for consultation with EPA on the interpretation of its commitments.

*EPA response:* EPA agrees with the State on the need for consultation with many agencies in development of the list of demonstration and permanent project commitments. Consequently, as discussed under Comment #2, EPA is requiring that the information necessary to meet this condition be submitted by May 1, 1980.

In summary, in Section 52.1674, "Part D—Conditions on approval," appearing at the end of this notice, EPA is promulgating proposed Condition (4) unchanged except that its date for completion has been extended from February 1, 1980 to May 1, 1980. EPA finds that for good cause additional notice and comment on this action are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act). The State is the party responsible for meeting the deadlines and as discussed in this subsection, the State's comments have been taken into consideration by EPA. In addition, the public has had an opportunity to comment generally on the concept of conditional approval, on the substance

of this specific condition, and on the deadlines applicable to this condition.

3. *Proposed Condition (8).* This condition was proposed by EPA as follows:

On or before February 1, 1980 the State must either submit to EPA acceptable justification for the following provisions of 6 NYCRR Part 229, "Gasoline Storage and Transfer," or hold public hearings to revise these provisions to correct their deficiencies:

- Section 229.3(a), "Storage of Gasoline in Fixed Roof Tanks," does not regulate the storage of petroleum liquids other than gasoline.
- Section 229.3(d), "Gasoline Filling Stations," exempts from control storage tanks at gasoline filling stations with an annual throughput of less than 400,000 gallons.

If the State elects to revise Part 229, such revised regulation must be adopted and submitted to EPA on or before August 1, 1980.

*Comment*

In a February 20, 1980 letter the State indicated that public hearings had been held on February 1, 5 and 7, 1980 to initiate the required revisions.

*EPA response:* Because the State has elected to revise its regulation rather than attempt to justify the apparent deficiencies identified by EPA in its notice of proposed rulemaking, this condition should now be promulgated in revision form. As promulgated in Section 52.1674, "Part D—Conditions on approval," appearing at the end of this notice, the condition will now only require the adoption and submittal to EPA by August 1, 1980 of a properly revised regulation. Since the substance of the proposed condition remains unchanged, EPA finds that, for good cause, notice and comment on this action are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act).

4. *Proposed Condition (14).* This condition was proposed by EPA as follows:

On or before January 1, 1980 the State must submit to EPA a memorandum of understanding which has been endorsed by appropriate Transportation Coordinating Committees and which provides commitments by appropriate agencies to develop, implement and enforce the SIP.

*Comment*

In its February 8, 1980 letter Tri-State indicated that the memorandum of understanding required by this condition has been prepared and the necessary endorsements obtained.

*EPA response:* The memorandum of understanding was submitted to EPA on March 12, 1980 by the Tri-State Regional Planning Commission. It was signed by the Commissioners of the New York State Department of Environmental Conservation and Transportation on March 5, 1980 and February 7, 1980, respectively. The memorandum of understanding, which was also signed by the Executive Director of Tri-State and endorsed by the appropriate Transportation Coordinating Committees, discusses intergovernmental coordination and identifies agencies responsible for tasks associated with technical planning, progress reports, and air pollution control strategies. Because the memorandum of understanding meets the proposed condition's requirements, the proposed condition is not being promulgated by EPA. EPA finds that, for good cause, notice and comment on this action are unnecessary (see 5 U.S.C. Section 553(b)(B)—the Administrative Procedure Act). The corrective action was clearly identified in the proposal, and the State's submission fully meets the proposed requirement. The public had an opportunity to comment on the issue and no comments other than the one discussed were received.

## III. Other Comments Received and Issues Raised

This section is devoted to a discussion of and response to those comments received by EPA on its December 10, 1979 notice of proposed rulemaking which did not pertain to the specific conditions on approval proposed in this notice. These comments were contained in two letters dated January 11, 1980 and February 6, 1980 from the State of New York, a January 23, 1980 letter from New York State Senator John Caemmerer, a February 8, 1980 letter from the New England Legal Foundation, a February 8, 1980 letter from the Natural Resources Defense Council, Inc. and a January 10, 1980 letter from Lederle Laboratories. In addition, general comments, addressed at national EPA policy, were received from Covington & Burling, attorneys acting on behalf of the Chemical Manufacturers Association (letter dated July 5, 1979) and the Natural Resources Defense Council, Inc. (letter dated August 6, 1979).

### *A. The Status of the 1973 SIP*

*Comment:* In its February 6, 1980 letter the State commented to the effect that it views its SIP revision submitted in response to the requirements of Part D of the Clean Air Act as a complete successor to prior SIP provisions, particularly with respect to transportation control measures. Consequently, it believes that "the proposed SIP has been presented to EPA as a whole replacement of the earlier SIP," and that the transportation control measures previously contained in the State submitted and EPA approved 1973 SIP, but not incorporated in the 1979 SIP, do not survive EPA approval of the 1979 SIP. This is so, the State claims, because the 1979 SIP, without incorporating some prior transportation control measures, is adequate to achieve reasonable further progress toward attainment of standards, as is required by Section 172 of the Clean Air Act.

*EPA response:* EPA does not agree with the State's view of the survivability of existing 1973 SIP transportation control measures. The general position of EPA with respect to the revocation of existing SIP requirements is stated in EPA's "General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Revisions for Nonattainment Areas" (44 FR 20374, April 4, 1979). There it is provided that a State may submit a revocation of an existing transportation control measure if it can demonstrate that the particular measure proposed to be revoked is not reasonably available. The provision implements the requirements of Section 172 of the Clean Air Act, which include the requirement that a SIP provide for the implementation of all reasonably available control measures as expeditiously as practicable. Furthermore, this policy carries out the Congressional intent that the 1979 SIP revisions were to supplement and build upon the existing SIP structure and provisions, not replace them.

Transportation control measures contained in existing, approved SIPs, (which might include transportation control measures listed in Section 108(f) of the Clean Air Act) are presumed by EPA to be reasonably available. Until the State makes the requisite demonstration of unreasonableness there is not a sufficient basis for revocation of such measures. Of course, the State remains free to submit a demonstration that an existing measure should not be considered reasonable and may request either a deletion of the measure or a modification to the measure, including its implementation schedule. If such a demonstration were submitted, EPA would then review the submission and take appropriate action to approve the deletion or modification of any measure. However, until the requisite demonstration is submitted and approved by EPA, the measure, as contained in the previously approved 1973 SIP, remains as an enforceable part

of the applicable plan. (CAA § 110(d); 44 FR 70768, December 10, 1979).

EPA recognizes that a number of the 1973 SIP measures have been the subject of enforcement action initiated by EPA or citizens' groups. Where such action has resulted in the issuance of Court Orders, a more complex situation arises. The State of New York submits that the Clean Air Act Amendments of 1977, and EPA's approval of a revised SIP not incorporating the litigated measures, undercuts the basis for the court's jurisdiction and that the Court Orders do not control the revision process.

With respect to the revision process, the fact that a previously approved transportation control measure has been reduced to a Court Order, while creating a strong presumption that such a measure is reasonable (i.e., available and implementable in accordance with the terms of the order), does not preclude EPA from entertaining a State proposed SIP revision which, in its substance or schedule of implementation, may contain measures which are at variance from the terms of the court order. If, upon review of a proposed SIP revision, EPA determines that it complies with all currently applicable requirements of the Clean Air Act, EPA may approve the revision and thus alter the applicable SIP.

With respect to the question of the court's jurisdiction however, EPA's approval of a SIP revision does not operate to alter the terms of an existing Court Order. Therefore, to insure that any existing Court Order is not inconsistent with the revised SIP EPA upon its approval of a revised SIP containing measures which were the subject of the terms of a prior Court Order, will petition the court for a modification of the Order so as to make it consistent with the revised SIP.

*B. The Effective Date for Conditions*

*Comment:* In its February 6, 1980 letter the State also requested that the effective date of any condition should be no sooner than 30 days after EPA promulgation of the condition.

*EPA response:* Because of the time necessary to satisfactorily respond to each condition, EPA generally agrees with this comment. However, EPA considers that, in some instances, the time frame for meeting conditions may be less than 30 days following promulgation of the condition.

In accordance with EPA policy on conditional approval, the dates contained in EPA's notice of proposed rulemaking were established after consultation with the State and represent the strong assurance by the State that the identified minor deficiencies will be corrected on schedule. Based on EPA's review of the public comments received as a result of its proposal and on further consultation with the State, some of the proposed dates are now being modified. In addition, as discussed in Subsection II.B.4 of this notice, one condition already has been successfully met and consequently it is not being promulgated.

For a condition with an effective date which falls prior to its promulgation, the condition and its associated deadline will become effective today on its date of promulgation and not before. EPA is making its promulgated actions effective today rather than at a later date because it believes, as discussed elsewhere in this notice, that good cause exists for doing so.

*C. Automotive Emission Inspection and Maintenance*

1. Program effectiveness.

*Comment No. 1.* In its SIP submittal the State committed itself to obtaining by 1987 a 25 percent reduction in passenger car hydrocarbon exhaust emissions and a 25 percent reduction in carbon monoxide exhaust emissions from implementation of its inspection and maintenance (I/M) program.

In its February 6, 1980 letter the State has now provided additional information on the stringency factors (failure rates) that will be used in its I/M program. A stringency factor of approximately 20 percent will be used. (The State believes that a 20 percent stringency factor will achieve a 25 percent or greater reduction in emissions.) The State committed itself to establishing appropriate emission standards for the inspection system so as to achieve the 20 percent stringency factor as well as to establishing appropriate standards for supportive programs.

In addition to clarifying its stringency factor selection, the State committed itself to implementing a mechanic training program. This program is expected to provide additional emission reductions above the 25 percent reductions to be achieved from the inspection of passenger cars. The State will begin its mechanic training program on November 1, 1981. Prior to this date the State will review several potential approaches for mechanic training in a four-month feasibility study. The approaches to be studied will include, but not be limited to, the following:

- Procedures for informing the public of mechanic qualifications
- Endorsement of certifications issued by recognized institutions
- Expansion of appropriate training to additional institutions
- Review and distribution of EPA and other training materials to educational institutions
- Recommendation for the inclusion of emissions testing and repair in the engine performance and repair program curriculum in vocational schools
- Distribution and encouragement of the use of EPA test materials for use in voluntary mechanic certification
- Establishing a program for State certification of emissions control repairers
- Mandating that repair shops doing emissions repair have trained emission control repairers.

Since the exact nature and requirements of the mechanics training program are not known, the State did not indicate what additional emission reductions could be expected to be achieved.

The State proposed the following changes to its schedule for implementing its I/M program: Date: 6/2/80. Task: Report on feasibility of mechanic training course and begin planning new program. Date: 11/1/81. Task: Begin mechanic training program.

*EPA response to comment No. 1:* EPA is pleased the the State has reaffirmed its commitment to obtain a 25 percent emission reduction from its inspection and maintenance program. EPA is also pleased that the State is committed to implementation of a mechanics training program. However, some questions still remain about the nature of the State's I/M program. Although these questions do not affect EPA's assessment of the approvability of the SIP at this time, it is critical that EPA maintain an accurate understanding of the State's proposed I/M program. Consequently, EPA has written to the State to obtain clarifying information on the following subjects:

- The types of vehicles subject to inspection and mandatory repair,
- Stringency factor application, and
- Requirements for mechanics certification.

After receipt of this information, EPA expects to take formal rulemaking action to incorporate this information in the SIP.

*Comment No. 2:* The New England Legal Foundation questioned the adequacy of the proposed I/M program, with specific concern regarding: (1) the absence of specific program stringency factors beyond the initial 10 percent and the failure to specify when the stringency factors wil be tightened: (2) the absence of a specific funding commitment; and (3) the lack of statutory or regulatory authority to

require proper mechanic training and certification.

*EPA Response to Comment No. 2:* As just discussed under Comment No. 1 the State has written to EPA to indicate the I/M program will attain a 20 percent stringency factor. Moreover, the State has committed itself to obtaining greater than 25 percent emission reductions from its I/M program by 1987. This commitment satisfies EPA's policy requirements. The State also has committed to establishing necessary emission standards by August 1, 1980 through amendments to regulations contained in Title 15, Motor Vehicles, Chapter I, Commissioner's Regulations.

As discussed in EPA's notice of proposed rulemaking, the State has committed itself to providing adequate funding for its I/M program. The State has identified several potential funding sources and a final selection is to be made by April 1, 1980. Therefore, EPA believes that an adequate commitment to funding for the I/M program exists.

Although EPA encourages the use of comprehensive mechanic training and certification programs, the existences of such programs is not prerequisite to EPA approval. Nevertheless, as discussed the State has committed itself to implement a mechanic training program and will explore a State certification program also.

2. *Implementation schedule.*

*Comment:* In a January 11, 1980 letter from the New York State Department of Environmental Conservation it is indicated that some of the dates that appeared in the proposed SIP revision for implementation of its I/M program should be changed. The State indicated that the changes were necessary because of questions received from manufacturers of testing equipment and from EPA regarding its "Request For Proposal" for exhaust analyzers. Also, delays were encountered in determining the membership of the I/M Citizens' Advisory Committee. The State believes that the new dates do not affect the date for initiation of inspections. The proposed changes to the schedule are:

| Task | Previous date | New date |
|---|---|---|
| Bids received | 1-4-80 | 2-8-80 |
| Complete study of waiver provisions and select procedures, if any | 1-4-80 | 4-8-80 |
| Select successful bidder | 1-18-80 | 4-8-80 |
| Begin public information and education program | 1-18-80 | 2-15-80 |
| Formally sign contract with successful bidder on RFP | 2-18-80 | 4-18-80 |

*EPA response:* EPA is approving the proposed changes in the I/M schedule since they appear warranted and do not change the date for initiation of testing. The entire schedule will now be as follows:

9-14-79—Coordination begins between DMV and DEC.
10-1-79—Prepare notification to all currently licensed stations informing them of the new requirements. Provide them with any information currently available on how they will be affected on a continuing basis.
10-1-79—Begin identifying all exhaust analyzer equipment suppliers to establish a mailing list for the RFP.
10-1-79—Begin, in coordination with DEC, preparing RFP for equipment supply, maintenance, and training.
10-15-79—Begin continuous public information and public education campaign by forming task force; use current DEC and EPA material.
10-31-79—Submit amended DMV budget request.
11-15-79—Mail RFPs to prospective bidders.
11-15-79—Begin draft of Commissioner's Regulations.
11-15-79—Begin study of waiver provisions.
2-8-80—Bids received.
4-8-80—Complete study of waiver provisions and select procedures, if any.
1-4-80—Begin public promulgation process for the Commissioner's Regulations on Part 79 including pass/fail standards for emission test and fee increase.
1-4-80—Submit legislation to raise DMV inspection sticker fee from 25 to 50 cents.
4-8-80—Select successful bidder.
2-15-80—Begin public information and education program.
2-4-80—Begin feasibility study of mechanic training program.
4-18-80—Formally sign contract with successful bidder on RFP.
4-1-80—DMV to receive funds from either amended budget request or legislation sticker fee to 50 cents (or both), or obtain funding from some other source.
4-1-80—Determine necessary DEC level of staffing.
6-2-80—Report on feasibiltiy of mechanic training course and begin planning new program.
7-1-80—Memorandum of understanding between DEC and DMV completed.
7-1-80—Determine funding mechanism for DEC.
8-1-80—Amended Part 79 promulgated.
9-1-80—Additional DMV monitoring staff on board.
10-1-80—Receive funding for DEC portion of program.
10-11-80—Distribute new inspection forms, supplies, and procedures including new NYMA inspection stickers and revised certified inspector training class.
12-1-80—Exhaust gas analyzers in hands of stations and AFI (including data recorders if available at this time).
1-1-81—Begin one year of mandatory emissions inspection/voluntary repair.
10-1-81—Data recording devices attached to all gas analyzers used for emissions inspection.
11-1-81—Begin mechanic training program.
1-1-82—Begin mandatory emissions inspection/mandatory repair.

3. *Mechanic training.*

*Comment #1:* New York State Senator Caemmerer indicated that EPA must ensure that the State's I/M program provides New York motorists with the most fundamental protections possible, foremost of which, the Senator believes, is a mechanic certification program. He also indicated that if the public is to have any faith in the proposed I/M program, the mechanics performing repairs must be certified by the government.

*EPA response to comment #1:* EPA agrees with Senator Caemmerer that a mechanic training program is a critical element of any I/M program. EPA is encouraged that the State has committed itself to implement a mechanic training program. EPA is confident that the State will choose the most advantageous program possible. It should be noted that neither the Clean Air Act nor EPA policy mandate that a State mechanic training program be implemented by means of State certification or licensing of repair mechanics. However, EPA agrees with the commenter that State certification or licensing is highly desirable.

*Comment #2:* New York State Senator Caemmerer also indicated that EPA should delay the implementation of the State's I/M program until such time as the State has in place a comprehensive mechanic certification program.

*EPA Response to Comment #2:* As discussed under Comment #2 in Subsection III.C.1 of this notice, EPA lacks the authority to require a mechanic training program. In addition, any delay in the start-up of the State's I/M program beyond its scheduled date could jeopardize attainment of air quality standards before December 31, 1987. Since the State has committed itself to begin the mechanic training program on November 1, 1981 and since mandatory inspections and mandatory repairs will not begin until January 1, 1982, Senator Caemmerer's concern will be addressed to some extent. Prior to the start of the mechanic training program, additional information on testing and repairs is expected to be available to mechanics describing how the program will operate.

*D. Heavy Duty Truck Retrofit*

*Comment:* The New England Legal Foundation (NELF) indicated that EPA's finding regarding the adequacy of the Heavy Duty Gasoline Truck Retrofit measure is incorrect. NELF indicated that the SIP should provide for the implementation of this measure regardless of whether or not reciprocal programs exist in New Jersey and

Connecticut. NELF indicated that since this measure was included as an enforceable part of the 1973 SIP, EPA should disapprove the SIP because it does not contain a commitment to implement this measure.

*EPA response:* As discussed in Subsection III.A of this notice in response to the State's comments on the status of the 1973 SIP, EPA agrees with the NELF that measures contained in the 1973 SIP, including truck retrofit, are presumed to be reasonably available and thus remain in effect as part of the SIP until a demonstration of unreasonableness is made by the State and approved by EPA. While it has listed this measure as being "reasonably available," the State has chosen to conduct a demonstration project to study further the technical feasibility of heavy duty gasoline truck retrofit program alternatives. EPA approves this approach because full implementation of this measure is, in part, dependent upon the results of the demonstration project which is scheduled for completion by December 1981.

*E. Particulate Matter Secondary Standard SIP Submittal*

*Comment:* The New England Legal Foundation commented on EPA's proposal to grant the State an 18-month extension or submission of a SIP revision to provide for attainment of the secondary standard for particulate matter. This extension was based upon a finding made by the State that the installation of reasonably available control technology on traditional sources of particulate matter would not be adequate to provide for attainment of this standard. NELF questioned the meaning of "traditional sources" as well as the adequacy of the State's demonstration to qualify for an extension. NELF suggested, that, prior to EPA granting an extension for submission of secondary particulate matter SIP revision, the SIP, at a minimum, should have demonstrated that all reasonably available control measures are being implemented as expeditiously as practicable.

*EPA response:* EPA regulations [40 CFR 51.31(c)] provide that "[any request for an 18-month extension] shall show that attainment of the secondary standards will require emission reductions exceeding those which can be achieved through the application of reasonably available control technology." EPA does not require the actual implementation of reasonably available control technology prior to the granting of an extension.

EPA differentiates between "traditional sources," which include industrial stack and fugitive emissions, and "non-traditional sources," which include fugitive dust, and does not require that non-traditional source controls be included in such an analysis. EPA has reexamined the SIP with regard to this comment and finds the extension still to be justified.

*F. Clarifying the Content of the SIP*

*Comment:* The Natural Resources Defense Council (NRDC) indicated that EPA should require that the SIP be rewritten and should describe precisely what changes are necessary for approval. NRDC recommends that, for each control measure, the State should be required to provide a full description of the actions it will take, the demonstration projects it will conduct, and the studies it will complete. For each of these elements, the State should specify manpower and funding commitments, agency responsibilities and detailed schedules.

*EPA response:* EPA recognizes the need for clarifying information to make the SIP more understandable and useful. However, EPA believes that the conditions being promulgated in this notice will provide the necessary assurances that the information to meet these objectives will be generated. Specifically, meeting the conditions related to list of commitments, improved program of study, project milestones, identification of resources, and memorandum of understanding are believed to accomplish the desired results.

*G. SIP Approvability*

1. Ozone control strategy adequacy.

*Comment:* The New England Legal Foundation indicated that the proposed SIP revision fails to set forth a comprehensive control strategy adequate to provide attainment of the national ambient air quality standard for ozone by 1987 or to provide for the implementation of all reasonably available control measures as expeditiously as practicable.

*EPA response:* Section 172(a)(2) of the Clean Air Act provides that if a state demonstrates that the national ambient standards for carbon monoxide or ozone cannot be attained by December 31, 1982 despite the implementation of all reasonably available control measures, then an extension in the attainment date for the ozone or carbon monoxide standards beyond 1982 shall be granted. Under the Act, in such cases, a state need not have demonstrated in 1979 how it intends to attain the standards by 1987, but need only implement all reasonably available control measures as expeditiously as practicable. Demonstration of attainment is called for in the states' 1982 SIP submission. New York has requested and been granted an extension beyond 1982; therefore, no further demonstration of attainment is necessary at this time.

Further, EPA must disagree with the claim made by the New England Legal Foundation that the New York SIP does not make the requisite showing of reasonable further progress towards attainment. As is evident from this notice and EPA's December 10, 1979 notice of proposed rulemaking, the State is committed to implementing, as expeditiously as practicable, all measures found to be reasonable at time of its SIP submission. (EPA expects that, as studies are completed and further information and endorsements are obtained, additional measures will be determined to be reasonable). The Clean Air Act requires that all reasonably available control measures must be implemented in all nonattainment areas. EPA has interpreted this requirement by publishing guidelines concerning reasonably available control measures for mobile sources and reasonably available control technology for stationary sources (see General Preamble, 44 FR 20372, April 4, 1979). These requirements, in essence, ensure the development of equitable and comprehensive control strategies in all nonattainment areas, consistent with the states' primary responsibility for selecting such measures.

The New England Legal Foundation also states that it believes EPA has an obligation to issue "uniform federal ozone measures" to address the problem of interstate pollution. This comment is not properly part of this rulemaking. The commenter did not allege that New York should address this problem and, in fact, admits that it believes it can be resolved only by EPA. EPA's obligation to issue such regulations is being litigated in the United States Court of Appeals for the Second Circuit in *New England Legal Foundation* v. *Costle*, No. 79–6202. EPA's position in that case is that it does not have a mandatory duty to promulgate regional ozone regulations.

2. *Conditional approval.*

*Comment No. 1:* The New England Legal Foundation indicated that it does not agree with EPA's finding that the SIP contains no more than minor deficiencies with regard to the plan provisions required under Part D of the Clean Air Act. Specifically, NELF notes, in support of its comment, the absence of identification and commitment to necessary financial and manpower resources to carry out required SIP

provisions, and the absence of legal authority and adopted regulations for some transportation measures.

*EPA response to Comment #1:* To address this comment, EPA believes it essential to understand the requirements of Part D of the Clean Air Act as they relate to SIP plan provisions, particularly transportation control measures, intended to attain national primary ambient air quality standards for ozone or carbon monoxide (or both). EPA does not believe the SIP required to be submitted by the states on January 1, 1979 and which is the subject of EPA's current action, must contain all possible transportation control measures, in fully enforceable form, that may ultimately be required to attain these national primary ambient air quality standards. Congress specifically provided that the states, in their 1979 SIPs related to ozone or carbon monoxide, may demonstrate that, notwithstanding the implementation of all reasonably available control measures (including I/M), attainment of the standards is not possible within the period prior to December 1982. If such demonstration is made, and is found to be acceptable to EPA, the states are given the further opportunity to adopt and submit, by July 1, 1982, such additional SIP provisions as may be necessary to provide for attainment of the applicable standards by December 1987. Inherent in this structure is the possibility of the phased development and implementation of SIP provisions, with the 1979 SIP being an initial step which provides for the expeditious implementation of reasonably available control measures (including I/M), demonstrates reasonable further progress toward attaining the standards, and identifies (but not necessarily implements) measures other than those reasonably available necessary to provide for attainment of standards by 1987.

When viewed against these fundamental requirements, EPA believes that the 1979 SIP submitted by the State meets the provisions of Part D of the Clean Air Act and that the deficiencies identified by EPA are "minor deficiencies," requiring correction or clarification by the State, but not requiring that EPA disapprove the SIP revision. All deficiencies identified by EPA relating to transportation control elements of the SIP (Conditions 1–6, 13, 14 identified in EPA's December 10 notice of proposed rulemaking) can be corrected by the State without jeopardizing the expeditious implementation of reasonably available transportation control measures (including I/M) and the achievement of reasonable further progress. The deficiencies relate exclusively to the need to define more precisely the status of various transportation related studies, demonstration projects and permanent projects committed to by the State in the SIP. These studies and demonstration projects have been identified by the State as being necessary prerequisites to those additional control measures which will be implemented by the State in the SIP to be submitted by July 1, 1982. When the deficiencies are corrected, EPA believes that the 1979 SIP will comply with all current requirements of Part D of the Act and will enable the State to submit, by July 1, 1982, a SIP containing all necessary further control measures to provide for attainment of the national primary ambient air quality standards for ozone and carbon monoxide by December 1987.

*Comment #2:* The Natural Resources Defense Council indicated that EPA's proposal to conditionally approve the SIP conflicts with the Clean Air Act and EPA policy requirements. NRDC noted that the Clean Air Act does not expressly provide for the use of conditional approval. Moreover, NRDC correctly points out that it is EPA policy to allow conditional approvals only where a SIP is found to be in substantial compliance with the Clean Air Act and where the State has provided assurrance that remaining minor deficiencies will be remedied within a short period of time (44 FR 38583, July 2, 1979). NRDC claims that this policy was incorrectly applied by EPA in its review of the New York SIP. In support of its claim NRDC referenced the deficiencies identified by EPA in its notice of proposed rulemaking and characterized them as major, not minor.

In addition, NRDC notes that the deficiencies cited by EPA in its notice of proposed rulemaking do not include all the deficiencies in the SIP. NRDC claims that the deficiencies in the SIP undermine its ability to serve as a meaningful plan. This is true, it claims, even including the improvements to be made as a result of the meeting of the proposed conditions. Furthermore, NRDC finds that the deficiencies preclude the SIP from complying with the provisions of the Clean Air Act. NRDC's conclusion is that, in the case of the New York SIP, conditional approval is inappropriate and the SIP should be disapproved.

*EPA response to Comment #2:* In response, EPA must reaffirm its policy of exercising conditional approval in cases where minor deficiencies exist in a SIP. The inherent authority of federal agencies to grant conditional approvals is firmly established. In *McManus* v. *Civil Aeronautical Board*, 286 F. 2d 414, 419 (2d Cir. 1961), the court expressly upheld the power of the Board to conditionally approve certain agreements, saying: "Nor is the Board bound to approve or disapprove agreements in their entirety * * *. [T]he power to condition its approval on the incorporation of certain amendments is necessary for flexible administrative action and is inherent in the power to approve or disapprove." *Id.* The reader should also take notice of *National Air Carrier Association* v. *Civil Aeronautics Board*, 436 F.2d 185, 190 D.C. Cir. 1970), which applied the holding in *McManus* to "closely parallel" situation. Similarly, in *Friends of the Earth* v. *EPA, 499* F.2d 1118, 1124 (2d Cir. 1974), the court upheld EPA's procedure of approving transportation control plans which lacked detailed regulations in cases where EPA had been furnished assurances that the regulations would subsequently be submitted. The Second Circuit found such a procedure, which resembles conditional approval, to be a reasonable method of carrying out a "difficult and complex job." (499 F.2d at 1124).

EPA feels that the concept of conditional approvals is appropriate to the SIPs for the following reason. A fundamental purpose of Part D of the Act was to permit reasonable economic growth in nonattainment areas at the same time that reasonable further progress is being made toward attainment by the required deadlines. Where a state plan substantially satisfied the Part D requirements, but lacks minor portions that can be readily supplied or corrected, it would be contrary to the intent of Congress to impose the sanctions specified in the Act. Thus, conditional approval prevents the unnecessarily harsh application of the sanctions in states which have made good faith efforts and submitted plans which have only minor deficiencies. Therefore, the concept of conditional approval is consistent with the intent of the 1977 amendments, as well as being within the inherent authority of the Agency.

Furthermore, as just discussed in the response to the NELF comments under Comment #1, EPA finds the deficiencies in the New York SIP can be characterized as minor. By meeting the requisite conditions and through development of the July 1, 1982 SIP revision it is expected that standards will be attained by the required date. EPA believes that any other course of action at this time would be counterproductive, since it would impact

ongoing State and local planning efforts and would be contrary to a fundamental policy of the Act that the identification, implementation and enforcement of reasonably available transportation control measures is the primary responsibility of State and local authorities.

*H. New Source Review*

1. *Definition of major source.*

*Comment:* Lederle Laboratories referenced the EPA proposal to approve the definition of major sources as defined in 6 NYCRR Part 231, "Major Facilities." This regulation defines a major source as one having allowable emissions of 50 tons per year, 1000 pounds per day or 100 pounds per hour of one of the criteria pollutants. Lederle Laboratories indicated that the definition in the Clean Air Act for a major source is 100 tons per year, if in one of the 28 listed industrial categories listed in Section 169 or 250 tons annually, if not listed. Lederle Laboratories objects to EPA's extension of the intent of the Clean Air Act by approving the more restrictive State definition.

*EPA response:* A state has the prerogative to require more stringent regulations than those contained in the Clean Air Act. However, it should be noted that EPA is approving only that portion of Part 231 which applies to major sources locating in a nonattainment area or having a significant air pollution impact on a nonattainment area. The emission limitations referenced by Lederle Laboratories pertain to the requirements applicable to a Prevention of Significant Deterioration (PSD) program. State requirements with respect to PSD are not addressed in today's action. A PSD program for New York State currently is being implemented by EPA under provisions of Part C of the Clean Air Act.

2. *Emissions offset.*

In its comments Lederle Laboratories also expressed a preference for EPA's "Recommendations for Alternative Reduction Options within State Implementation Plans; Policy Statement" ("bubble policy") (44 FR 71780, December 11, 1979) rather than for the State's program to require major sources of volatile organic compounds to offset all emission growth which occurs. The State, in recognizing the uncertainties prevalent in its emissions inventory for volatile organic compounds has established an "offset" policy for this pollutant. EPA finds this policy warranted in light of the requirements of Section 173(1)(A) of the Clean Air Act, since an alternate program premised on "growth allowance," as provided for by Section 173(1)(B), would not be consistent with the accuracy of the State's emission data base. EPA also believes the State's approach to be consistent with the objective of the "bubble" concept, which still may be applied to an individual facility.

*I. General Comments*

General comments addressed at national EPA policy and, therefore, applicable to all comprehensive SIP revisions prepared pursuant to Part D of the Clean Air Act were submitted by the Natural Resources Defense Council and the law firm of Covington and Burling on behalf of the Chemical Manufacturers Association. These comments and EPA's response to them are presented in a final rulemaking notice for New York State published on February 5, 1980 at 45 FR 7803.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Secs. 110, 172, and 301 of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601))

Dated: May 12, 1980.

**Douglas M. Costle,**

*Administrator, Environmental Protection Agency.*

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

**Subpart HH—New York**

1. Section 52.1670 paragraph (c) is amended by designating the undesignated subparagraphs under (c)(44) as (c)(44)(i), (ii)(A)–(H), (iii), (iv), (v), (vi), and (viii) respectively and adding a new (c)(44)(xvi) and (c)(44)(xviii) and by adding new paragraphs (c)(46)–(50) as follows:

**§ 52.1670 Identification of plan.**

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(44) Supplementary submittals of SIP revision information from the New York State Department of Environmental Conservation, insofar as they deal with all areas of the State except the Niagara Frontier Air Quality Control Region, dated:

* * * * *

(xvi) November 13, 1979, providing a "declaratory ruling" regarding interpretation of the provisions of 6 NYCRR Part 231 in implementing the new source review program.

* * * * *

(xviii) February 20, 1980, dealing with public hearings to revise Parts 229 and 231 of 6 NYCRR consistent with corrective action indicated by EPA.

* * * * *

(46) Five documents entitled:

(i) Volume I—New York State Air Quality Implementation Plan for Control of Carbon Monoxide and Hydrocarbons in the New York City Metropolitan Area.

(ii) Volume II—Detailed Descriptions of Reasonably Available Control Measures.

(iii) Volume III—Air Quality and Emission Inventory.

(iv) Volume IV—Public Participation.

(v) Total Suspended Particulates Secondary Standard: New York City Extension Request.

submitted on May 24, 1979 by the New York State Department of Environmental Conservation.

(47) A document entitled, "New York State Air Quality Implementation Plan—Statewide Summary and Program," submitted on September 10, 1979 by the New York State Department of Environmental Conservation.

(48) Supplementary submittals of information from the New York State Department of Environmental Conservation regarding the New Jersey-New York-Connecticut Air Quality Control Region SIP revisions, dated:

(i) June 26, 1979, dealing with control of storage tanks at gasoline stations in Nassau, Rockland, Suffolk, and Westchester Counties.

(ii) July 30, 1979, dealing with new source review provisions for major sources of volatile organic compounds.

(iii) August 20, 1979, providing a commitment to meet "annual reporting requirements."

(iv) January 11, 1980, dealing with changes to the State's schedule for implementing a light duty vehicle inspection and maintenance program.

(v) March 12, 1980, providing a memorandum of understanding among the New York State Department of Environmental Conservation, New York State Department of Transportation, and the Tri-State Regional Planning Commission.

(49) Supplementary submittals of information from the Governor's Office regarding the New Jersey-New York-

Connecticut Air Quality Control Region SIP revision, dated:

(i) August 6, 1979, dealing with the status of efforts to develop necessary legislation for implementing a light duty vehicle inspection and maintenance program.

(ii) November 5, 1979, providing the State's legal authority and a schedule for implementing a light duty vehicle inspection and maintenance program.

(iii) February 6, 1980, committing to providing additional information on systematic studies of transportation measures, committing to clarification of SIP commitments, and providing additional information on the State's light duty vehicle inspection and maintenance program.

(50) Supplementary information, submitted by the New York State Department of Transportation on October 17, 1979, providing clarification to "reasonably available control measures" commitments contained in the New Jersey-New York-Connecticut Air Quality Control Region SIP revision.

2. Section 52.1672 is amended by revising paragraph (a) and adding a new paragraph (b) as follows:

**§ 52.1672 Extensions**

(a) The Administrator hereby extends for 18 months (until July 1, 1980) the statutory timetable for submission of New York's plan for attainment and maintenance of the secondary standards for particulate matter in the Village of Solvay and areas of the City of Syracuse and the City of New York.

(b) The Administrator hereby extends the statutory deadline for attainment of carbon monoxide and ozone national ambient air quality standards in the New Jersey-New York-Connecticut Air Quality Control Region to December 31, 1987. Specific attainment dates shall be defined, as applicable, in the plan revision to be submitted by July 1, 1982.

3. Section 52.1673 is revised to read as follows:

**§ 52.1673 Approval status.**

With the exceptions set forth in this subpart, the Administrator approves New York's plan for the attainment and maintenance of the national standards under Section 110(a)(2) of the Clean Air Act. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D, title I of the Clean Air Act, as amended in 1977, except as noted below in § 52.1674 and for the mass transportation improvement provisions of the plan for the New Jersey-New York-Connecticut Air Quality Control Region and the provisions of the plan for the Niagara Frontier Air Quality Control Region. In addition, continued satisfaction of the requirements of Part D for the ozone portion of the SIP depends on the adoption and submittal of RACT requirements by July 1, 1980 for the sources covered by CTGs issued between January 1978 and January 1979 and adoption and submittal by each subsequent January of additional RACT requirements for sources covered by CTGs issued by the previous January.

4. Section 52.1674 is amended by revising the introductory text of (a) and (a)(2) and the introductory text of (d) and adding new paragraphs (e) and (f) as follows:

**§ 52.1674 Part D—Conditions on approval.**

The following actions must be carried out by the State for the correction of unfulfilled requirements of part D of the Clean Air Act:

(a) The following conditions shall be applicable to the New York State plan with regard to its provisions for attainment of the ozone standard in those areas of the Central, Genesee Finger Lakes, Hudson Valley, and New Jersey-New York-Connecticut Air Quality Control Regions designated as nonattainment for this pollutant in Section 81.333 of this chapter, when last revised.

* * * * *

(2) On or before August 1, 1980 the State must adopt and submit to EPA a revised 6 NYCRR Part 229, "Gasoline Storage and Transfer," which regulates all petroleum liquid storage in fixed roof tanks.

* * * * *

(d) The following conditions shall be applicable to the New York State plan with regard to its provisions for attainment of the ozone, carbon monoxide, and particulate matter standards in those areas of the Central and Hudson Valley Air Quality Control Regions, the ozone and carbon monoxide standards in those areas of the Genesee Finger Lakes and New Jersey-New York-Connecticut Air Quality Control Regions, and the particulate matter standard in those areas of the Southern Tier West Air Quality Control Region designated as nonattainment for each of these pollutants in Section 81.333 of this Chapter, when last revised.

* * * * *

(e) The following conditions shall be applicable to the New York State plan with regard to its provisions for attainment of the ozone and carbon monoxide standards in those areas of the New Jersey-New York-Connecticut Air Quality Control Region designated as nonattainment for each of the pollutants in Section 81.333 of this Chapter, when last revised.

(1) On or before August 1, 1980 the State must submit to EPA key milestones (actions and dates) associated with projects relating to the transportation control measures which are a part of its SIP. Measures which have a particular need for the identification of additional milestones with regard to their proposed actions include:

(i) Parking Restrictions,

(ii) Freight Transportation,

(iii) Limitation on Authorized Parking,

(iv) Bike Lanes (Demonstration Project),

(v) Express Bus and Carpool Lanes,

(vi) Pedestrian Priority Zones,

(vii) Traffic Flow Improvements for Arterials,

(viii) Traffic Flow Improvements for Limited Access Highways,

(ix) Employer Based Programs,

(x) Private Car Restrictions,

(xi) Alternate Work Schedules,

(xii) Bicycle Lanes and Storage Facilities, and

(xiii) Park and Ride and Fringe Parking.

(2) On or before August 1, 1980 the State must submit to EPA an improved program of study for the broader application of the following measures:

(i) Freight Transportation,

(ii) Express Bus and Carpool Lanes,

(iii) Pedestrian Priority Zones,

(iv) Employer Based Programs,

(v) Private Car Restrictions,

(vi) Alternate Work Schedules,

(vii) Bicycle Lanes and Storage Facilities.

In addition, each new and existing study's schedule, its funding source, its anticipated products, its relationship to measures, projects and other studies, and procedures for tracking its progress and reporting on its findings must be submitted to EPA.

(3) On or before August 1, 1980, the State must submit to EPA additional documentation to support its determination that the measure, "Controls on Extended Vehicle Idling," is not reasonably available. If such additional documentation cannot be provided, this measure must be recategorized.

(4) On or before May 1, 1980, the State must submit to EPA three separate listings covering, respectively, all of the transportation related studies, demonstration projects and permanent projects committed to in the SIP.

(5) On or before August 1, 1980 the State must submit to EPA SIP revision criteria and procedures for making changes to transportation projects contained in the SIP. Criteria for a

"significant" change to a project should consider the degree of change in a project's scope, cost, schedule for implementation and status as to its "reasonableness." SIP revision procedures should provide for changes to a measure's categorization and the failure to include a project in the Transportation Improvement Program.

(6) On or before August 1, 1980 the State must submit to EPA SIP revision criteria and procedures for making changes to transportation studies contained in the SIP.

(7) On or before August 1, 1980 the State must submit to EPA identification of the resources necessary to carry out the transportation planning process and the following transportation elements of the SIP:

(i) Parking Restrictions,

(ii) Freight Transportation,

(iii) Heavy Duty Gasoline Truck Retrofit,

(iv) Express Bus and Carpool Lanes,

(v) Pedestrian Priority Zones,

(vi) Traffic Flow Improvements for Arterials,

(vii) Employer Based Programs,

(viii) Park-and-Ride and Fringe Parking,

(ix) Alternate Work Schedules.

(f) The following condition shall be applicable to the New York State plan with regard to its provisions for attainment of the ozone standard in those areas of the New Jersey-New York-Connecticut Air Quality Control Region designated as nonattainment for this pollutant in Section 81.333 of this Chapter, when last revised.

(1) On or before August 1, 1980 the State must adopt and submit to EPA a revised 6 NYCRR Part 229, "Gasoline Storage and Transfer," such that the deficiency caused by exemption from control of storage tanks at gasoline filling stations with an annual throughput of less than 400,000 gallons is corrected.

(2) On or before January 1, 1981 the State must submit to EPA an organic compound emissions inventory of sufficient comprehensiveness and quality to meet the requirements specified by EPA.

5. Section 52.1682 is amended by deleting the first two entries in the table, identified as "Niagara Frontier Interstate" and "New Jersey-New York-Connecticut Interstate" and inserting new entries as follows:

**§ 52.1682 Attainment dates for national standards.**

* * * * *

| Air quality control region and nonattainment area | Pollutant | | | | | | |
|---|---|---|---|---|---|---|---|
| | TSP | | $SO_2$ | | NO | CO | $O_3$ |
| | Primary | Secondary | Primary | Secondary | | | |
| New Jersey-New York-Connecticut Interstate: | | | | | | | |
| City of New York: | | | | | | | |
| Borough of Manhattan | a | c | a | a | a | d | d |
| Borough of Bronx (portion) | a | c | a | a | a | d | d |
| Borough of Brooklyn (portion) | a | c | a | a | a | d | d |
| Borough of Queens (portion) | a | c | a | a | a | d | d |
| Borough of Staten Island (portion) | a | c | a | a | a | d | d |
| Remainder of City of New York | a | a | a | a | a | d | d |
| City of Yonkers | a | a | a | a | a | d | d |
| City of Mount Vernon | a | a | a | a | a | d | d |
| County of Nassau (portion) | a | a | a | a | a | d | d |
| Remainder of AQCR | a | a | a | a | a | a | d |
| Niagara Frontier Intrastate | e | e | e | a | a | e | e |
| * * * | | * | | * | | * | * |

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BILLING CODE 6560-01-M

## 40 CFR Part 180

[FRL 1497-5; PP 9F2267/R246]

## Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 3,5-Dimethyl-4-(Methylthio)Phenyl Methylcarbamate

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a tolerance for residues of the insecticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate on blueberries at 25 parts per million (PPM). The regulation was requested by Mobay Chemical Corp. This rule establishes a maximum permissible level for residues of the insecticide on blueberries.

**EFFECTIVE DATE:** May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Miller, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401, M Street, SW., Washington, DC 20460 (202/426-9458).

**SUPPLEMENTARY INFORMATION:** On October 24, 1979, notice was given (44 FR 61248) that Mobay Chemical Corp., PO Box 4913, Kansas City, MO 64120, had filed a pesticide petition (PP 9F2267) with the EPA under provisions of the Federal Food, Drug, and Cosmetic Act.

This petition proposed that 40 CFR 180.320 be amended to establish a tolerance for combined residues of the insecticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity blueberries at 25 ppm. No comments were received in response to this notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerance included two-year rat and dog feeding studies with no-observed-effect levels (NOEL) of 100 ppm and 250 ppm, respectively; a three-generation rat reproduction study with an NOEL of 300 ppm; a rat teratology study, which was negative at 10 milligrams (mg)/kilogram (kg) of body weight (bw); a rat oncogenicity study, which was negative; a delayed neurotoxicity study in hens which was negative up to 800 ppm; and a dominant lethal assay test in mice which was negative at 10 mg/kg bw. Based on the two-year rat feeding study with an NOEL of 100 ppm, and using a safety factor of 100, the acceptable daily intake (ADI) for humans is 0.05 mg/kg bw/day, and the maximum permissible intake (MPI) is 3.0 mg/day for a 60-kg human. The theoretical maximum residue contribution (TMRC) in the human diet from permanent tolerances for combined residues of the subject pesticide and its cholinesterase-inhibiting metabolites now in effect in or on corn, at 0.03 ppm, cherries at 25.0 ppm, and peaches at 15.0 ppm utilized 8.06 percent of the ADI. The theoretical maximum residue contribution (TMRC) in the human diet from the permanent tolerances and the temporary tolerances now in effect in or on grapes at 15.0 ppm; the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; the eggs and the meat, fat, and meat byproducts of poultry at 0.02 ppm; in milk at 0.01 ppm; raisins at 25.0

ppm utilizes 12 percent of the ADI. The permanent, temporary, and the proposed tolerances on blueberries result in a TMRC of 0.38 mg/day, and utilize 12 percent of the ADI. The increase due to blueberries is 0.38 percent.

The incremental dietary exposure from food uses has been assessed for the new use on blueberries and is considered not significant. The percentage increase in the TMRC due to the new use is three percent. The presently available data base for this chemical does not give cause for toxicological concern. As there are no feed items involved in the proposed use, there will be no secondary residues in meat, milk, poultry, or eggs.

An adequate analytical method is available for enforcement purposes, and the nature of the subject pesticide is adequately understood. Permanent tolerances as cited above have been established for residues of the subject insecticide. Temporary tolerances as cited above have been established and have been extended until December 31, 1980. No actions are pending against registration of the insecticide, and no other considerations are involved in establishing the proposed tolerance. The pesticide is considered useful for the purpose for which a tolerance is sought, and it is concluded that the tolerance of 25 ppm on blueberries established by amending 40 CFR 180.320 will protect the public health. Therefore, it is concluded that the tolerance be established as set forth below.

Any person adversely affected by this regulation may, on or before June 20, 1980; file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective May 21, 1980, Part 180 is amended as set forth below.

(Sec. 408(d)(2), 68 Stat. 512, (21 U.S.C. 346a(d)(2))

Dated: May 14, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

Part 180, Subpart C, § 180.320 is amended by alphabetically inserting blueberries at 25 ppm in the table to read as follows:

**§ 180.320 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate; tolerances for residues.**

* * * * *

| Commodity: | Parts per million |
|---|---|
| Blueberries | 25 |

* * * * *

[FR Doc. 80-15518 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 41 CFR Part 3-4

### Unsolicited Proposals

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary, Department of Health and Human Services is amending its procurement regulations by adding a new subpart on unsolicited proposals.

The new subpart will replace the present subpart 3-4.52 and will implement and supplement subpart 1-4.9, Unsolicited Proposals, of the Federal Procurement Regulations. The new subpart sets forth a requirement for offerors of unsolicited proposals to execute a certification verifying that the proposal has been prepared without the assistance of Department employees, establishes the principal official responsible for procurement in each major procuring activity as the point of contact for coordinating the receipt and handling of unsolicited proposals, provides guidance on information to be included in the justification for acceptance of an unsolicited proposal, and provides a notice concerning the use and disclosure of data furnished by the offeror in an unsolicited proposal.

This new subpart is necessary to update the Department's procurement regulations and to add the certification provision.

**EFFECTIVE DATE:** This amendment is effective May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jack Coleman, Office of Procurement Policy, OGP-OASMB-OS, Department of Health and Human Services, Room 539H, Hubert H. Humphrey Building, 220 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-8901.

**SUPPLEMENTARY INFORMATION:** On March 31, 1980, the proposed rule concerning unsolicited proposals was published in the **Federal Register**, and it invited public comments by April 30, 1980. As a result one response was received, from a management consultant firm. This firm felt that the findings required in the "Justification for Acceptance of Unsolicited Proposal" set forth in § 3-4.910(b)(1) were unduly restrictive and in some ways confusing. The Department agrees with this criticism and has rewritten the required findings to more clearly state the basic requisites of an acceptable unsolicited proposal.

The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Title 41 CFR Chapter 3 is amended as set forth below.

Dated: May 15, 1980.

**E. T. Rhodes,**

*Deputy Assistant Secretary for Grants and Procurement.*

Under Part 3-4, Special Types and Methods of Procurement, Subpart 3-4.52, Unsolicited Proposals, is deleted in its entirety and the following subpart 3-4 is added. In addition, the table of contents for Part 3-4 is amended to delete Subpart 3-4.52 and to add the following:

## PART 3-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

**Subpart 3-4.9—Unsolicited Proposals**



**Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).**

### Subpart 3-4.9—Unsolicited Proposals

**§ 3-4.906 Content of unsolicited proposals.**

(a) through (c) [Reserved.]

(d) *Certification by offeror.* To ensure against contacts between Department employees and prospective offerors which would exceed the limits of advance guidance set forth in § 1-4.905 resulting in an unfair advantage to an offeror, the principal official responsible for procurement (or designee) shall ensure that the following certification is furnished to the prospective offeror and the executed certification is included as

part of the resultant unsolicited proposal:

**Unsolicited Proposal Certification by Offeror**

This is to certify, to the best of my knowledge and belief, that:

a. This proposal has not been prepared under Government supervision.

b. The methods and approaches stated in the proposal were developed by this offeror.

c. Any contact with employees of the Department of Health and Human Services has been within the limits of appropriate advance guidance set forth in § 1–4.905.

d. No prior commitments were received from departmental employees regarding acceptance of this proposal.

Date: _____

Organization: _____

Name: _____

Title: _____

(This certification shall be signed by a responsible official of the proposing organization or a person authorized to contractually obligate the organization.)

**§ 3–4.907 Time of submission.**

The principal official responsible for procurement shall establish procedures governing the time for submission and number of copies of proposals for the purpose of maintaining orderly and efficient evaluation procedures.

**§ 3–4.908 Agency point of contact.**

The principal official responsible for procurement or his/her designee shall be the point of contact for coordinating the receipt and handling of unsolicited proposals. Contacts made outside of the procuring activity shall be promptly coordinated with the principal official responsible for procurement or his/her designee.

**§ 3–4.909 Receipt, review and evaluation.**

The principal official responsible for procurement or his/her designee shall be accountable for the receipt and handling of unsolicited proposals. Accordingly, he/she shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals in accordance with § 1–4.909. These procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(a) through (e) [Reserved.]

(f) An unsolicited proposal shall not be refused consideration merely because it was initially submitted as a grant application. However, contracts shall not be awarded on the basis of unsolicited proposals which have been rejected for grant support on the ground that they lack scientific merit.

**§ 3–4.910 Method of procurement.**

(a) [Reserved]

(b) In lieu of the justification for noncompetitive procurement required by § 1–4.910(b), the program office shall prepare a "Justification for Acceptance of Unsolicited Proposal."

(1) The "Justification" shall address the factors listed in § 1–4.909(d) and include the following findings:

(i) The unsolicited proposal was selected on the basis of its overall merit, cost, and contribution to the activity's program objective;

(ii) The substance of the unsolicited proposal does not closely resemble that of a pending competitive solicitation;

(iii) The substance thereof is not available to the Government without restriction from another source.

(2) The "Justification for Acceptance of Unsolicited Proposal" shall be submitted to the contracting officer together with, but as a separate document from, the request for contract and shall be signed by the same official of the program office who signs the request for contract. Approval of the "Justification" shall be made at the same level as prescribed in § 3–3.5306 for approval of a justification for noncompetitive procurement.

**§ 3–4.913 Limited use of data.**

The legend, Use and Disclosure of Data, prescribed in § 1–4.913(a) is to be used by the offeror to restrict the use of data for evaluation purposes only. However, data contained within the unsolicited proposal may have to be disclosed as a result of a request submitted pursuant to the Freedom of Information Act. Because of this possibility, the following notice shall be furnished to all prospective offerors of unsolicited proposals whenever the legend is provided in accordance with § 1–4.905(b)(9):

The Government will attempt to comply with the "Use and Disclosure of Data" legend. However, the Government may not be able to withhold a record (data, document, etc.) nor deny access to a record requested by an individual (the public) when an obligation is imposed on the Government under the Freedom of Information Act, 5 U.S.C. 552, as amended. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act. Records which the offeror considers to be trade secrets and commercial or financial information and privileged or confidential must be identified by the offeror as indicated in the referenced legend.

[FR Doc. 80–15624 Filed 5–20–80; 8:45 am]

BILLING CODE 4110–12–M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 547

**[Docket No. 79–51; General Order 45]**

### Procedures for Environmental Policy Analysis

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rules.

**SUMMARY:** The Federal Maritime Commission is hereby issuing final rules to provide procedures for implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, in compliance with the regulations of the Council on Environmental Quality. These procedures apply to all Commission actions, though for certain specified actions no environmental analysis will normally occur.

**DATES:** This rule is effective May 21, 1980.

**FOR FURTHER INFORMATION CONTACT:** Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, N.W., Rm. 11101, Washington, D.C. 20573 (202) 523–5725.

**SUPPLEMENTARY INFORMATION:** This proceeding was initiated by Notice of Proposed Rulemaking published May 18, 1979, in the **Federal Register** (44 FR 29122–29126). The Federal Maritime Commission (Commission) proposed to establish procedures implementing the National Enviromental Policy Act of 1969 (NEPA) as it applies to the Commission's regulatory framework.

Comments were received from or on behalf of: (1) Pacific Coast European Conference (PCEC); (2) Tampa Port Authority (Tampa); (3) Pacific Westbound Conference, Pacific-Straits Conference, Pacific/Indonesian Conference and Pacific Cruise Conference (Pacific Conferences); (4) United States Lines, Inc. (USL); (5) Philippines North America Conference, Straits/New York Conference, Trans-Pacific Freight Conference of Japan/Korea, Japan/Korea-Atlantic & Gulf Freight Conference, Agreement No. 10107 and Agreement No. 10108 (PNAC); (6) a group of eleven conferences and rate agreements (AEUSC);[1] and (7)

[1] Australia-Eastern U.S.A. Shipping Conference; Greece/United States Atlantic Rate Agreement; Iberian/U.S. North Atlantic Westbound Freight Conference; Marseilles/North Atlantic U.S.A. Freight Conference; Med-Gulf Conference; Mediterranean North Pacific Coast Freight Conference; North Atlantic Mediterranean Freight Conference; U.S. Atlantic and Gulf/Australia—New Zealand Conference; U.S. North Atlantic Spain Rate Agreement; U.S. South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement; and the West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference.

Stephen J. Buckley.[2] Subsequent to receipt of comments, the Commission's staff prepared a proposed final rule which was submitted to the Council on Environmental Quality (CEQ) for its review pursuant to 40 C.F.R. 1507.3(a). After conducting its review, CEQ sent comments and recommended changes to the Commission. All comments to the proposed rules raising substantive issues and the resultant revisions in these rules are discussed below. Those comments not specifically discussed have nonetheless been thoroughly reviewed and considered by the Commission.

1. *Section 547.1—Purpose and Scope.* PCEC suggests that the scope of these rules be narrowed to "all major non-adjudicatory actions of the Federal Maritime Commission significantly affecting the quality of the human environment." Such a revision is unnecessary. NEPA applies to *all* federal actions. However, because of the nature of certain federal actions, the specific action-forcing requirements of NEPA are often inapplicable. These rules have been drafted with this distinction in mind. Though they apply to all actions of the Commission, their various procedural requirements may not be applicable for a variety of reasons (*e.g.*, the actions are categorically excluded or will not have a significant effect upon the human environment).

2. *Section 547.2—Organization.* Because it is apparent throughout these rules that the Commission's Office of Environmental Analysis will administer the majority of the activities to be performed under this Part, this informational section has been deleted from the final rule. As a result, the remaining sections have been renumbered.

3. *Section 457.3—Definitions.* Both PCEC and Mr. Buckley question the term "potential action". PCEC contends that it is unnecessary and expands the Commission's regulations beyond statutory and regulatory requirements. While it may be true that the Commission need not commence its environmental assessment process until there is a proposed action, it is by no means clear that an agency cannot commence this process earlier. For certain Commission actions, most notably investigations and adjudications, the Commission's proposed action will not occur before the issuance of its report. *See Aberdeen & Rockfish R.R. Co. v. SCRAP,* 422 U.S. 289, 320–21 (1975). It would be impractical to defer the assessment process to this particular stage of activity. The use of "potential action" permits the Commission to assess its environmental responsibilities and prepare necessary environmental documents at a more reasonable pace.

4. *Section 547.5—Categorical Exclusions.* Initially, AEUSC contends that these rules should be specifically limited to actions affecting the environment of the United States. This position appears to be contrary to the policy enumerated in Executive Order 12144 (44 *Fed. Reg.* 1957, January 9, 1979) that, for certain federal actions, agencies should take into consideration the environment outside the United States, its territories and possessions. The Commission has concluded that of the four classes of actions mentioned in this Executive Order, only the first, actions significantly affecting the environment of the global commons outside the jurisdiction of any nation, could potentially apply to its various regulatory activities. Consequently, the Commission has revised proposed §§ 547.7(a) and 547.8(a)(4) to indicate that a finding of no significant impact and an environmental impact statement (EIS) will consider the potential impact on the environment of the United States and, in appropriate cases, the environment of the global commons.

Several parties have commented on the scope of the categorical exclusions, suggesting revisions of those already proposed and the inclusion of others. PNAC would extend the scope of proposed § 547.5(a)(11)—excluding the receipt of non-exclusive transshipment agreements—to actions involving requests for section 15 approval of exclusive transshipment agreements. They contend that even though exclusive transshipment agreements continue to require section 15 approval, they would have no more environmental impact than would non-exclusive transshipment agreements. However, regardless of the environmental effects of a non-exclusive transshipment agreement, the Commission lacks the ability to alter it. The Commission merely receives non-exclusive transshipment agreements for informational purposes, hardly a "federal action" for purposes of NEPA. *See* 46 CFR Part 524. On the other hand, exclusive transshipment agreements must be submitted for Commission approval pursuant to section 15 of the Shipping Act, and this type of federal action could permit the Commission to consider the environmental effects of such agreements in approriate cases. The Commission will, therefore, continue categorically to exclude only non-exclusive transshipment agreements from its NEPA rules (section 547.4(a)(13)).

PCEC and PNAC question proposed § 547.5(a)(8), which excludes amendments to section 15 agreements which neither increase nor diminish the originally granted authority. PCEC would alter this exclusion to apply to *all* amendments to section 15 agreements. Its only justification is that the present language "poses serious definitional difficulties". The Commission cannot accept such a substantial enlargement of the scope of this exclusion. Our intent was to limit the scope of the exclusion to only those amendments which would not normally have significant environmental effects.

PNAC expressed concern that amendments submitted for the sole purpose of extending the life of an agreement beyond its expiration date might be considered an "increase" in the authority originally granted and therefore not within this particular exclusion. Under certain circumstances such an amendment might be an "increase" in the authority originally granted. The Commission, therefore, finds no reason for restating this subsection and will interpret it accordingly.

The Pacific Conferences contend that it is unfair to exempt actions concerning the rates and practices of controlled carriers (proposed § 547.5(a)(15)) while not similarly exempting the rates and practices of all other carriers or conferences in the foreign commerce of the United States. They additionally claim that NEPA applies only where a federal agency has significant discretionary powers and that the Commission's rate authority in foreign commerce is strictly confined by statutory and decisional criteria. The latter contention is unconvincing. Our public laws must be interpreted and administered in accordance with NEPA's policies (42 U.S.C. 4332), and it may well be appropriate for the Commission to consider environmental factors in making determinations pursuant to its rate statutes, even though pre-NEPA precedent does not mention such criteria. Moreover, the Commission does not believe it is unfair to exempt only the rates and practices of controlled carriers. The Ocean Shipping Act of 1978, Pub. L. 95–483, 92 Stat. 1607,

[2] In addition, by letter dated September 20, 1979, the Advisory Council on Historic Preservation noted that there were no provisions in the rules which ensure compliance with the National Historic Preservation Act (16 U.S.C. 470 *et seq.*). The Commission has reviewed this statute and concludes that it has no applicability to the Commission's proceedings. There is no need, therefore, to include provisions concerning the National Historic Preservation Act in these rules.

which amends sections 1 and 18 of the Shipping Act, 1916 (46 U.S.C. 801, 817) is a relatively recent statute. The Commission has yet to acquire any substantial experience in administering it, but there are early indications that such actions will most likely not have significant environmental impacts. Should the Commission's experience prove otherwise, this exemption will be reconsidered. Until such time, environmental consideration is still possible in such matters under §§ 547.4(b) or (c).

The Pacific Conferences contend that adversary adjudications before the Commission should be exempted from NEPA. They cite judicial authority for the proposition that some federal actions are exempt from NEPA because of their unique circumstances, even though there is no express exemption in the Act. They also refer to a 1975 CEQ memorandum which concluded that NEPA should not apply to Federal Trade Commission adjudicatory proceedings. They further note that CEQ's regulations exempt the "bringing of civil or criminal enforcement actions". 46 CFR 1508.18(a).

There has yet to be a clear judicial pronouncement that NEPA does not apply to an agency's adjudicatory proceedings. Moreover, the CEQ memorandum relied upon by the Conferences has subsequently been renounced by CEQ. CEQ clearly indicates that it interprets NEPA as applying to *all* federal actions, including adjudications. Moreover, it appears that the conferences may have overlooked or misinterpreted the scope and effect of proposed § 547.5(a)(20) which exempts:

> Investigatory and adjudicatory proceedings pursuant to the Shipping Act, 1916, and the Merchant Marine Act of 1920, or portions thereof, the purpose of which is to ascertain past violations of these Acts.

This particular exclusion (now § 547.4(a)(22)) should alleviate most of their concerns. No further exemption for adjudicatory proceedings is warranted at this time.

AEUSC suggests that consideration of special permission applications should be expressly exempted from environmental assessment. The Commission agrees, and has therefore included such an exemption in its final rule (section 547.4(a)(6)). The Commission further agrees that many of the types of section 15 agreements listed in AEUSC's proposed § 547.5(a)(30)(a)–(s) will not individually or cumulatively have a significant effect on the quality of the human environment. Section 547.4(a)(10) of this final rule consequently excludes those types of section 15 agreements which solely regulate intra-conference or intra-rate-agreement relationships or pertain to administrative matters of conferences or rate agreements. The remainder of the categorical exclusions proffered by AEUSC are rejected. Proposed § 547.5(a)(28), exempting activities in or under the jurisdiction of a nation other than the United States, is unnecessary in light of our revisions contained in §§ 547.6(a) and 547.7(a)(4). AEUSC's proposed subsection 31 would effectively exempt every section 15 agreement except for those which would normally require the preparation of an EIS. The Commission has chosen a different approach—that of identifying, based upon its experience, those agreements which should be specifically excluded.

PCEC states that a Commission decision categorically to exclude a particular action should be final and not subject to reinclusion. It would, accordingly, delete proposed §§ 547.5(b) and (c), which contain procedures for considering the environmental effects of what was otherwise an excluded action. The Commission rejects such a rigid approach in light of the requirement that it "* * * provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." 40 CFR 1508.4. These subsections meet this requirement. The Commission likewise rejects PNAC's revision of proposed § 547.5(b) to permit challenges to exclusions "only in unusual and extraordinary circumstances" and only after a specific referral order from the Commission to OEA. We do not believe that the procedure now set forth in § 547.4(b) will result in any significant delay in Commission actions, especially since the OEA must review submissions challenging a categorical exclusion within 30 days.

5. *Section 547.6—Environmental Assessments.* USL suggests that in all cases the Commission should publish a notice of intent to prepare an environmental assessment in the **Federal Register.** PCEC suggests clarification of proposed § 547.6(b) to explain the "appropriate cases" in which notice of intent may be published and also suggests the addition of a subsection (c) to provide a timetable for completion of an environmental assessment by the OEA. The nature of the action will determine the time required to prepare an assessment and does not lend itself to setting a fixed timetable for all cases. There is no requirement that notice be given prior to the preparation of an environmental assessment. As presently worded, § 547.5(b) provides the OEA with the discretion to publish notice in those cases where it deems useful. In all other cases, decisions on the significance of an action's environmental impact can be reached more expeditiously without notice and comment.

6. *Section 547.7—Finding of No Significant Impact.* The Commission has made several changes in this section (now § 547.6) in response to various comments. First, it has clarified the fact that it is only concerned with impacts on the quality of the human environment of the United States or of the global commons. Once a finding of no significant impact is prepared, the OEA will publish notice of its availability in the **Federal Register.** This will be the only such notice to the general public. If petitions for review of a finding of no significant impact are filed, the Commission will serve notice of its decision on all parties who filed comments concerning the action (assuming there was a prior notice of intent to prepare an assessment) or who filed petitions for review. There is no need for the Commission to "adopt" a finding of no significant impact. PCEC's recommendation of a 30-day period for review of petitions for review has been partially adopted. The Commission will now decide such petitions within 45 days of their receipt.

7. *Section 547.8—Environmental Impact Statement.*—(a) *General.* The Commission has deleted subsection (1)(ii) because of its decision to delete proposed § 547.9. Subsection (3) has been amended to reflect the fact that, in certain cases, the issuance of an initial decision by an Administrative Law Judge may be a major decision point in the EIS process. Subsection (4) clarifies that EIS's shall consider impacts only on the environment of the United States and the global commons outside the jurisdiction of any nation.

(b) *Draft Environmental Impact Statements.* The Pacific Conferences note that the proposed rules provide a maximum of 60 days within which to comment on a DEIS. They suggest that the words "for up to 15 days" be deleted from proposed § 547.8(b)(3) so that extensions based upon good cause are openended. Though a maximum of 60 days within which to comment on a DEIS is indeed rigid, it is not unreasonable. This is all the more true when these new procedures are in effect, since the OEA will be preparing DEIS's more expeditiously and their length will likely be reduced.

USL submits that proposed § 547.8(b)(3) unnecessarily limits the scope of comments concerning a DEIS to its adequacy or the merits of the

alternatives discussed in it. The Commission did not intend to limit comments in this manner and has accordingly revised this section (now § 547.7(b)(3)).

(c) *Final Environmental Impact Statements.* Sections 547.8(c)(2) through (5) of the proposed rules set forth a procedure for utilization of a completed FEIS which will apply to all Commission proceedings. The Commission noted, however, that it was also considering an alternative procedure which would require the consideration of FEIS's in formal administrative hearings. USL and PNAC support the former proposal. The Pacific Conferences and CEQ support some variation of the latter. The Pacific Conferences object to the proposed procedure because: (1) the FEIS will not be sponsored by a witness subject to cross-examination; and (2) the findings which will be part of the record of decision may not necessarily be only those supported by regular evidentiary standards such as reliability and relevance. They contend that in an adversary administrative adjudication the right to an evidentiary hearing is provided by the Administrative Procedure Act (5 U.S.C. 556(d)) and guaranteed by the due process clause of the Fifth Amendment. They consequently recommend an addition to proposed § 547.8(c)(3) or, in the alternative, support the hearing procedures provision which was included in the supplement to the proposed rules.

The Pacific Conferences also note that proposed § 547.8(c)(4) does not permit a party objecting to an ALJ's environmental finding of fact to take exceptions to the Commission prior to its ultimate decision. They contend that the exception procedure is available for other factual issues and should likewise pertain to environmental issues. They suggest, therefore, that proposed § 547.8(c)(4) be revised to allow any party, within 30 days after an ALJ certifies a finding of fact, to file a memorandum and brief excepting to any such finding.

CEQ supports a procedure whereby an FEIS would be placed before an ALJ for consideration prior to the preparation of an initial decision.

The procedure adopted by the Commission (section 547.7(c)(3) and (4)) meets CEQ's objections and also resolves some of the problems perceived by the Pacific Conferences. Under this procedure, the FEIS will be submitted to an ALJ for consideration of the environmental impacts and alternatives in preparing an initial decision, in those cases assigned to an ALJ for hearing. However, in all cases, a party may petition the Commission for an evidentiary hearing concerning an alleged substantial and material error of fact in the FEIS. In such instances the Commission has two options: (1) it can simply refer the petition to an ALJ for resolution, or (2) to the extent it grants the petition, it can determine those issues which are substantial and material and then refer them to an ALJ for a hearing and factual resolution.

8. *Section 547.9—Actions Normally Requiring an EIS.* CEQ's regulations state that agency procedures shall include specific criteria for an identification of those typical classes of action which normally do require environmental impact statements. 40 CFR 1507.3(b)(2)(i). In an attempt to meet this requirement, the Commission set forth, in proposed § 547.9, four classes of actions which will ordinarily require the preparation of an EIS. Several commenters have questioned the general nature of these classes of action and the applicability of this requirement to the FMC's regulatory scheme. The Commission has reviewed this section in light of the comments received and concludes that it should be deleted in its entirety. The FMC regulates the conduct of the ocean shipping industry and does not administer programs and projects as do other federal agencies. It is not possible to identify with any reasonable degree of specificity typical classes of actions normally requiring an EIS. In fact, it has been the Commission's experience since 1969 that NEPA actually impacts on but a very few of its actions. Any such action will be identified during the environmental assessment process and will result in the preparation of an EIS if warranted. The broad and vague categories proposed in § 547.9 would be of little practical use.

9. *Section 547.11—Information Required by the Commission.* As an initial matter, this section has been redesignated § 547.9 and the reference to dual rate contract applications deleted. Various commenters have suggested that this section shifts what is primarily a Commission responsibility onto a private party. They also claim that it places an undue burden on parties whose activities may have no environmental impact and that failure to comply fully with this section could apparently have adverse effects on actions before the Commission. This section has been redrafted slightly to alleviate these concerns and to clarify its intended effect. The requirements of this section will only arise following a specific Commission request for such information and will not, therefore, apply in all instances. Parties who appear before the Commission seeking some sort of relief are often in a position to provide information that the Commission might otherwise have difficulty obtaining. As reworded, the type of information expected of those persons identified in subsection (a) should not be unduly burdensome. Moreover, the Commission has emphasized that it expects persons to provide such information "only" to the fullest extent "possible". Individuals are urged to contact OEA for informal assistance prior to submitting any complaint, protest, petition, or section 15 application which requests Commission action as enumerated in this section. If the OEA uses any such information in the preparation of an environmental assessment or an EIS, it will independently assure its accuracy. The OEA will, of course, remain primarily responsible for the preparation of all necessary environmental documents.

10. *Section 547.12—Time Constraints for Final Administrative Action.* PNAC notes that the time constraints on final administrative actions by the Commission imposed by this section (since renumbered as 547.10) are mandatory and repose no discretion in the Commission. It suggests that these time constraints be observed only to the maximum extent practicable. These time periods are consistent with CEG's directive, 40 CFR 1506.10(b) (1) and (2). The Commission has altered this section slightly to reflect that the prescribed periods may be reduced only with the approval of the Environmental Protection Agency for compelling reasons of national security (40 CFR 1506.10(d)) or when a statutory deadline is imposed on the Commission's action.

The Pacific Conferences maintain that many of the questions presented to the Commission cannot await the delays inherent in the environmental review process. They propose a new section which would permit the Commission to waive or suspend these rules to take emergency or interim action to avoid unwarranted hardship. Such an addition to these rules is unncecessary. Section 1506.11 of CEQ's regulations (which have been incorporated into these rules) sets forth the procedures applicable to emergency circumstances. In such instances CEQ will advise the Commission on appropriate emergency arrangements.

11. *Other Comments.* The Pacific Conferences have indicated some concern that these regulations be instituted in a prompt and orderly manner. These final rules will be effective May 21, 1980, and will apply to

all proceedings or actions commenced thereafter.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and section 43 of the Shipping Act, 1916 (46 U.S.C. 841(a)), Part 547 of Title 46, Code of Federal Regulations, is adopted.

By the Commission.[1]

**Francis C. Hurney,**

*Secretary.*

## PART 547—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

Sec.



**Authority:** Section 43 of the Shipping Act, 1916, 46 U.S.C. 841, section 102 of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(B).

### § 547.1 Purpose and scope.

(a) This Part implements the National Environmental Policy Act of 1969 (NEPA) and Executive Order 12114 and incorporates and complies with the Regulations of the Council on Environmental Quality (CEQ) (40 CFR 1500 *et seq.*).

(b) This Part applies to all actions of the Federal Maritime Commission (Commission). To the extent possible, the Commission shall integrate the requirements of NEPA with its obligations under section 382(b) of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6362.

### § 547.2 Definitions.

(a) "Shipping Act" means the Shipping Act, 1916, as amended, 46 U.S.C. 801 *et seq.*

(b) "Common Carrier by Water or Other Person Subject to the Act" means any common carrier by water as defined by section 1 of the Shipping Act, including a conference of such carriers, or any person not a common carrier by water carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water.

(c) "Environmental Impact" means any alteration of existing environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action under consideration.

(d) "Potential Action" means the range of possible Commission actions that may result from a Commission proceeding in which the Commission has not yet formulated a proposal.

(e) "Proposed Action" means that stage of activity where the Commission has determined to take a particular course of action and the effects of that course of action can be meaningfully evaluated.

(f) "Environmental Assessment" means a concise document that serves to "provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact" (40 CFR 1508.9).

(g) "Recyclable" means any secondary material that can be used as a raw material in an industrial process in which it is transformed into a new product replacing the use of a depletable natural resource.

### § 547.3 General information.

(a) All comments submitted pursuant to this Part shall be addressed to the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573.

(b) A list of Commission actions for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Office of Environmental Analysis, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573 (telephone [202] 523–5835).

### § 547.4 Categorical exclusions.

(a) No environmental analyses need be undertaken or environmental documents prepared in connection with actions which do not individually or cumulatively have a significant effect on the quality of the human environment because they neither increase nor decrease air, water or noise pollution; the use of fossil fuels, recyclables, or energy; or are purely ministerial actions. The following types of Commission actions are therefore excluded:

(1) Issuance, modification, denial and revocation of freight forwarder licenses, pursuant to section 44 of the Shipping Act;

(2) Certification of financial responsibility of passenger vessels pursuant to 46 CFR Part 540;

(3) Certification of financial responsibility for water pollution cleanup pursuant to 46 CFR Parts 542 and 543;

(4) Promulgation of procedural rules pursuant to 46 CFR Part 502;

(5) Acceptance or rejection of tariff filings in foreign and domestic commerce;

(6) Consideration of special permission applications filed pursuant to 46 CFR 531.18 and 536.15;

(7) Receipt of terminal tariffs pursuant to section 17 of the Shipping Act;

(8) Suspension of and/or decision to investigate tariff schedules pursuant to section 3 of the Intercoastal Shipping Act, 1933;

(9) Consideration of amendments to agreements filed pursuant to section 15 of the Shipping Act, which neither increase nor diminish the authority granted in the original approval of the section 15 agreement;

(10) Consideration of agreements between common carriers or other persons subject to the Shipping Act which solely affect intraconference or intra-rate agreement relationships or pertain to administrative matters of conferences or rate agreements;

(11) Consideration of agreements between common carriers or other persons subject to the Shipping Act, to discuss, propose or plan future action, the implementation of which requires filing a further agreement under section 15 of the Shipping Act;

(12) Consideration of equipment interchange, husbanding or wharfage agreements filed for section 15 approval;

(13) Receipt of non-exclusive transshipment agreements pursuant to 46 CFR Part 524;

(14) Action relating to collective bargaining agreements;

(15) Action pursuant to section 18(c) of the Shipping Act, concerning the justness and reasonableness of controlled carriers' rates, charges, classifications, rules or regulations;

(16) Receipt of self-policing reports and shipper requests and complaints pursuant to 46 CFR Parts 527 and 528;

(17) Receipt of financial reports prepared by common carriers by water in the domestic offshore trades pursuant to 46 CFR Parts 511 and 512;

(18) Adjudication of small claims pursuant to 46 CFR 502.301 *et seq.* and 46 CFR 502.311 *et seq.*;

(19) Action taken on special docket applications pursuant to 46 CFR 502.92;

(20) Consideration of matters related solely to the issue of Commission jurisdiction;

[1] Commissioner Peter N. Teige did not participate.

(21) Investigations conducted pursuant to 46 CFR Part 513;

(22) Investigatory and adjudicatory proceedings pursuant to the Shipping Act or the Merchant Marine Act of 1920, or portions thereof, the purpose of which is to ascertain past violations of these Acts;

(23) Consideration of dual rate contract systems pursuant to section 14b of the Shipping Act;

(24) Action regarding access to public information pursuant to 46 CFR Part 503;

(25) Action regarding receipt and retention of minutes of conference meetings pursuant to 46 CFR Part 537;

(26) Administrative procurements (general supplies);

(27) Contracts for personal services;

(28) Personnel actions; and

(29) Requests for appropriations.

(b) If interested persons allege that a categorically excluded action will have a significant environmental effect (*e.g.*, increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy) they shall, by written submission to the Commission's Office of Environmental Analysis (OEA), explain in detail their reasons. The OEA shall review these submissions and determine, not later than 30 days after receipt, whether to prepare an environmental assessment. If the OEA determines not to prepare an environmental assessment, such persons may petition the Commission for review of the OEA's decision within 15 days of receipt of notice of such determination.

(c) If the OEA determines that the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, it shall prepare an environmental assessment pursuant to § 547.5 of this Part.

**§ 547.5 Environmental assessments.**

(a) Every Commission action not specifically excluded under section 547.4 of this Part shall be subject to an environmental assessment.

(b) The OEA may publish in the **Federal Register** a notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues. Such comments must be received by the Commission no later than 20 days from the date of publication of the notice in the **Federal Register.**

**§ 547.6 Finding of no significant impact.**

(a) If upon completion of an environmental assessment the OEA determines that a potential or proposed action will not have a significant impact on the quality of the human environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the **Federal Register.** This document shall include the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 547.4 of this Part, will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within 20 days from the date of publication of the notice of its availability in the **Federal Register.** The Commission shall review the petitions and either deny them or order the OEA to prepare an EIS pursuant to § 547.7 of this Part. The Commission shall, within 45 days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

**§ 547.7 Environmental impact statements.**

(a) *General.* (1) An EIS shall be prepared by the OEA when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

(2) The EIS process will commence:

(i) For adjudicatory proceedings, when the Commission issues an order of investigation or a compalint is filed;

(ii) For rulemaking or legislative proposals, upon issuance of the proposal by the Commission; and

(iii) For other actions, the time the action is noticed in the **Federal Register.**

(3) The major decision points in the EIS process are: (i) the issuance of an initial decision in those cases assigned to be heard by an Administrative Law Judge (ALJ), and (ii) the issuance of the Commission's final decision or report on the action.

(4) The EIS shall consider potentially significant impacts upon the quality of the human environment of the United States and, in appropriate cases, upon the environment of the global commons outside the jurisdiction of any nation.

(b) *Draft environmental impact statements.* (1) The OEA will initially prepare a draft environmental impact statement (DEIS) in accordance with 40 CFR 1502.

(2) The DEIS shall be distributed to every party to a Commission proceeding for which it was prepared. There will be no fee charged to such parties. One copy per person will also be provided to interested persons at their request. The fee charged such persons shall be that provided in 46 CFR 503.43.

(3) Comments on the DEIS must be received by the Commission within forty-five (45) days of the date the Environmental Protection Agency (EPA) publishes in the **Federal Register** notice that the DEIS was filed with it. Sixteen copies shall be submitted as provided in § 547.3(a) of this Part. Comments shall be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed in it. All comments received will be made available to the public. Extensions of time for commenting on the DEIS may be granted by the Commission for up to 15 days if good cause is shown.

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, the OEA will prepare a final environmental impact statement (FEIS) pursuant to 40 CFR Part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in § 547.7(b)(2) of this Part.

(2) The FEIS shall be prepared prior to the Commission's final decision and shall be filed with the Secretary, Federal Maritime Commission. Upon filing, it shall become part of the administrative record.

(3) For any Commission action which has been assigned to an ALJ for evidentiary hearing:

(i) The FEIS shall be submitted prior to the close of the record, and

(ii) The ALJ shall consider the environmental impacts and alternatives contained in the FEIS in preparing the initial decision.

(4)(i) For all proposed Commission actions, any party may, by petition to the Commission within 20 days following EPA's notice in the **Federal Register,** assert that the FEIS contains a substantial and material error of fact which can only be properly resolved by conducting an evidentiary hearing, and expressly request that such a hearing be held. Other parties may submit replies to the petition within 15 days of its receipt.

(ii) The Commission may delineate the issue(s) and refer them to an ALJ for expedited resolution or may elect to refer the petition to an ALJ for consideration.

(iii) The ALJ shall make findings of fact on the issue(s) and shall certify such findings to the Commission as a supplement to the FEIS. To the extent that such findings differ from the FEIS, it shall be modified by the supplement.

(iv) Discovery may be granted by the ALJ on a showing of good cause and, if granted, shall proceed on an expedited basis.

**§ 547.8 Record of decision.**

The Commission shall consider each alternative described in the FEIS in its decisionmaking and review process. At the time of its final report or order, the Commission shall prepare a record of decision pursuant to 40 CFR 1505.2.

**§ 547.9 Information required by the Commission.**

(a) Upon request of OEA, a person filing a complaint, protest, petition or section 15 application requesting Commission action that will:

(1) Alter cargo routing patterns between ports or change modes of transportation;

(2) Change rates or services for recyclables;

(3) Change the type, capacity or number of vessels employed in a specific trade; or

(4) Alter terminal or port facilities; shall submit to OEA, no later than 25 days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment.

(b) The statement submitted shall, to the fullest extent possible, include:

(1) The probable impact of the requested Commission action on the environment (*e.g.*, the use of energy or natural resources, the effect on air, noise, or water pollution) compared to the environmental impact created by existing uses in the area affected by it;

(2) Any adverse environmental effects which cannot be avoided if the Commission were to take or adopt the requested action; and

(3) Any alternatives to the requested Commission action.

If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the OEA for informal assistance in preparing this statement. The OEA shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(c) In all cases, the OEA may request every common carrier by water, or other person subject to the Act, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within 25 days of such request, all material information necessary to comply with NEPA and this Part. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 21 of the Shipping Act.

**§ 547.10 Time constraints on final administrative actions.**

No decision on a proposed action shall be made or recorded by the Commission until the later of the following dates unless reduced pursuant to 40 CFR 1506.10(d), or unless required by a statutorily prescribed deadline on the Commission action:

(a) Ninety (90) days after EPA's publication of the notice described in § 547.7(b) of this Part for a DEIS; or

(b) Thirty (30) days after publication of EPA's notice for an FEIS.

[FR Doc. 80-15567 Filed 5-20-80; 8:45 am]

BILLING CODE 6730-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

**[Directed Service Order No. 1437; Supplemental Order No. 2]**

### Regional Transportation Authority—Directed Service—Chicago Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee) Over Chicago Commuter Line

Decided: May 9, 1980.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Directed Service Order No. 1437 Supplemental Order No. 2.

**SUMMARY:** Pursuant to 49 U.S.C. 11125, the Commission, in DSO No. 1437, as revised, authorized the Illinois Regional Transportation Authority (RTA) to provide interim rail service—without federal subsidization under 49 U.S.C. § 11125(b)(5)—over the Chicago-Joliet, IL, commuter line owned by the Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) ("Rock Island" or "RI").

In Supplemental Order No. 1 to DSO No. 1437, we required RTA and the RI Trustee to negotiate regarding use of the line and related facilites. We reserved the right to set reasonable compensation terms, should the parties be unable to reach agreement.

The parties have been unable to reach an agreement regarding compensation and request the Commission to issue an order settling the dispute. We conclude that compensation for use of the involved line should be computed in accordance with the principles set forth in Finance Docket No. 29305, *St. Louis-San Francisco Railway Company—Compensation for Use of Terminal Tracks—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee)*, I.C.C. (decided April 7, 1980), 45 FR 25401 (April 15, 1980).

**DATES:** *Effective Date:* This decision shall be effective on May 19, 1980.

*Expiration Date:* Unless otherwise modified by the Commission, this decision will expire at 11:59 p.m. (Central time ) on May 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** Richard J. Schiefelbein (202) 275-0826, or Joel E. Burns, (202) 275-7849.

**SUPPLEMENTAL INFORMATION:**

**Decision of the Commission**

*Background*

The Rock Island has been in bankruptcy proceedings since 1975. In September 1979, its cash flow position became so severe as to prevent the continuation of normal rail operations. Accordingly, we issued Directed Service Order No. 1398 (and supplements thereto) directing the Kansas City Terminal Railway Company (KCT) to provide service under 49 U.S.C. § 11125 as a subsidized "directed rail carrier" (DRC) over the Rock Island rail system. *Kansas City Term. Ry. Co.—Operate—Chicago, R.I. & P.*, 360 I.C.C. 289, 478, 718 (1979-80); 44 FR 56343, 70733, and 45 FR 14578 (1979-80). That order expired on March 23, 1980.

On March 20, 1980, we issued DSO No. 1437 authorizing the RTA to provide interim service—without federal subsidization under 49 U.S.C. § 11125(b)(5)—over the Chicago-Joliet, IL, commuter line owned by the Rock Island, from March 24 through May 31, 1980, inclusive. The terms and conditions of DSO No. 1437 were modified by Supplemental Order No. 1 issued March 25, 1980, [published as part of DSO 1437 on April 2, 1980], by adding a requirement that RTA and the RI Trustee negotiate regarding use of Rock Island tracks and related facilities. In the event of failure to reach agreement, we reserved the right to set reasonable compensation terms.

The RI Trustee has filed a petition stating that he has been unable to reach agreement with RTA and requesting that the Commission set compensation. The Trustee proposes that compensation for use of the involved line be set at 1.2 percent per month of the value of the property. He asserts that the value of the Chicago-Joliet commuter line is $53 million and that the monthly rental

should be $630,000. The Trustee also requests that the Commission set terms for the use of Rock Island tracks and related facilities.

RTA has replied to the Trustee's petition. It takes the position that, as a public entity, it should not be required to pay any rent for use of the involved properties because the commuter operations yield no net profit.

*Discussion and Conclusions*

We have established a formula for calculating reasonable compensation to be paid for use of Rock Island tracks and related facilities operated pursuant to a service order issued under 49 U.S.C. § 11123. Finance Docket No. 29305, *St. Louis-San Francisco Railway Company—Compensation for Use of Terminal Tracks—Chicago, Rock Island & Pacific Railroad Company, Debtor* (William M. Gibbons, Trustee), —— I.C.C. —— (decided April 7, 1980), 45 FR 25401 (April 15, 1980) (*Frisco Compensation* case). We have determined that this formula is appropriate for setting compensation to be paid for use of a line operated pursuant to an unsubsidized directed service order issued under 49 U.S.C. § 11125, which is not subject to a sale agreement setting a purchase price. DSO No. 1453, *St. Louis Southwestern Railway Company—Directed Service—Chicago, Rock Island & Pacific Railroad Company, Debtor (Willima M. Gibbons, Trustee) Between Santa Rosa, NM, and St. Louis, MO,* Supplemental Order No. 2, embracing DSO No. 1456, *St. Louis Southwestern Railway Company—Directed Service—Chicago, Rock Island & Pacific Railroad Company, Debtor (William M. Gibbons, Trustee) Between Memphis, TN, and Fordyce, AR,* Supplemental Order No. 2, (served April 28, 1980) (*SSW Compensation* case).

The concepts of DSO No. 1437 are essentially the same as those of the involved orders in the *SSW Compensation* case, except that they apply to a commuter line, not a freight line. As we noted in the *SSW Compensation* case, the *Frisco Compensation* case formula is designed to make a reasonable accommodation of the opposing interests of the Trustee and the interim operators with respect to lines not subject to a purchase agreement setting an agreed price.

RTA argues that, as a public entity providing subsidized commuter service, it should not be required to pay compensation for use of the line. We do not find this argument to be persuasive. The type of service provided over Rock Island lines during interim operations should not control whether the Trustee should receive compensation. Profitability of interim operations is a factor to be considered in determining what level of compensation is reasonable. It is not the only factor to be considered, however, in setting compensation for use of lines pursuant to a permissive, unsubsidized directed service order.

Unlike DSO No. 1398, in which we directed the KCT to provide service, we have not compelled RTA to provide interim operations. Rather, it is RTA that wants access to a portion of the Rock Island to provide those operations, and in these circumstances we believe it is not appropriate to allow RTA (or any similarly situated interim operator) that benefit without providing some compensation to the Trustee. Moreover, since it is not up to the Trustee to determine what kind of operations are performed, we believe the Trustee should be paid a base rental for the use of Rock Island property by interim operators. Application of the *Frisco* concept, adjusted to apply costs and revenues of commuter service operations, will assure the Trustee of receiving some compensation for use of Rock Island properties even if temporary operations produce no net revenues. Accordingly, RTA should pay the Trustee, for the use of the Chicago-Joliet, IL, commuter line and related facilities, on a monthly basis, in advance, the sum of $1,250 per route mile per year. The method of computing net revenues set forth in the second part of the *Frisco Compensation* case formula is not applicable to passenger operations. Therefore, net revenues, if any, from interim operations over the Chicago-Joliet line should be calculated in accordance with the commuter standards at 49 CFR 1127.6 and 1127.7.

The Trustee requests that the Commission fix terms, in addition to compensation, for use of the involved line. We believe that these terms should be negotiated between the parties, giving consideration to the terms and conditions of DSO No. 1437, as revised, and the compensation specified in this decision.

*We find:* 1. RTA and the RI Trustee have been unable to agree upon terms for compensation for the RI estate for use of RI property by RTA under DSO No. 1437, as revised.

2. The terms of compensation set forth in this decision will be reasonable and will accommodate the interests of RTA and the RI Trustee.

3. This action will not significantly affect either the quality of the human environment or the conservation of energy resources. See 49 CFR Parts 1106 and 1108 (1978).

*It is ordered:* 1. RTA shall compensate the Rock Island estate for the use of RI tracks and related facilities, operated under DSO No. 1437, in accordance with the terms of this decision.

2. This decision shall be effective on the date it is served. [May 19, 1980].

By the Commission Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis, and Gilliam. (Commissioner Gilliam not participating).

(49 U.S.C. 11125)

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-15571 Filed 5-20-80; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 611

### Foreign Fishing Regulations—Subpart E; Northeast Pacific Ocean

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

**ACTION:** Final regulations.

**SUMMARY:** These regulations amend 50 CFR Part 611 (foreign fishing regulations) and provide the conditions and restrictions for an orderly fishery by foreign fishermen in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California.

**EFFECTIVE DATE:** These regulations are effective on May 17, 1980.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas E. Kruse, Acting Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109, Telephone: (206) 442-7575.

**SUPPLEMENTARY INFORMATION:** The Assistant Administrator for Fisheries (Assistant Administrator) approved the amendment to the preliminary management plan (PMP) for the foreign trawl fishery in the FCZ off the coasts of Washington, Oregon, and California on March 19, 1980. Proposed regulations governing this fishery were published on April 16, 1980 (45 FR 25844). A public hearing was held on May 1, 1980 in Seattle, and comments were accepted until May 9, 1980.

The amended PMP, as approved, provides the basis for these regulations and is available for public inspection at the Northwest Regional Office of the National Marine Fisheries Service (NMFS) (address above). These regulations constitute Subpart E of the

1980 foreign fishing regulations, and govern all foreign fishing during 1980 in the FCZ seaward of Washington, Oregon, and California. While they are similar to those regulations which were in effect during 1979, there are some significant differences. Those differences are summarized here:

(1) The name "Pacific whiting" has been substituted for the name "Pacific hake";

(2) Based upon recent stock assessment, the optimum yield (OY) and total allowable catch (TAC) of Pacific whiting is decreased from 198,900 metric tons (mt) to 175,000 mt;

(3) Based upon an evaluation of expected domestic harvesting and processing capabilities and intentions, the estimated domestic annual harvest (DAH) is reduced from 50,000 mt to 40,000 mt (12,000 mt U.S. caught/U.S. processed and 28,000 mt U.S. caught/foreign processed), and the total allowable level of foreign fishing (TALFF) for Pacific whiting is 135,000 mt, of which 35,000 mt is held in reserve and may be apportioned to TALFF after July 1;

(4) The incidental catch allowance for sablefish is increased from 0.1 to 0.173 percent of the Pacific whiting catch. This increase has been determined to be necessary in order to allow foreign fishermen to harvest the Pacific whiting TALFF. Based upon recent evaluation of sablefish stocks, this incidental catch allowance amounts to a maximum of 1.7 percent of the sablefish OY, and should not have any adverse impact on either the resource or the domestic sablefish harvest;

(5) There are two possible ways of increasing TALFF in a given year. The first deals with release of all or part of the reserve that is not needed by domestic industry. The second allows TALFF to be supplemented by the amount of DAH in excess of domestic needs. Both procedures were used in 1979, and reassignments to TALFF were made at the same time (August 1). However, the criteria for assessing release of reserves and the date for implementing reserve release have been changed. As a result, these two procedures are treated separately in 1980, as follows:

The determination whether or not to release any part of the reserves to TALFF will be made after July 1 rather than August 1, and the criteria for that determination are modified to include a larvae survey as well as an in-season survey of processors' intentions and domestic catch and effort. These regulations make pertinent data available to the public and allow for public comment from June 15–30 on the proposal of whether or not to release reserves.

A procedure to re-evaluate DAH during the season and add to TALFF on August 1 any portion of the DAH that will not be harvested by domestic fishermen is included. These regulations make pertinent data available to the public and allow for public comment on any such proposal from July 15–31. This provision allows for full utilization of the Pacific whiting resource should the domestic whiting harvest during 1980 not be as large as expected.

(6) The OY's for the incidental species have been adjusted, based upon recent evaluations. The catch of incidental species will be reported to the nearest 0.01 mt per haul, rather than to the nearest 0.1 mt. This requirement is intended to provide a more accurate measure of the incidental catch. Also, a new daily log book system will be implemented.

Two parties commented on the amendment and proposed regulations. The first statement, from the Polish representative, included three recommendations which were incorporated into the final regulations. These suggestions are discussed below:

(1) 50 CFR 611.70(f)(1)(ii) on gear restrictions would be clarified by stating that this restriction on mesh-size modification applies only to the cod end of the net. This comment is consistent with the intent of the original statement.

(2) 50 CFR 611.70(g)(1) requires that on-deck estimates for a haul shall be "logged prior to the next fishing operation." Since the next operation may begin shortly after the previous haul has been dumped on deck, there could be insufficient time to carefully assess the catch. By changing the phrase to "before the next haul is on deck" this becomes a more realistic stipulation, is consistent with our request for careful estimation (to 0.01 mt for incidentally caught species), and still requires that the data be entered after each haul.

(3) 50 CFR 611.70(g)(iii) states that the daily logbook shall be submitted to the Regional Director within one week after termination of the fishery. Due to logistical problems, the request to extend this period to three weeks has been granted.

The second statement recommended that since OY is defined as MSY adjusted by economic, ecological, and social considerations, and since the domestic groundfish industry is economically depressed, OY should equal DAH. By doing so, foreign fishing (TALFF) would be eliminated and U.S. industry would expand (DAH would increase).

The FCMA provides that the amount to be allocated to the foreign fishery is that portion of the OY which will not be taken by the domestic industry. As the DAH is estimated by an annual survey of domestic industry's capacity and intention, and is buffered by a reserve of 20 percent OY, then domestic industry already receives highest priority with respect to fish to be taken in the FCZ. Any further increase in DAH would inhibit maximum use of the resource contrary to the FCMA.

There is no viable economic reason for lowering OY to equal DAH in 1980. The Washington, Oregon, California (WOC) domestic groundfish market is glutted and seriously depressed. There is no indication that the WOC domestic groundfish market situation could be relieved by an increased supply of whiting, for which there has been small demand. Similarly, a reduced TALFF does not assure a receiptive world export market. There is no indication that a domestic whiting fishery could successfully compete on a wide scale in the world market in 1980. Should the domestic industry indicate an increased demand for the whiting resource within the bounds of OY, all or part of the 35,000 m.t. reserve will be made available to the domestic harvest. The reserve is considered adequate to allow for any foreseeable increase in domestic harvest in 1980. No relevant economic, ecological or social justification was identified for equating OY and DAH.

A second recommendation urged 100 percent observer coverage of foreign fishing operations. This is not possible in 1980 because of Federal funding and hiring restrictions now in effect.

A. The Environmental Impact Statement/Preliminary Fishery Management Plan for the Trawl Fishery of the Washington, Oregon, and California region (January 1977) as amended for the 1978 and 1979 fisheries is amended as follows for the 1980 fishery:

Two appendices are added.

Appendix B.—Initial Determination of Nonsignificance for the Proposed 1980 Amendment for the Foreign Trawl Fishery off Washington, Oregon, and California.

Appendix C.—Environmental Assessment of an Amendment (Amendment 3) to the Preliminary Fishery Management Plan for the Trawl Fisheries off Washington, Oregon, and California. These documents are available for public inspection at the Northwest Regional Office (address above).

The Assistant Administrator for Fisheries has determined that these regulations are not significant under

Executive Order 12044, and that no significant environmental impacts will result from this action. A copy of the environmental assessment with the statement of non-significance is available for review at the National Marine Fisheries Service, Washington, D.C., or at the Northwest Regional Office (address above).

The Assistant Administrator also finds that the 30-day implementation delay required by sec. 553(c) of the Administrative Procedure Act is unnecessary and contrary to the public interest because these regulations relieve a no fishing restriction by permitting foreign fishing in the fishery conservation zone (FCZ) and also by permitting foreign processing vessels to receive fish harvested by U.S. fishermen. Without these regulations such activities would not be lawful under provisions of the FCMA.

Signed at Washington, D.C. this 16th day of May, 1980.

**Winfred H. Meibohm,**

*Executive Director, National Marine Fisheries Service.*

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

Part 611 Foreign Fishing Regulations are amended as follows:

**§ 611.20 [Amended]**

1. Appendix 1 to 50 CFR 611.20 is revised to read as follows:

| Species | Species code | Area | Optimum yield (OY) in metric tons | Domestic harvest (DAH) in metric tons | Joint venture (JVP) [1] in metric tons | Reserve | TALFF |
|---|---|---|---|---|---|---|---|
| * | * | * | * | * | * | * | * |
| 5. North Pacific Ocean Fisheries: Washington, Oregon, and California Trawl Fisheries: | | | | | | | |
| Whiting, Pacific | 704 | | 175,000 | 40,000 | 28,000 | 35,000 | [10]100,000 |
| Flounders | 129 | | 38,400 | | | 35 | [10]100 |
| Mackerel, jack | 208 | | 55,000 | | | 1,050 | [10]3,000 |
| Rockfishes, excluding Pacific Ocean perch | 849 | | 43,300 | | | 258 | [10]738 |
| Pacific Ocean perch | 780 | | 1,000 | | | 22 | [10]62 |
| Sablefish | 703 | | 13,400 | | | 61 | [10]173 |
| Other species | 499 | | 26,100 | | | 175 | [10]500 |

[1] JVP is a subset of DAH.

[10] Allowable incidental catch of these species is determined as a percentage of the Pacific whiting TALFF (see § 611.70(b)(1)(ii)(A)).

(2) 50 CFR 611.70 is revised to read as follows:

## Subpart E—Northeast Pacific Ocean

### § 611.70 Washington, Oregon, and California trawl fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone seaward of Washington, Oregon, and California.

(b) *Authorized fishery.*—(1) *TALFFs, reserves, and reassessment of DAH.* (i) *TALFFs.* The total allowable levels of foreign fishing (TALFFs), the amounts of fish set aside as reserves, and the initial estimated domestic annual harvest (DAH) are set forth in Appexdix 1 of 50 CFR § 611.20.

(ii) *Reserves.* (A) *Apportionment of reserves.* As soon as practicable after July 1, the Northwest Regional Director of the National Marine Fisheries Service (Regional Director) shall apportion all or part of the reserves to TALFF. The Regional Director may withhold all or part of the Pacific whiting reserve based on the criteria in paragraph (b)(1)(ii)(B) of this section. Apportionment of the reserves for other species shall be based on the following maximum incidental catch rates expressed as a percentage of the Pacific whiting TALFF:

| Species: | *Percentage* |
|---|---|
| Flounders | 0.1 |
| Jack Mackerel | 3.0 |
| Rockfishes, Excluding Pacific Ocean Perch | 0.738 |
| Pacific Ocean Perch | 0.062 |
| Sablefish | 0.173 |
| Other Species | 0.5 |

(B) *Criteria.* The Regional Director may withhold all or part of the Pacific whiting reserve if, as of June 15:

(*1*) All or part of the Pacific whiting reserve will be harvested by vessels of the United States during the rest of the fishing year, as determined by the following factors:

(*i*) Report of U.S. catch and effort compared to previously projected U.S. harvesting capacity;

(*ii*) Projected U.S. catch and effort for the rest of the fishing year; and

(*iii*) Projected processing for the rest of the fishing year; or

(*2*) The January-March 1980 Pacific whiting larvae assessment establishes that the total allowable catch of whiting is less than 175,000 m.t.

(C) *Public comment.* (*1*) On or about June 15 the Regional Director shall publish in the **Federal Register** the amount of reserves, if any, that he proposes to apportion to the TALFFs.

(*2*) Comments may be submitted to the Regional Director concerning all matters relevant to the determinations to be made by the Regional Director under paragraph (b)(1)(ii)(B) of this section. (Address: National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109.)

(*3*) Comments must be submitted by June 30, or 15 days after publication, whichever is later.

(*4*) The Regional Director shall consider any timely comment filed in accordance with this section in making the determinations specified in paragraph (b)(1)(ii)(B) of this section.

(*5*) The Regional Director shall compile, in aggregate form, the most recent available reports on:

(*i*) Current and projected domestic catch and effort;

(*ii*) Projected processing capabilities and intentions; and

(*iii*) Results of the Pacific whiting larvae assessment.

This data shall be available, as they are compiled, for public inspection during business hours at the National Marine Fisheries Service, Northwest Regional Office, 1700 Westlake Avenue North, Seattle, Washington 98109 during the period June 15–30.

(D) *Procedure.* As soon as practicable after July 1, the Regional Director shall publish in the **Federal Register:**

(*1*) The amounts of reserves to be apportioned to the TALFFs;

(*2*) The reasons for the determinations regarding apportionment to TALFF of the Pacific whiting reserve; and

(*3*) Responses to comments received.

(iii) *Reassessment of DAH.* (A) *Apportionment of excess DAH.* As soon as practicable after August 1, the

Regional Director shall add to TALFF that portion of the 40,000 m.t. projected DAH of Pacific whiting that he determines will not be harvested by U.S. fishermen during the rest of the fishing year, based on the factors in paragraph (b)(1)(iii)(B) of this section. Additions to incidental catch allowances for other species shall be based upon the incidental catch rates set forth in paragraph (b)(1)(ii)(A) of this section.

(B) *Criteria.* The Regional Director shall consider the following factors in making the determination in paragraph (b)(1)(iii)(A) of this section:

(*1*) The domestic catch and effort for Pacific whiting as of July 15;

(*2*) Projected U.S. catch and effort for the rest of the fishing year; and

(*3*) Projected processing for the rest of the fishing year.

(C) *Public comment.* (*1*) On or about July 15, the Regional Director shall publish in the **Federal Register** the amount of Pacific whiting DAH that he proposes to add to TALFF:

(*2*) Comments may be submitted to the Regional Director concerning all matters relevant to the determinations to be made by the Regional Director under paragraph (b)(1)(iii)(B) of this section (Address: National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109).

(*3*) Comments must be submitted by July 31.

(*4*) The Regional Director shall consider any timely comment filed in accordance with this section in making the determinations specified in paragraph (b)(1)(iii)(B) of this section.

(*5*) The Regional Director shall compile, in aggregate form, the most recent available reports on:

(*i*) Current and projected domestic catch and effort; and

(*ii*) Projected processing capabilities and intentions. This data shall be available, as they are compiled, for public inspection during business hours at the National Marine Fisheries Service, Northwest Regional Office, 1700 Westlake Avenue North, Seattle, Washington, during the period July 15–31.

(D) *Procedure.* As soon as practicable after August 1, the Regional Director shall publish in the **Federal Register:**

(*1*) The amount of Pacific whiting DAH to be added to the TALFF;

(*2*) The reasons for the determinations regarding apportionment to TALFF of Pacific Whiting DAH; and

(*3*) Responses to comments received.

(2) *Fishing permitted.* The catching and retention of any species for which a nation has an allocation is permitted, provided that:

(i) The vessels of that nation have not caught:

(A) The allocation of that nation for Pacific whiting; or

(B) The maximum allowable incidental catch of that nation for any species or species group (e.g., "other species"). When vessels of a foreign nation have caught a maximum allowable incidental catch, all further fishing (as defined in § 611.2(r)(1)) by vessels of that nation must cease, except as otherwise authorized by permit, even if the Pacific whiting allocation has not been reached. Therefore, it is essential that a foreign nation plan its fishing strategy to ensure that the reaching of an incidental catch limit does not close its Pacific whiting fishery;

(ii) A directed fishery is not conducted for species or species groups other than Pacific whiting; or

(iii) The fishery has not been closed for other reasons under § 611.15.

(c) *Open season.* Foreign fishing authorized under this subpart may begin at 0700 G.M.T. on June 1 and will terminate not later than 0800 G.M.T. on November 1, except as specified otherwise in a permit.

(d) *Open areas.* Except as prohibited in paragraph (c) of this section, foreign fishing under this Subpart is permitted beyond the twelve nautical miles from the baseline used to measure the U.S. territorial sea between 39°00′ N. latitude and 47°30′ N. latitude, and as otherwise specifically authorized by permit.

(e) *Closed areas.* Fishing by foreign vessels except as otherwise specifically authorized by permit is prohibited in the following areas:

(1) "Columbia River Recreational Fishery Sanctuary"—that area between 46°00′ N. latitude and 47°00′ N. latitude and east of a line connecting the following coordinates in the order listed: 46°00′ N. lat., 124°55′ W. long.; 46°20′ N. lat., 124°40′ W. long.; and 47°00′ N. lat., 125°20′ W. long.

(2) "Klamath River Pot Sanctuary"—that area between 41°20′ N. latitude and 41°37′ N. latitude and east of a line connecting the following coordinates in the order listed: 41°20′ N. lat., 124°32′ W. long.; and 41°37′ N. lat., 124°34′ W. long.

(f) *Gear restrictions.* (1) No foreign vessel may use any gear other than a pelagic trawl with a minimum mesh size of 100 mm, stretched inside measure when wet after use. No liners are permitted in the cod end of the trawl.

(2) Except as specifically authorized in writing by the Regional Director, no foreign fishing vessel may:

(i) Attach any device to pelagic fishing gear or use any other means that would, in effect, make it possible to fish on the bottom; or

(ii) Use any device or method which would have the effect of reducing mesh size in the cod end.

(g) *Statistical reporting.*—(1) *Daily fishing log.* The basis for all reports shall be a daily fishing log. This logbook shall be supplied by NMFS prior to entry into the fishery. Daily catch data shall be recorded in duplicate. On-deck estimates of catch shall be made for each haul, and logged before the next haul is on deck. Each haul estimate may be adjusted, if necessary, with processed catch information within 24 hours, provided that such adjustments accurately reflect the relative sizes of the individual hauls landed that day and the total catch for the day. The following information must be included in the log:

(i) Date.

(ii) Times of commencement and completion of each set.

(iii) Vessel's positions in degrees and minutes of latitude and longitude at the time of commencement and completion of each set.

(iv) Bottom depth, averaged over length of tow.

(v) Depth of gear during tow.

(vi) Catch to the nearest tenth of a metric ton (0.1 m.t.) of Pacific whiting *in each haul.*

(vii) Catch to the nearest hundredth of a metric ton (0.01 m.t.) of the following species *in each haul:*

(A) Jack mackerel.

(B) Pacific Ocean perch.

(C) Rockfishes (excluding Pacific Ocean perch).

(D) Sablefish.

(E) Flounders.

(F) Other species.

(viii) Catch, in numbers of fish, of the following prohibited species:

(A) Pacific halibut.

(B) Salmon.

(2) In addition to requirements of § 611.9, the owner or primary operator of each foreign fishing vessel shall be responsible for maintaining catch and effort statistics and shall submit reports as follows to the Regional Director, Northwest Region (address: National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109).

(i) *Daily report.* From the time the NMFS estimates that 90 percent of a nation's allocation of any species (directed or incidental) has been reached, and so notifies the designated representative of that nation, the information required under § 611.9(e) (Weekly Catch Report) shall be submitted on a daily basis and must reach the Regional Director no later than three days after the reported fishing day.

(ii) *Annual report.* Each nation whose fishing vessels operate in the fishery

shall report annual catch and effort statistics by May 30 of the following year in tabular form as follows:

(A) *Effort* in hours trawled, by vessel-class, by gear-type, by month, by ½° latitute by 1° longitude statistical areas.

(B) *Catch* by vessel-class, by gear-type, by month, by ½° latitude by 1° longitude statistical areas:

(*1*) To the nearest tenth of a metric ton (0.1 m.t.) for the following species or species groups: Pacific whiting, jack mackerel, Pacific Ocean perch, rockfishes (excluding Pacific Ocean perch), sablefish and flounders; and

(*2*) In numbers of fish for Pacific halibut and salmon.

(iii) *Daily logbook.* The logbook shall be available for inspection by the NMFS or U.S. Coast Guard personnel who at any time may remove the original copy. All original entries in the daily logbook (excluding those removed by the NMFS or U.S. Coast Guard personnel) shall be submitted to the Regional Director within three weeks after termination of a fishery. Duplicate copies shall be retained on the foreign vessel.

(iv) *Report of fish on board when entering fishery.* Before operating in this fishery, each foreign vessel with fish on board shall report to the Regional Director the species and amounts of fish on board which were harvested in any other fishery. Any fish on board not so reported will be presumed to have been harvested in this fishery. Such reports shall be submitted in accordance with the procedures specified in § 611.4(b).

**§ 611.9 [Amended]**

3. 50 CFR 611.9 (Appendix I, Pacific Ocean Fishes) is amended by changing the common English name for *Merluccius productus* (code 704) from Pacific hake to Pacific whiting.

[FR Doc. 80-15607 Filed 5-20-80; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 45, No. 100
Wednesday, May 21, 1980

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 ENERGY

### Economic Regulatory Administration

### 10 CFR Part 211

[Docket No. ERA-R-80-02]

### Amendments to Crude Oil Supplier/Purchaser Rule

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of address change.

**SUMMARY:** On April 28, 1980, ERA issued an Notice of Proposed Rulemaking regarding amendments to the Crude oil supplier/purchaser rule (45 FR 29770, May 5, 1980). The address for requests to speak at the San Francisco Hearing was incorrectly listed in that notice. The correct address for such requests is listed below.

**ADDRESS:** Send requests to speak at Hearing to: Terry Osborn (External Affairs), Department of Energy, 333 Market Street, San Francisco, California 94105, (415) 764–7027.

**FOR FURTHER INFORMATION CONTACT:**

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2222–A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653–3757.

Terry Osborn (External Affairs), Department of Energy, 333 Market Street, San Francisco, California 94105, (415) 764–7027.

Issued in Washington, D.C., May 12, 1980.

**F. Scott Bush,**

*Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.*

[FR Doc. 80–15551 Filed 5–20–80; 8:45 am]

BILLING CODE 6450–01–M

### 10 CFR Part 474

[Docket No. CAS–RM–80–202]

### Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Equivalent Petroleum-Based Fuel Economy Calculation; Notice of Proposed Rulemaking and Public Hearing

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) is proposing procedures to be used in calculating the equivalent petroleum-based fuel economy value of electric vehicles which DOE is required to develop pursuant to section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act, as added by Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979. The equivalent petroleum-based fuel economy value is intended to be used in calculating corporate average fuel economy pursuant to regulations prescribed by the Environmental Protection Agency.

**DATES:** Written comments must be received by 4:30 p.m. e.d.t. on or before July 21, 1980. The public hearing will be held on June 10, 1980, at 9:00 a.m. e.d.t. Requests to speak at the hearing must be received by 4:30 p.m. e.d.t. on May 27, 1980, and speakers will be notified by May 30, 1980.

**ADDRESSES:** Send written comments, requests to speak, and copies of speaker's statement to Carol Snipes, Office of Conservation and Solar Energy, Mail Stop 6B025, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585. The public hearing will be held in Room 2105, 2000 M Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

Robert S. Kirk, Electric and Hybrid Vehicles Division, Mail Stop 5H—044, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–8032.

Pamela Pelcovits, Office of the General Counsel, Mail Stop 1E—254, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–9516.

Carol Snipes, Office of Dockets and Hearings, Mail Stop 6B025, Department of Energy, 1000 Independence Avenue, S.W. Washington, D.C. 20585, (202) 252–9319.

**SUPPLEMENTARY INFORMATION:**



#### I. Background

In an effort to conserve energy through improvements in the energy efficiency of motor vehicles, Congress, in 1975, passed the Energy Policy and Conservation Act (EPCA), Public Law 94–163. Title III of EPCA amended the Motor Vehicle Information and Cost Savings Act (15 USC 1901 *et. seq.*) (the Motor Vehicle Act) by mandating fuel economy standards for automobiles produced in, or imported into, the United States. This legislation, as amended, requires that every manufacturer or importer meet a specified corporate average fuel economy (CAFE) standard for the fleet of vehicles which the manufacturer produces or imports in any model year. Administrative responsibilities for the CAFE program are assigned to the Department of Transportation and the Environmental Protection Agency (EPA) under the Motor Vehicle Act. The Secretary of Transportation is responsible for prescribing the CAFE standard through model year 1984 (the CAFE standard for model year 1985 and subsequent model years is prescribed in the Motor Vehicle Act) and enforcing the penalties for failure to meet these standards. The Administrator of EPA is responsible for calculating a manufacturer's CAFE value.

Because electric vehicles do not consume fuel (as defined in section 501(5) of the Motor Vehicle Act) for propulsive power, they are not included in the Motor Vehicle Act) for propulsive power, they are not included in the Motor Vehicle Act definition of the automobile and, accordingly, are not included in the calculation of a manufacturer's CAFE value.

On January 7, 1980, the President signed the Chrysler Corporation Loan Guarantee Act of 1979 (Pub. L. 96–185) (the Act). Section 18 of the Act amended section 13(c) of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 (Pub. L. 94–413) (the EHV Act) and directed the Secretary of Energy, in consultation with

the Secretary of Transportation and the Administrator of EPA, to conduct a 7-year evaluation program of the inclusion of electric vehicles in the calculation of average fuel economy to determine the value and implications of such inclusion as an incentive for the early initiation of industrial engineering development and initial commercialization of electric vehicles in the United States. The evaluation program is to be conducted in parallel with DOE's existing electric vehicle research, development, and demonstration activities under the EHV Act.

Section 13(c) of the EHV Act directs the Administrator of EPA to implement the evaluation program by amending EPA regulations to include electric vehicles in calculating a manufacturer's CAFE value. Specific EPA regulations that relate to this statutory requirement are set forth at Title 40, Code of Federal Regulations, Part 86—Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines, and Part 600—Fuel Economy of Motor Vehicles.

Section 18 of the Act also amends section 503(a) of the Motor Vehicle Act and directs the Secretary of Energy to determine equivalent petroleum-based fuel economy values for various classes of electric vehicles. The intent of this legislation is to provide an incentive for vehicle manufacturers to produce electric vehicles by including the expected high equivalent fuel economy of these vehicles in the CAFE calculation and thereby to accelerate the early commercialization of electric vehicles. Pursuant to the requirements of section 503(a)(3) of the Motor Vehicle Act, DOE is proposing regulations that provide a method of calculating equivalent petroleum-based fuel economy values (in units of miles per gallon) for electric vehicles. As provided by section 18 of the Act, DOE is required to promulgate final regulations no later than 6 months after the proposal.

This rule represents DOE's initial effort in the 7-year evaluation program on the value of the inclusion of electric vehicles in the CAFE calculation as an incentive to their commercial production. Pursuant to section 503(a)(3)(C) of the Motor Vehicle Act, DOE will review the final rule annually and will propose changes as necessary. As mandated in section 13(c)(4) of the EHV Act, a report of the progress of this evaluation program will be issued each year as part of the DOE Electric and Hybrid Vehicle Program Annual Report to Congress, pursuant to section 14 of the EHV Act. This report will discuss the success of the program in providing an incentive to the production and commercialization of electric vehicles. Included in this report will be quantitative information on electric vehicle production and an assessment of the effect of the program on use of petroleum and other forms of energy. A final report and recommendation on the permanent inclusion of electric vehicles in the CAFE calculations will be provided to Congress in 1987, as required by section 13(c)(4) of the EHV Act.

## II. Development of the Proposed Rule

### *A. Requirements of the Motor Vehicle Act*

Section 503(a)(3) of the Motor Vehicle Act requires DOE to determine the equivalent petroleum-based fuel economy values for various classes of electric vehicles taking into account the following parameters:

(i) the approximate electric energy efficiency of the vehicles considering the vehicle type, mission, and weight;

(ii) the national average electricity generation and transmission efficiencies;

(iii) the need of the Nation to conserve all forms of energy, and the relative scarcity and value to the Nation of all fuel used to generate electricity; and

(iv) the specific driving patterns of electric vehicles as compared with those of petroleum-fueled vehicles.

DOE is proposing as Part 474 of Chapter II of Title 10 of the Code of Federal Regulations procedures for calculating the equivalent petroleum-based fuel economy of electric vehicles. The use of these procedures will provide fuel economy values for the various kinds of electric vehicles which manufacturers may produce. As discussed in section III below, this calculation involves converting the actual electrical energy consumption of an electric vehicle (kilowatt-hours per mile) to miles per gallon and adjusting that figure to account for factors ii through iv, above.

### *B. Coordination With EPA Regulations*

In coordinating the development of the evaluation program, as required by section 13(c)(1) of the EHV Act, DOE and EPA clarified the function of each agency. Accordingly, DOE is proposing regulations which provide a method to calculate the equivalent petroleum-based fuel economy value of an electric vehicle. The actual inclusion of electric vehicles in the calculation of a manufacturer's CAFE value will result from the amendments to EPA regulations, including the appropriate cross reference to DOE regulations. EPA will be promulgating amendments as an "Interim Final Rule" in the near future.

### *C. Public Access to Information*

To assist the public in commenting on this proposed rulemaking, copies of the following sources of information used in developing Part 474 are available in Docket No. CAS–RM–80–202 for public inspection and copying in the DOE Reading Room, Room 5B–180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Copies of "Electric Vehicles and the Corporate Average Fuel Economy," (technical support paper) can be obtained by writing to Dr. Robert S. Kirk at the address listed in the "For Further Information" section, above.

"Electric Vehicles and the Corporate Average Fuel Economy," Aerospace Corporation (Aerospace Report No. ATR–80(7766)1).

"Electric Vehicle Test Procedure—SAE J227a," Society of Automotive Eningeers, February 1976.

"Inclusion of Electric and Hybrid Vehicles in Corporate Average Fuel Economy Standards—Environmental Assessment," C. Saricks, M. K. Singh, and M. J. Bernard, Argonne National Laboratory, April 15, 1980.

"Code of Federal Regulations—Title 40," Parts 86 and 600, Office of the Federal Register, July 1, 1979.

"Role of Electric Vehicles in U.S. Transportation," Hearing before a Subcommittee of the Committee on Appropriations, United States Senate, 96th Congress, First Session, 1979.

"Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Performance Standards for Demonstrations," 10 CFR Part 475.

"EHV Program Environmental Assessment," First Review Draft, Argonne National Laboratory, December 18, 1979.

The technical support paper is the basic support document for the development of DOE's calculation procedure discussed in section III, below. The discussion of the proposed rule which follows contains a basis for understanding how the steps in this procedure were developed. Further detailed discussion and information are provided in the technical support paper.

## III. Discussion of the Proposed Rule

The following paragraphs discuss the operation of each section of the proposed regulations.

### *A. Purpose and Scope*

Section 474.1 states that Part 474 contains the procedures to be used for calculating the equivalent petroleum-

based fuel economy of electric vehicles. It is intended that values obtained from these procedures will be used in the calculation of the CAFE value of a vehicle manufacturer under EPA procedures at 40 CFR Part 600, Fuel Economy of Motor Vehicles.

*B. Definitions*

Section 474.2 contains the definitions necessary for the operation of Part 474. Several of the terms, such as "stop-and-go electrical efficiency value" and "energy equivalent fuel economy value," refer to separate steps in calculating the equivalent petroleum-based fuel economy value of an electric vehicle. The meaning of the term "petroleum equivalent factor" is discussed in more detail below.

DOE is proposing a definition of an electric vehicle in section 474.2. While hybrid vehicles (which can use either petroleum, electricity, or a combination of both for propulsive power) are included in the definition of "electric vehicle" for purposes of the evaluation program under section 18 of the Act, the statutory definition has been modified to exclude hybrid vehicles from the proposed definition of electric vehicle for Part 474. DOE has determined that this exclusion is necessitated at this time by the absence of a suitable test procedure to measure the energy consumption of hybrid vehicles. The wide range of heat engine/electric motor combinations in a hybrid vehicle, which can vary with the state of charge of the energy storage system, makes development of such test procedures very complex. DOE is currently involved in the development of such a test procedure and would proposed any procedure for public comment before including hybrid vehicles within the scope of Part 474. DOE has coordinated this determination and the proposed definition of "electric vehicle" with EPA.

DOE is proposing a definition of "model year" for purposes of choosing the appropriate petroleum equivalency factor in the calculation of equivalent petroleum-based fuel economy under § 474.4. This definition is compatible with EPA's definition of "model year," as set forth at 40 CFR 600.002(a)(6)–79.

DOE is interested in comments on the clarity and completeness of § 474.2 and is particularly interested in any comments on the proposed exclusion of hybrid vehicles.

*C. Test Procedures*

Based on the Society of Automotive Engineers (SAE) Electric Vehicle Test Procedure J227a (contained in Docket No. CAS–RM–80–202), DOE is proposing in § 474.3 the test procedure that shall be used in determining equivalent petroleum-based fuel economy. This test procedure is widely used throughout the electric vehicle community, and it is used for the vheicle performance aspects of the DOE Performance Standards for Demonstration (10 CFR Part 475) for electric vehicles purchased or leased for the DOE EHV Demonstration Project under the EHV Act.

The SAE Test Procedure J227a includes procedures for eight different tests. The test procedures provision in this proposed rule includes tests for (1) range at steady speed; (2) vehicle range when operated in a selected driving pattern; and (3) vehicle energy economy.

These test procedures, rather than the widely EPA test procedures (found in 40 CFR Part 86 and 600), are proposed to be used because of the fundamental differences between battery-powered and gasoline-powered vehicles. For electric vehicles, performance and fuel economy are dependent on the state of charge of the battery, and performance and efficiency measurements are made over the range of the battery state of charge. These measurements start with the battery completely charged and continue until it is either discharged to a point where the vehicle can no longer meet the test cycle requirements or is at the discharge limit set by the battery manufacturer. Measurements thus derived give results averaged over all battery states of charge. The SAE J227a test procedure, with its shorter, repetitive test cycle, results in finer measurable increments of energy consumption compared with the longer and more varied test cycle in the EPA procedure. While the EPA cycle is more representative of actual driving conditions for a gasoline-powered vehicle, the finer measurable increments in the SAE test procedure make it more applicable for electric vehicles.

Under the EPA regulations, the fuel economies of gasoline- and diesel-powered vehicles are measured on two driving schedules, or cycles, simulating the average use of such vehicles. The EPA highway driving cycle simulates intercity use; the EPA urban cycle simulates patterns in the urban setting. Because DOE believes the limited range of near-term electric vehicles makes them inappropriate for intercity use, the proposed rule does not include intercity use in its test procedures. Section 474.3 requires the use of the SAE test procedure driving patterns in a manner which closely duplicates the EPA urban driving cycle. The EPA urban driving cycle is primarily a series of accelerations from rest to 20 to 40 miles per hour, followed by short cruises at speed, and ended by a coasting/braking deceleration. The SAE Schedule C driving pattern, cited in § 474.3, is an acceleration from rest to 30 miles per hour in 18 seconds, followed by a 20-second cruise, and ended with a 17-second coasting/braking decleration. This very closely duplicates the stop-and-go portion of the EPA urban driving cycle.

The EPA urban driving cycle also includes a brief stretch of freeway driving which is characterized by a 54-mph cruise. Section 474.3(c) provides for a 54-mph steady speed measurement to duplicate this portion of the EPA cycle.

The freeway driving segment of the EPA urban driving cycle is 9.26 percent of the total urban cycle. Accordingly, in the calculation of the equivalent petroleum-based fuel economy value under § 474.4(b) of the proposed rule, the Schedule C stop-and-go test is weighted 90.74 percent, and the 54-mph steady speed test is weighted 9.26 percent.

*D. Calculation Procedures*

Section 474.4 describes the steps necessary to calculate the equivalent petroleum-based fuel economy of an electric vehicle. The rule itself specifies a series of arithmetic steps. Each of these steps represents DOE's determination on the appropriate consideration of the parametes which Congress directed DOE to take account of in determining equivalent petroleum-based fuel economy.

The mathematical form of the equation described in the proposed rule is as follows:

$$FE = FE_{ee} \times PEF$$

where FE is the equivalent petroleum-based fuel economy, $FE_{ee}$ is the energy equivalent fuel economy value (miles per gallon), and PEF is the petroleum equivalency factor. PEF is a single factor incorporating the parameters ii–iv specified by Congress in the Act, as set forth in section II.A, above.

Section 474.4(d) provides that the equivalent petroleum-based fuel economy value is calculated by multiplying the energy equivalent fuel economy value by the petroleum equivalency factor. Each of these terms is discussed in further detail below.

*(1) Energy Equivalent Fuel Economy ($FE_{ee}$)*

Section 503(a)(3)(A)(i) of the Motor Vehicle Act requires DOE to take account of "the approximate electrical energy efficiency of the vehicles considering the vehicle type, mission and weight." This requirement is met in section 474.4(a) by calculating the energy equivalent fuel economy value, according to the following formula:

$$FE_{ee} = \frac{C}{\eta_{ev}}$$

where: C = energy content of gasoline

$$= \frac{125,071 \text{ Btu/gallon}}{3412 \text{ Btu/kWh}}$$

= 36.6562 kWh/gallon

$\eta_{ev}$ = measured electrical efficiency of the vehicle (kWh/mile)

These two terms are discussed below.

(a) *Measured Electrical Efficiency of the Vehicle.* Section 474.4(a) and (b) call for the calculation of the electrical efficiency value of the vehicle by use of the procedure described in Section II above. Vehicle type and weight are accounted for in the energy consumption measurement provided in this test procedure. Vehicle mission is accounted for in the stop-and-go and steady speed driving patterns and their relative weighting.

(b) *Energy Content of Gasoline.* The SAE test procedure discussed above measures the electrical efficiency of the vehicle in units of kilowatt-hours per mile. This factor, as applied in section 474.4(c), converts the electrical efficiency into an energy equivalent fuel economy value in units of miles per gallon. The conversion factors used (125,071 Btu/gallon and 3412 Btu/kWh) are the standard thermal conversion factors. DOE is interested in comments on the use of these conversion factors.

*(2) Petroleum Equivalency Factor*

While the determination of the energy efficiency of an electric vehicle is a straightforward task based on physical testing, the measurement of the remaining parameters listed in section 503(a)(3)(A) of the Motor Vehicle Act is less subject to precise quantification. A general discussion of DOE's consideration of these parameters follows, and a more detailed discussion is provided in the technical support paper.

To simplify the calculation of the equivalent petroleum-based fuel economy, all the terms described below have been combined in section 474.4(d) into a single term called the petroleum equivalency factor. This factor will be determined for each model year covered by the program.

At this time, DOE is not proposing values for the petroleum equivalency factor (section d below). For purposes of public comment on this proposed rulemaking, sample figures for the petroleum equivalency factor are set forth in Table I.

Pursuant to section 503(a)(3)(C) of the Motor Vehicle Act, the Secretary of Energy will review values prescribed in Part 474 on an annual basis and will propose revisions, if necessary. On this basis, the petroleum equivalency factor may be revised, if it is determined that the values comprising this factor change siginificantly.

The petroleum equivalency factor is determined as follows:

$$PEF = DPF \times \eta_t \times AF \times \frac{E_{total}}{\sum_i I_i V_i}$$

where: DPF = driving pattern factor

$\eta_t$ = average national electrical transmission efficiency

AF = accessory factor

$E_{total}$ = total amount of electricity generated from all fuel sources for the model year (quads)

$I_i$ = input energy of fuel used to generate electricity from fuel source i (quads)

$V_i$ = relative value factor of fuel i

**Table I.**—*Sample Petroleum Equivalency Factor Calculation*

| Year | Driving pattern factor (DPF) | Electrical transmission efficiency ($\eta_T$) | Accessory factor (AF) | Total electric energy generated (quads) [1] ($E_{total}$) | Sum of weighted primary energy source (quads) [1] ($\Sigma_i I_i V_i$) | Sample petroleum equivalency factor [1] |
|---|---|---|---|---|---|---|
| 1981 | 0.8479 | 0.9141 | 0.9000 | 7.6732 | 3.1016 | 1.7257 |
| 1982 | .8486 | .9141 | .9000 | 8.0371 | 3.2648 | 1.7186 |
| 1983 | .8492 | .9141 | .9000 | 8.4011 | 3.4316 | 1.7104 |
| 1984 | .8499 | .9141 | .9000 | 8.7650 | 3.5861 | 1.7090 |
| 1985 | .8505 | .9141 | .9000 | 9.1289 | 3.7479 | 1.7043 |
| 1986 | .8511 | .9141 | .9000 | 9.4928 | 3.8819 | 1.7122 |
| 1987 | .8517 | .9141 | .9000 | 9.8567 | 4.0170 | 1.7193 |

[1] Sample figures.

Each of these factors is described in further detail below.

(a) *Driving Pattern Factor.* Section 503(c)(A)(iv) of the Motor Vehicle Act requires that DOE take into account "the specific driving patterns of electric vehicles as compared with those of petroleum-fueled vehicles." As discussed above, DOE believes that near-term electric vehicles cannot completely replace petroleum-fueled vehicles and, accordingly DOE developed the driving pattern factor to reflect this limitation. Conceptually, the driving pattern factor is the ratio of

annual vehicle miles travelled for an electric vehicle to that of a petroleum-fueled vehicle. The petroleum-fueled vehicle has a greater number of vehicle miles travelled annually than the electric vehicle due to the limited range restriction of electric vehicles. This limitation produces a negative effect on equivalent petroleum-based fuel economy. Table II gives the driving pattern factor over the 7-year period of the evaluation program (reference Docket No. CAS–RM–80–202).

(b) *Electric Transmission Efficiency.* Section 503(c)(3)(A)(ii) of the Motor Vehicle Act requires that DOE take account of "the national average electrical generation and transmission efficiencies." Since energy is lost in transmitting electricity, this factor has a negative effect on equivalent petroleum based fuel economy. The national average electrical transmission efficiency currently is 0.9141 (source: "Electric Vehicles and the Corporate Average Fuel Economy," contained in the Docket) and is not projected to change significantly during the 7-year period of the Act. Therefore, an electrical transmission efficiency factor of 0.9141 is included in the equation.

**Table II.**—*Driving Pattern Factors*

| Year | Miles per year | | Driving pattern factors |
|---|---|---|---|
| | VMT (EV's) | VMT (ICE's) | |
| 1981 | 8,320 | 9,812 | 0.8479 |
| 1982 | 8,430 | 9,934 | .8486 |
| 1983 | 8,540 | 10,056 | .8492 |
| 1984 | 8,650 | 10,178 | .8499 |
| 1985 | 8,760 | 10,300 | .8505 |
| 1986 | 8,870 | 10,422 | .8511 |
| 1987 | 8,980 | 10,544 | .8517 |

Source: "EHV Program Environmental Assessment," first review draft, Argonne National Laboratory, Dec. 18, 1979.

(c) *Accessory Factor.* While section 503(a)(3) of the Motor Vehicle Act does not specifically identify petroleum-powered accessories as a parameter in calculating equivalent petroleum-based fuel economy, petroleum-powered accessories on an electric vehicle can consume significant amounts of petroleum fuel. Sections 503(a)(3)(A) (iii) and (iv) direct DOE to include "the need * * * to conserve all forms of energy" and "specific driving patterns of electric vehicles as compared with those of petroleum-fueled vehicles" in equivalent petroleum-based fuel economy. Accordingly, DOE is proposing to include the fuel consumption of petroleum-powered accessories in equivalent petroleum-based fuel economy calculations.

DOE is aware that electric vehicles can be equipped with electrically powered accessories. However, DOE is not proposing to include these accessories in equivalent petroleum-based fuel economy, due to the minor effect of electrically-powered accessories when converted to equivalent petroleum consumption. DOE is interested in comments on these determinations.

DOE recognizes the most accurate method for including petroleum-powered accessories in the equivalent petroleum-based fuel economy calculation would be through the actual testing of the petroleum consumption of accessories. However, there are currently no such test procedures, and DOE is proposing to include a constant in the petroleum equivalency factor to represent the estimated use of petroleum-powered accessories. DOE, in coordination with EPA, will be developing test procedures to measure the petroleum consumption of accessories and will propose any relevant test procedures for public comment before amending Section 474.

DOE is proposing at this time to include a constant for only heater/defrosters. This is based on the fact that defrosters are the one petroleum-powered accessory with which all electric vehicles must be equipped, pursuant to Federal Motor Vehicle Safety Standards. Because electrically powered defrosters have a significant effect on the range of electric vehicles, most electric vehicles are equipped with petroleum-powered defrosters. Defrosters are generally combined with heaters in one system.

The fuel consumption of a petroleum-powered heater/defroster for a typically-sized electric vehicle is about 0.01 gallon/mile. Assuming a usage factor of 10 percent and typical equivalent petroleum-based fuel economy values for electric vehicles of 100 to 200 mpg, the accessory fuel consumption reduces the fuel economy values by 9 to 17 percent. DOE is proposing an accessory factor of 0.900. This value of 0.900 represents DOE's best estimate of the combination of vehicle fuel economy and accessory fuel consumption for near-term electric vehicles. DOE is interested in comments on the Accessory Factor.

(d) *Electricity Generation Efficiency and Relative Value Factor.* The last term in the proposed formula for the petroleum equivalency factor takes account of the remaining parameters listed in the Motor Vehicle Act: the national average electricity generation efficiency and the relative scarcity and value to the Nation of all fuel used to generate electricity. The term is the ratio of total electricity generation to input energy, weighted by a relative value factor. The derivation of values for this term, and, therefore, for the petroleum equivalency factor depends on the availability of data for (1) total electricity generation, (2) energy sources used in electricity generation, and (3) prices for such sources, as well as for automotive gasoline. DOE is not including values in section 474.4(d) for the petroleum equivalency factor in the proposal issued today until publication of the 1979 Annual Report to Congress of DOE's Energy Information Administration (EIA), scheduled for June 1980. At that time, DOE will propose for comment values for model years 1981 through 1987, along with relevant source data and support documentation. Accordingly, the final rule, which is required to be promulgated in November 1980, will be based upon both today's and the subsequent proposal.

Section 503(a)(3)(A)(ii) of the Motor Vehicle Act requires DOE to take into account average electricity generation efficiency. Electricity generation efficiency is defined as the total output of the electricity generated in the United States divided by the sum of the energy inputs for each energy source used to generate electricity. DOE intends to include fuels (i.e., coal, petroleum, natural gas, nuclear and hydroelectric power) that constitute 1 percent or greater of total electricity production in this calculation. Table III gives sample fuel inputs and total electricity generation for purposes of allowing public comment on the operation of the petroleum equivalency factor. These sample figures do not have any relationship to the actual values that DOE will propose, as discussed above.

Section 503(a)(3)(A)(iii) of the Motor Vehicle Act also requires in part that "the relative scarcity and value to the Nation of all fuel used to generate electricity" be taken into account. The petroleum equivalency factor accomplishes this by multiplying each of the individual fuel energy input terms used in calculating electricity generation efficiency by a relative value factor. The relative value factor proposed today consists of the ratio of the average price

of the individual fuel used to generate electricity to the average price of gasoline until DOE promulgates its projections of marginal prices for future years.

DOE believes that marginal prices rather than average prices should be used in computing the relative value factor, because marginal prices would better reflect the true value of energy savings to the Nation as called for in the Act. DOE is currently developing marginal price projections and estimates of the premium value of energy savings above such marginal prices. DOE then plans to provide the public an adequate opportunity to participate because of the significant effect such price forecasts will have on a number of DOE programs, including the evaluation program.

**Table III.**—*Sample Projections for Electric Energy Generation (Quads)*

| Year | Primary energy source consumed | | | | | Total electricity generated |
|---|---|---|---|---|---|---|
| | Fuel oil | Natural gas | Coal | Nuclear | Hydroelectric | |
| 1981 | 1.300 | 2.747 | 13.313 | 3.539 | 3.256 | 7.6732 |
| 1982 | 1.277 | 2.795 | 13.899 | 4.050 | 3.299 | 8.0371 |
| 1983 | 1.254 | 2.844 | 14.486 | 4.561 | 3.343 | 8.4011 |
| 1984 | 1.231 | 2.892 | 15.072 | 5.072 | 3.386 | 8.7650 |
| 1985 | 1.208 | 2.941 | 15.659 | 5.583 | 3.429 | 9.1289 |
| 1986 | 1.185 | 2.990 | 16.246 | 6.094 | 3.472 | 9.4528 |
| 1987 | 1.162 | 3.038 | 16.832 | 6.605 | 3.515 | 9.8567 |

Table IV provides sample values for average prices and the relative value factor for purposes of allowing public comment on the operation of the petroleum equivalency factor. These sample values do not have any relationship to the actual values which DOE will propose, as discussed above.

*E. Comments Requested*

The Department of Energy solicits comments on all aspects of the proposed regulations, but specifically requests comments on the following items:

1. Electric vehicle test procedures.
2. Relative weighting of stop-and-go and steady-speed fuel economy values.
3. Relative value factor.
4. Driving pattern factors.
5. Projected use of electric automobile versus conventionally powered automobiles from both an annual mileage basis and a type-of-usage basis.
6. Electrical transmission efficiency.
7. Petroleum-powered accessory test procedures.
8. Annual usage of petroleum-powered accessories.
9. Hybrid vehicle test procedures.

**Table IV.**—*Sample Projections for Relative Value Factors*

| Year and fuel | Average price (dollars per Btu) | Relative value factors |
|---|---|---|
| 1981: | | |
| Automotive gasoline | 10.27 | |
| Fuel oil | 4.67 | 0.4547 |
| Natural gas | 2.05 | .1996 |
| Coal | 1.37 | .1334 |
| Nuclear energy | .54 | .0526 |
| Hydroelectric | .00 | .0000 |
| 1982: | | |
| Automotive gasoline | 10.75 | |
| Fuel oil | 5.03 | .4679 |
| Natural gas | 2.25 | .2093 |
| Coal | 1.45 | .1349 |
| Nuclear energy | .55 | .0512 |
| Hydroelectric | .00 | .0000 |
| 1983: | | |
| Automotive gasoline | 11.24 | |
| Fuel oil | 5.40 | .4804 |
| Natural gas | 2.44 | .2171 |
| Coal | 1.54 | .1370 |
| Nuclear energy | .56 | .0498 |
| Hydroelectric | .00 | .0000 |
| 1984: | | |
| Automotive gasoline | 11.72 | |
| Fuel oil | 5.76 | .4915 |
| Natural gas | 2.64 | .2253 |
| Coal | 1.62 | .1382 |
| Nuclear energy | .57 | .0486 |
| Hydroelectric | .00 | .0000 |
| 1985: | | |
| Automotive gasoline | 12.21 | |
| Fuel oil | 6.13 | .5020 |
| Natural gas | 2.84 | .2326 |
| Coal | 1.71 | .1400 |
| Nuclear energy | .58 | .0475 |
| Hydroelectric | .00 | .0000 |
| 1986: | | |
| Automotive gasoline | 12.40 | |
| Fuel oil | 6.30 | .5081 |
| Natural gas | 2.98 | .2403 |
| Coal | 1.73 | .1395 |
| Nuclear energy | .60 | .0484 |
| Hydroelectric | .00 | .0000 |
| 1987: | | |
| Automotive gasoline | 12.59 | |
| Fuel oil | 6.47 | .5139 |
| Natural gas | 3.13 | .2486 |
| Coal | 1.75 | .1390 |
| Nuclear energy | .62 | .0492 |
| Hydroelectric | .00 | .0000 |

## IV. Opportunities for Public Comment

*A. Written Comments*

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed regulations. Comments should be submitted to the address indicated in the address section of this preamble and should be identified on the outside of the envelope and on documents submitted to DOE with the designation "Inclusion of Electric Vehicles in CAFE Calculation—Proposed Regulations." (Docket No. CAS-RM-80-202) Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 5B–180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. All comments received before 4:30 p.m., e.d.t., [60 days from date of publication] and all other relevant information will be considered by DOE before final action is taken on the proposed regulations.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information that he or she believes to be confidential and that may be exempt by law from public disclosure should submit one complete copy and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established by 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

*B. Public Hearing*

1. *Request Procedures.* The time and place of the public hearing are indicated in the dates and address sections of this preamble. DOE invites any person who has an interest in the proposed rulemaking or who is a representative of a group or class of persons that has an interest in the proposed rulemaking to make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at the address indicated in the address section of this preamble and must be received before 4:30 p.m. on May 27, 1980. A request may be hand delivered between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Requests should be labeled, both on the document and on the envelope, "Inclusion of Electric Vehicles in CAFE Calculation—Public Hearing (Docket No. CAS–RM 80–202)."

The person making the request should describe the interest concerned; if appropriate, state why he or she is a proper representative of a group or class of persons that has such an interest; and give a concise summary of the proposed oral presentation and a telephone number where the requester may be contacted through the day before the hearing. Each person selected to be heard will be notified by DOE before 4:30 p.m., May 30, 1980. Fifteen copies of a speaker's statement should be brought to the hearing. In the event that any person wishing to testify cannot provide fifteen copies, alternative arrangements can be made in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Carol Snipes at (202) 252–9319.

2. *Conduct of the Hearing.* DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based

on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of the persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person who wishes to have a question asked at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented for answer.

Any person wishing to make an oral presentation at the hearing, but who does not file a timely request as specified above, may notify Carol Snipes before the hearing or the presiding officer during the hearing of his or her desire to make a presentation. Such person will be admitted as a "limited" participant and will be heard at such time and for such duration as the presiding officer may permit.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Room 5B–180, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

## V. Other Matters

### *A. Environmental Review*

Upon review of the Environmental Assessment ("Environmental Assessment—Inclusion of Electric and Hybrid Vehicles in CAFE Calculations," included in Docket No. CAS–RM–80–202), it was determined that the program does not constitute a major Federal action significantly affecting the quality of the human environment and that, therefore, no Environmental Impact Statement need be prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

### *B. Regulatory Review*

It has been determined that the proposed regulation is significant, as that term is used in Executive Order 12044 and amplified in DOE Order 2030. The determination is based on the importance of the overall electric and hybrid vehicle program in encouraging the development of alternative means of transportation. It has been further determined that this regulatory action is not likely to have a major impact, as defined by Executive Order 12044 and DOE Order 2030; consequently, no regulatory analysis will be prepared in this instance.

### *C. Urban Impact Analysis*

This proposed regulation has been reviewed in accordance with OMB Circular A–116 to assess the impact on urban centers and communities. In accordance with the DOE finding that the regulation is not likely to have a major impact, DOE has determined that no community and urban impact analysis of the rulemaking is necessary, pursuant to Section 3(a) of Circular A–116.

### *D. Coordination With the Secretary of Transportation and the Administrator of the Environmental Protection Agency*

In developing this proposed rulemaking, DOE has consulted with the Secretary of Transportation and the Administrator of EPA, pursuant to section 13(c)(1) of the EHV Act.

(Motor Vehicle Information and Cost Savings Act, Pub. L. 94–163, as amended by the Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185; Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94–413, as amended by the Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185; Department of Energy Organization Act, Pub. L. 95–91.)

In consideration of the foregoing, DOE hereby proposes to issue Part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., May 12, 1980.

**John C. Sawhill,**

*Deputy Secretary.*

Chapter II of Title 10, Code of Federal Regulations is amended by establishing Part 474 as follows:

## PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; EQUIVALENT PETROLEUM-BASED FUEL ECONOMY CALCULATION

Sec.



Authority: Section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act, Pub. L. 94–163 (15 U.S.C. 2003(a)(3)), as added by section 18 of the Chrysler Corporation Loan Guarantee Act of 1979, Pub. L. 96–185; Department of Energy Organization Act, Pub. L. 95–91.

### § 474.1 Purpose and scope.

This part contains procedures for calculating the equivalent petroleum-based fuel economy value of electric vehicles, as required to be prescribed by the Secretary of Energy under section 503(a)(3) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(3)), as added by section 18 of the Chrysler Corporation Loan Guarantee Act of 1979. The equivalent petroleum-based fuel economy value is intended to be used in calculating corporate average fuel economy pursuant to regulations promulgated by the Environmental Protection Agency at 40 CFR Part 600—Fuel Economy of Motor Vehicles.

### § 474.2 Definitions

For purposes of this part, the term—

"Electric vehicle" means a vehicle that is powered by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices. Recharge energy shall be drawn primarily from a source off the vehicle, such as residential electric service.

"Electrical efficiency value" means the weighted average of the stop-and-go and steady-speed electrical efficiency values, as determined in accordance with § 474.4(b).

"Energy equivalent fuel economy value" means the electrical efficiency value converted into units of miles per gallon, as determined in accordance with § 474.4(c).

"Equivalent petroleum-based fuel economy value" means a number, determined in accordance with § 474.4, which represents the average number of miles traveled by an electric vehicle per gallon of gasoline.

"Model year" means an electric vehicle manufacturer's annual production period (as determined by the Administrator of the Environmental Protection Agency) which includes January 1 of such calendar year. If a

manufacturer has no production period, the term "model year" means the calendar year.

"Petroleum equivalency factor" means a number which represents the parameters listed in section 503(a)(3)(ii)–(iv) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2003(a)(3)) for purposes of calculating equivalent petroleum-based fuel economy in accordance with § 474.4(d).

"Steady-speed electrical efficiency value" means the average number of kilowatt-hours of electrical energy required for an electric vehicle to travel 1 mile, as determined in accordance with § 474.43(c).

"Stop-and-go electrical efficiency value" means the average number of kilowatt-hours of electrical energy required for an electric vehicle to travel 1 mile, as determined in accordance with § 474.3(b).

**§ 474.3 Test procedures.**

(a) The conditions and equipment in the Electric Vehicle Test Procedure—SAE J2271 of the Society of Automotive Engineers shall be used for carrying out the test procedures set forth in this section unless otherwise specifically provided in this part.

(b) The test procedures prescribed in SAE procedure J227a, Vehicle Energy Economy, using Vehicle Test Cycle C for the driving cycle, shall be used for generation of the stop-and-go electrical efficiency value.

(c) The test procedures prescribed in SAE procedure J227a, Vehicle Energy Economy, using a driving cycle consisting of a steady speed of 54 mph, as prescribed in the SAE procedure for Range at Steady Speed, shall be used for generation of the steady-speed electrical value.

**§ 474.4 Equivalent petroleum-based fuel economy calculation.**

Calculate the equivalent petroleum-based fuel economy of an electric vehicle as follows:

(a) (1) Determine the stop-and-go electrical efficiency value, according to § 474.3(b).

(2) Determine the steady-speed electrical efficiency value, according to § 474.3(c).

(b) Calculate the electrical efficiency value by:

(1) Multiplying the stop-and-go electrical efficiency value by 0.9074;

(2) Multiplying the steady-speed electrical efficiency value by 0.0926; and

(3) Adding the resulting two figures, rounding to the nearest 0.0001 kWh/mile.

(c) Calculate the energy equivalent fuel economy value by dividing the electrical efficiency value into 36.6562.

(d) Calculate the equivalent petroleum-based fuel economy value in miles per gallon by multiplying the energy equivalent fuel economy value by the petroleum equivalency factor for the model year in which the electric vehicle is manufactured. DOE will propose the numbers for (d)(i)–(7) in the near future.

(1) For model year 1981, the petroleum equivalency factor is [ ];

(2) For model year 1982, the petroleum equivalency factor is [ ];

(3) For model year 1983, the petroleum equivalency factor is [ ];

(4) For model year 1984, the petroleum equivalency factor is [ ];

(5) For model year 1985, the petroleum equivalency factor is [ ];

(6) For model year 1986, the petroleum equivalency factor is [ ];

(7) For model year 1987, the petroleum equivalency factor is [ ].

**Appendix—Sample Calculation**

*Step 1*

Assume that a 1983 model year electric vehicle was tested according to the procedures in section 474.3 and the following results were obtained:

stop-and-go electrical efficiency value = 0.344 kWh/mile

steady-speed electrical efficiency value = 0.260 kWh/mile

*Step 2*

The electrical efficiency value is then calculated, according to section 474.4(b), by averaging the above two values, weighted 0.9074 and 0.0926, respectively:

electrical efficiency value
$= (0.9074 \times 0.344) + (0.0926 \times 0.260)$
$= 0.3362$ kWh/mile

*Step 3*

The energy equivalent fuel economy value ($FE_{ee}$) is then calculated, according to section 474.4(c), by dividing the electrical efficiency value into 36.6562 which is the number of kilowatt-hours equivalent to the energy content of 1 gallon of gasoline: energy equivalent fuel economy $= 36.6562 \div 0.3362 = FE_{ee} = 109.0309$ mpg

*Step 4*

The equivalent petroleum-based fuel economy is then calculated, according to section 474.4(d), by multiplying the energy equivalent fuel economy by the petroleum equivalency factor. Assume that the petroleum equivalency factor for model year 1983 is 1.7; therefore:

$FE = FE_{ee} \times$ Petroleum Equivalency Factor
$= 109.0309 \times 1.7$
$= 185.4$ mpg

[FR Doc. 80-15468 Filed 5-20-80; 8:45 am]

BILLING CODE 6450-01-M

**Office of Conservation and Solar Energy**

**10 CFR Part 477**

**[CAS-RM-79-507]**

## Standby Federal Emergency Energy Conservation Plan

**AGENCY:** Department of Energy.

**ACTION:** Withdrawal of certain proposed rulemaking provisions.

**SUMMARY:** On January 31, 1980, the Department of Energy (DOE) established the Standby Federal Emergency Energy Conservation Plan in accordance with Title II of the Emergency Energy Conservation Act of 1979. The Federal Register notice regarding establishment of that Plan (45 F.R. 8462, February 7, 1980) also included notice of several emergency gasoline conservation measures proposed for inclusion in the Plan. One of those measures concerned emergency restrictions on recreational watercraft use on weekends. DOE has withdrawn this proposal to evaluate emergency energy restrictions on all recreational and nonhighway vehicles and craft which utilize oil based fuels.

**DATES:** Proposed § 477.48 of 10 CFR (45 FR 8503) is withdrawn effective as of April 23, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Henry G. Bartholomew or Lorn Harvey, Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue, S.W., Room GE-004A, Washington, D.C. 20585, (202) 252-4966.

Lewis W. Shollenberger, Jr. or Christopher T. Smith, Office of General Counsel, Department of Energy, Room 1E258, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-9510.

**SUPPLEMENTARY INFORMATION:** Title II of the Emergency Energy Conservation Act of 1979 (the Act) provides the framework for a coordinated national response to an emergency energy shortage. If the President finds that a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are necessary under the international energy program, he may establish monthly emergency energy conservation targets for each affected energy source (e.g., gasoline or home heating oil) for the Nation and for each State. Within 45 days after these targets are established, States must submit to the Secretary of Energy emergency energy conservation plans containing measures they will implement to reduce consumption of

each targeted energy source within the levels set by the President.

Section 213(a) of the Act required the Department of Energy (DOE) to establish a Standby Federal Emergency Energy Conservation Plan (the Federal Plan) within 90 days after the date of enactment. As stipulated in the Act, the Federal Plan must provide for emergency reduction in public and private use of energy sources for which targets are likely to be established. Among other things, the Plan must contain measures which may be effective in achieving an emergency reduction in the use of a targeted energy source.

The Federal Plan is intended to serve two purposes. First, it serves as an example to, and provides guidance for, States as they prepare their own conservation plans. Second, the President may impose all or any part of the Federal Plan in any State which, after at least 90 days operation of an approved State Plan, he finds is not substantially meeting its conservation target for a persistent shortage which is equal to or greater than 8 percent of the projected normal demand. The President may impose the Federal Plan more quickly in a State which he finds is not substantially meeting its target and which has no State Plan in effect or has failed to implement its plan.

As required by the Act, DOE established the Federal Plan on January 31, 1980. As published (45 F.R. 8462, February 7, 1980), this plan contained six interim final measures and four proposed measures, the latter to be included in the Federal Plan if DOE adopted them as final rules after analysis and consideration of the comments and testimony received during the 60-day public comment period.

One proposed measure, the emergency recreational watercraft restriction, (proposed § 477.48 of 10 CFR, 45 FR 8503), was the focus of numerous comments evincing DOE's need to evaluate further the measure's application, scope and potential impact. If this proposed measure were adopted by DOE and implemented by the President or a Governor, it would prohibit use of recreational watercraft on one or both days of a weekend depending on the severity of the shortage. In view of the comments received on this measure, DOE decided, on April 23, 1980, to withdraw the proposed § 477.48 for further evaluation in conjunction with the development of emergency energy restrictions on all recreational and nonhighway vehicles and craft. If, after this evaluation, a revised proposal is developed, DOE will publish it for public comment.

Accordingly, proposed § 477.48 of 10 CFR, which was published on February 7, 1980 (45 FR 8503), is withdrawn, effective as of April 23, 1980.

(Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96-102, Department of Energy Organization Act, Pub. L. 95-91)

Issued in Washington, D.C., May 16, 1980.

John C. Sawhill,

*Deputy Secretary.*

[FR Doc. 80-15648 Filed 5-20-80; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[LR-130-79]

### Time for Filing Declarations of Estimated Income Tax by Farmers, Fishermen, and Certain Nonresident Aliens

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the time for filing estimated income tax by farmers, fishermen, and certain nonresident aliens. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Act of November 10, 1978. These amendments to the regulations will provide the public with guidance needed to comply with the Acts, by specifying the dates for filing declarations of tax in a timely manner.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by July 21, 1980. The amendment relating to the time for farmers and fishermen to file declarations of estimated tax is effective for taxable years beginning after November 10, 1978. The amendment relating to the time for nonresident aliens to file declarations of estimated tax is effective for taxable years beginning after December 31, 1976.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-130-79), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Claudine Ausness of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T, 202-566-3803).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 6073 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1012 (c) of the Tax Reform Act of 1976 (90 Stat. 1614) and section 7 of the Act of November 10, 1978 (Pub. L. 95-628, 92 Stat. 3630) and are to be issued under the authority contained in sections 6073(d) and 7805 of the Code (68A Stat. 750, 917; 26 U.S.C. 6073 (d) and 7805).

#### Explanation of Provisions

The amendment made by the Tax Reform Act provides that, in the case of nonresident alien individuals who are not subject to wage withholding, the due date for filing a declaration of estimated tax for the current taxable year is not earlier then the due date for filing an income tax return for the preceding taxable year. The amendment made by the Act of November 10, 1978, provides an additional exception for farmers and fishermen to the quarterly requirements relating to declarations of estimated tax. The new special rule applies when at least two-thirds of the gross income shown on an individual's tax return for the preceding taxable year is from farming or fishing. The proposed amendments would conform the regulations to reflect these changes.

The regulations also provide special rules relating to the timely filing of declarations of estimated tax by farmers, fishermen, and certain nonresident aliens if the taxable year is a short taxable year or if the taxpayer is on a fiscal—rather than a calendar-year basis. An individual whose gross income from farming or fishing for the preceding short taxable year was at least two-thirds of the total gross income from all sources shown on the return for the preceding short taxable year is not required to file a declaration of estimated tax for the current taxable year until on or before the 15th day of the month immediately following the close of the current taxable year. A nonresident alien whose wages are not subject to withholding but who is required to file a declaration of estimated tax for a short taxable year need not file the declaration before the 15th day of the 6th month following the beginning of the short taxable year.

In regard to taxpayers on a fiscal-year basis, if at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from

farming or fishing, he is not requird to file a declaration of estimated tax until on or before the 15th day of the month immediately following the close of his taxable year. In the case of a nonresident alien on a fiscal-year basis whose wages are not subject to withholding but who is required to file a declaration of estimated tax for the fiscal year, he is not required to file the declaration until on or before the 15th day of the 6th month of the fiscal year.

**Comments and Requests For A Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

**Drafting Information**

The principal author of these proposed regulations is Claudine Ausness of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**Proposed Amendments to the Regulations**

The proposed amendments to 26 CFR Part 1 are as follows:

**Paragraph 1.** Section 1.6073–1 is amended by revising subparagraph (1) of paragraph (b), by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and by adding a new paragraph (c). These revised and added provisions read as follows:

**§ 1.6073–1 Time and place for filing declarations of estimated tax by individuals.**

* * * * *

(b) *Farmers or fishermen*—(1) *In general.* In the case of an individual on a calendar year basis—

(i) If at least two-thirds of the individual's total estimated gross income from all sources for the calendar year is from farming or fishing (including oyster farming), or

(ii) If at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from farming or fishing (including oyster farming) (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration of estimated tax on or before the 15th day of January of the succeeding calendar year in lieu of the time prescribed in paragraph (a) of this section. For the filing of a return in lieu of a declaration, see paragraph (a) of § 1.6015–1.

* * * * *

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, for taxable years beginning after December 31, 1976, in the case of a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose estimated gross income for the calendar year meets the requirements of section 6015(a), a declaration of estimated tax for the calendar year need not be made before June 15th of such calendar year.

* * * * *

**Par. 2.** Section 1.6073–2 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1.6073–2 Fiscal years.**

* * * * *

(b) *Farmers or fishermen.* In the case of an individual on a fiscal year basis—

(1) If at least two-thirds of the individual's total estimated gross income from all sources for the fiscal year is from farming or fishing (including oyster farming), or

(2) If at least two-thirds of the individual's total gross income from all sources shown on the return for the preceding taxable year was from farming or fishing (including oyster farming) (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration on or before the 15th day of the month immediately following the close of his taxable year, in lieu of the time prescribed in paragraph (a) of this section.

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, in the case of a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose anticipated income for the fiscal year meets the requirements of section 6015(a), § 1.6015(a)–1, and § 1.6015(i)–1, the declaration of estimated tax for the fiscal year need not be filed before the 15th day of the 6th month of such fiscal year.

**Par. 3.** Section 1.6073–3 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 1.6073–3 Short taxable years**

* * * * *

(b) *Farmers or fishermen.* In the case of an individual—

(1) Whose current taxable year is a short taxable year and whose estimated gross income from farming or fishing (including oyster farming) is at least two-thirds of his total estimated gross income from all sources for such current taxable year, or

(2) Whose taxable year preceding the current taxable year was a short taxable year and whose gross income from farming or fishing (including oyster farming) was at least two-thirds of the total gross income from all sources shown on the return for such preceding short taxable year (with respect to declarations of estimated tax for taxable years beginning after November 10, 1978),

he may file a declaration of estimated tax on or before the 15th day of the month immediately following the close of the current taxable year, in lieu of the time prescribed in paragraph (a) of this section.

(c) *Nonresident aliens.* Notwithstanding the provisions of paragraph (a) of this section, in the case of a short taxable year, a nonresident alien described in section 6072(c) (relating to returns of nonresident aliens whose wages are not subject to withholding) whose anticipated income for the short taxable year meets the requirements of section 6015(a), § 1.6015(a)–1, § 1.6015(g)–1, and § 1.6015(i)–1 on or before the 1st day of the 6th month following the beginning of such year need not file a declaration of estimated tax before the 15th day of the 6th month following the beginning of such year.

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

[FR Doc. 80-15613 Filed 5-20-80; 8:45 am]

BILLING CODE 4830-01-M

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

### 36 CFR Chapter IX

### Improving Government Regulations; Semiannual Agenda of Regulations

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** Semiannual agenda of significant regulations under development or review.

**SUMMARY:** Pursuant to Section 2 of Executive Order 12044, the Pennsylvania Avenue Development Corporation is not planning to issue or review any significant regulations prior to September 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary M. Schneider, Attorney, Office of General Counsel, Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C. 20004, (202) 566–1078.

Dated: May 2, 1980.

**W. Anderson Barnes,**

*Executive Director.*

[FR Doc. 80–15573 Filed 5–20–80; 8:45 am]

**BILLING CODE 7630–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL 1496–2]**

### Proposed Revision of the Virginia State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Commonwealth of Virginia submitted to the Environmental Protection Agency amendments to its air pollution control regulations and requested that they be reviewed and processed as revisions of the Virginia State Implementation Plan (SIP). The amendments consist of changes to Parts I (Definitions), II (General Provisions), III (Air Quality Standards), IV (Existing and Certain Other Sources), VII (Air Pollution Episode), and Appendices A, I, and J. The Commonwealth also requested that certain previously submitted amendments to Part I (definition of "actual heat input"), Part II (indirect source review regulations) and Part VII (standby emergency plants) be withdrawn from further consideration as revisions of the Virginia SIP. Some of these amendments and withdrawal requests serve to correct portions of previously proposed, but unapprovable, Virginia regulations. This notice also proposes withdrawal of a federally-approved regulation in Part II (evidential public hearings) that had been approved in error; the Commonwealth had rescinded this regulation prior to EPA approval.

**DATE:** The public is invited to submit comments on these proposed SIP revisions. All comments submitted on or before June 20, 1980, will be considered.

**ADDRESSES:** Copies of the proposed SIP revisions, as well as accompanying support documentation submitted by Virginia, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn.: Harold A. Frankford.

Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219, Attn.: Mr. John M. Daniel, Jr.

Public Information Reference Unit, EPA Library, U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

All comments should be submitted to: Mr. Howard Heim (3AH10), Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn.: AH017VA.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harold A. Frankford (3AH12), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106; phone: (215) 597–8392.

**SUPPLEMENTARY INFORMATION:**

### Background

Between August 14, 1975 and September 24, 1979, the Commonwealth of Virginia submitted to the Environmental Protection Agency amendments to its Regulations for the Control and Abatement of Air Pollution and requested that they be reviewed and processed as revisions of the Virginia State Implementation Play (SIP) for the attainment and maintenance of national ambient air quality standards. The amendments consist of changes to Parts I (Definitions), II (General Provisions), III (Air Quality Standards), IV (Existing and Certain Other Sources), VII (Air Pollution Episode), and Appendices A, I and J.

The Commonwealth provided proof that after adequate public notice, public hearings were held with regard to these amendments. The submittal dates of these amendments, as well as the date and locations of the public hearings, are summarized below:

| Submittal date | Public hearing date(s) | Locations |
|---|---|---|
| Aug. 14, 1975 | May 12, 1975 | Abingdon, Radford, Lynchburg, Fredericksburg, Richmond, Virginia Beach, and Fairfax. |
| Mar. 11, 1977 | Jan. 18, 1977 | Abingdon, Roanoke, Lynchburg, Fredericksburg, Richmond, Virginia Beach, Fairfax. |
| Sept. 20, 1978 | July 14, 1978 | Richmond. |
| | July 17, 1978 | Abingdon, Roanoke, Lynchburg, Fredericksburg, Virginia Beach, Fairfax. |
| Sept. 6, 1979 | Feb. 12, 1979 | Abingdon, Radford, Lynchburg, Richmond, Virginia Beach, Falls Church. |
| | May 14, 1979 | Do. |
| Sept. 24, 1979 | July 16, 1979 | Do. |
| | May 14, 1979 | Do. |

Unless otherwise noted, the amendments listed below were submitted on September 20, 1978. In cases where the State has submitted amendments to the same regulation at different times, the State has requested that the most recent version be considered for review as a revision of the Virginia SIP.

### I. Part I—Definitions

*A. Additions*

1. Facility
2. One-Hour
3. Pollutant (9/24/79)

*B. Modifications*

1. Emergency
2. Fossil Fuel-Fired Steam Generator
3. Fuel Burning Equipment
4. One Hour Period
5. Particulate
6. Performance Test
8. Source
9. Stationary Source

*C. Deletions*

1. Dust Removal System
2. Heating Value

### II. Part II—General Provisions

| Regulation | Brief description |
|---|---|
| Section 2.06 | *Local Ordinances*—Local governmental body would not be able to grant variances to any pollution control ordinance if such variance would violate the requirements of the State Regulation. |

### III. Part III—Ambient Air quality Standards

| Regulation | Brief description |
|---|---|
| Section 3.02(a) | The primary annual standard for particular matter in State Region 7 (the Virginia portion of the National Capital Interstate AQCR) is changed from 60 $\mu g/m^3$ to 75 $\mu g/m^3$. |

**IV. Part IV—Regulations Controlling Emissions From Existing Sources**

A. *Special Provisions*

Section 4.02(a) ..... *Compliance*—Amendments would allow the use of alternative test methods and would provide operating and maintenance requirements for compliance.

B. *Rule EX-2—Emission Standards for Visible Emissions and Fugitive Dust*

New Section 4.20 ..... *Applicability and Designation of Affected Facility*—New Section.

Current Section 4.20 ..... *Emission Standards*—Deleted.

Current Section 4.22 ..... *Traffic Hazard*—Redesignated as Section 4.27—Unchanged.

New Section 4.22 (9/24/79) ..... *Standard for Visible Emissions*—Section basically replaces current Section 4.20.

Section 4.23 ..... *Standard for Fugitive Dust*—Current Section 4.41—Amendments require removal of dirt or other materials spilled during transportation, as well as dried sediments resulting from soil erosion.

Section 4.25 ..... *Test Methods and Procedures*—New Section.

Section 4.26 ..... *Waivers*—New section.

C. *Rule EX-5 Emission Standards for Gaseous Pollutants*

Section 4.51 § 4.51(a) ..... *Sulfur Oxides Emissions and Other Gases and Compounds Containing Sulfur*—General requirements—the wording is revised.

§ 4.51(b) (Formerly part of § 4.51(a)) ..... Amendments would increase the allowable sulfur emissions from coal-burning sources located in the Virginia portion of the National Capital Interstate AQCR and restate the conditions by which compliance is determined. (Former §§ 4.51(b) through (g) is changed to §§ 4.51(c) through (h)).

D. *Rule EX-7 Emission Standards for Incinerators*

Section 4.07.05 (8/14/75) ..... Emission Testing—Deleted.

**V. Part VII—Air Pollution Episode**

Section 7.01 ..... *General Provisions*—The Forecast Stage is renamed the Watch Stage.

Section 7.02 ..... *Episode Determination*—The forecast Stage is renamed the Watch Stage; "air stagnation advisory" would replace "atmospheric stagnation forecast."

Section 7.03 ..... *Standby Emission Reduction Plans.*

(3/11/77) ..... Minor wording changes.

(9/24/79) ..... 1. The regulation is revised to specify that only stationary sources emitting any criteria pollutant are required to prepare a standby emission reduction plan.

2. The provision which would have exempted less than 100 ton sources from preparing a standby emission reduction plan is deleted.

Section 7.04 (3/11/77) ..... Control Requirements—Minor wording changes.

**VI. Appendices**

Appendix A ..... *Abbreviations*—The following terms are added: ampere (A), actual (act), cubic centimeter (cc), cubic feet (cu ft), day (d), dry cubic feet (dcf), dry cubic meter (dcm), feet (ft), hertz (Hz), Joule (J), megagram (Mg), mole (mol), newton (N), nanogram (ng), pascal (Pa), pounds per square inch gage (psig), second (s), cubic foot at standard conditions (scf), cubic feet per hour at standard conditions (scfh), cubic meter at standard condition (scm), sulfur oxides (SOx), square feet (sq ft), at standard conditions or standard (std), microliter (ul), volt (V), watt (W), year (yr) and ohm (Ω). The term at standard conditions (s) is deleted.

Appendix I ..... *EPA Regulations-Referenced Documents*—New FEDERAL REGISTER citations referring to revisions of 40 CFR Part 50, 40 CFR Part 60, and 40 CFR Part 61 are added.

Appendix J ..... *Emission Monitoring Procedures for Existing, New and Modified Sources*—Amendments consist of changes to opacity measurement methods, data output requirements, and categories of sources subject to emission monitoring.

## Withdrawal of Previously Submitted Amendments

(1) In its SIP revision request, the Commonwealth of Virginia also deleted the definition of "actual heat input", submitted to EPA on August 14, 1975. Although EPA had proposed this definition as a plan revision on March 28, 1977, 42 FR 16446, no final action had been taken. EPA considers this most recent submittal by the Commonwealth to reflect its desire to have the definition of "actual heat input" removed and therefore withdraws this definition from further consideration as a SIP revision.

(2) On December 1, 1978, the Commonwealth of Virginia additionally requested that EPA withdraw from further consideration as a plan revision, the August 14, 1975 amendment to § 2.33 of Part II, referring to indirect source review regulations (§§ 2.33(a)(1)(ii), 2.33(g), 2.33(j), 2.33(k)). Although EPA formally proposed the indirect source review regulation as a revision of the Virginia SIP, 42 FR 16446, no final action was ever taken. The current federally-approved SIP does not contain any indirect source review regulations. In view of Virginia's request, the Administrator withdraws Virginia's indirect source review regulations from further consideration as a revision of the Virginia SIP.

## Revision of Previously Submitted Amendments

(1) On September 24, 1979, Virginia revised a regulatory provision originally submitted on September 20, 1978 and pertaining to opacity limitations (Section 4.22). The revised limitation consists of a 20% "steady-state" opacity limitation, with exceptions of up to 60% opacity allowed during six minutes per 60-minute period. EPA considers these opacity/time limitations to be approvable.

(2) Amendment to Section 7.03 (Standby Emission Reduction Plans) submitted by Virginia on August 14, 1975 and proposed by EPA as a plan revision, 42 FR 16446, would have exempted sources with a potential of emitting less than 100 per year of particulates, sulfur dioxide, carbon monoxide, nitrogen dioxide, or hydrocarbons from preparing standby emission reduction plans. During subsequent discussions, EPA informed Virginia that the provisions of 40 CFR Part 51 do not allow such exclusions and therefore, their amendment could not be approved as a plan revision. On September 24, 1979, the Commonwealth submitted a revised provision in 7.03 which removes the exemption, thereby satisfying the requirements of 40 CFR Part 51. The revised Section 7.03 would require all stationary sources emitting any of the criteria pollutants to prepare a standby emission reduction plan. EPA proposes to approve revised provision of § 7.03 as a revision of the Virginia SIP.

### *Proposed Disapproval of $SO_2$ Regulations*

The change to § 4.51(b) increases the allowable sulfur dioxide emissions from coal burning sources in State Region 7 (the Virginia portion of the National Capital Interstate Air Quality Control Region). However, the State did not submit a control strategy demonstration, required by 40 CFR 51.13, showing the effect of this emissions relaxation on sulfur dioxide levels in the National Capital Interstate AQCR. In the absence of such demonstration, the Administrator proposes to disapprove the change in § 4.51(a) as a revision of the Virginia SIP.

### *Proposed Disapproval of Opacity Regulations*

A new § 4.26 (Waivers) is added to Rule EX-2. The section outlines the procedure under which waivers to the opacity limitations may be granted. However, the regulation also contains deficiencies. First, the regulation does not specify what source surveillance technique, if any, would be used to

determine compliance with the mass emission limitation if the opacity limitation contained in § 4.22 is not used. In addition, this regulation provides for indefinite waivers.

EPA believes that if waivers are allowed, then a specific source surveillance technique should be used to determine compliance with the prevailing mass emission limitation. Moreover, waivers should be granted for brief and specified time periods. An indefinite waiver constitutes an exception to the regulations and therefore cannot be granted without EPA approval. Thus, EPA proposes to disapprove § 4.26, unless Virginia takes steps to correct the above deficiencies.

**Proposal of Previously Submitted Amendments**

On March 11, 1977, the Commonwealth of Virginia, after adequate notice and public hearings, submitted amendments to Parts II and VII of the Virginia Regulations for the Control and Abatement of Air Pollution and requested that they be reviewed and processed as revisions of the Virginia SIP. Because it was the intent of Virginia not to have a requirement for evidential public hearings in the SIP, EPA's approval of the evidential public hearing provision in § 2.04 was in error. Thus, EPA proposes to delete § 2.04(a)(2) from the Virginia SIP.

The amendments in Part VII consist of administrative changes in § 7.03 (Standby Emission Reduction Plans) and § 7.04 (Control Requirements) designed to conform to amendments in Section 7.02 (Episode Determination). The latter amendments were approved by the Administrator as a SIP revision on March 9, 1978, 43 FR 9603. Therefore, EPA proposes to approve the amendments in §§ 7.03 and 7.04 as revisions of the Virginia SIP.

On August 14, 1975, the Commonwealth of Virginia submitted a new definition of "cold stand-by unit." EPA proposes to approve this definition as a revision of the Virginia SIP.

**Request for Public Comment**

The public is invited to submit to the address stated above comments on whether these proposed revisions submitted by Virginia should be approved or disapproved as revisions of the Virginia State Implementation Plan.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. I have reviewed this regulation and determined that it is a "specialized" regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401–642)

Dated: May 7, 1980.

**Jack J. Schramm,**

*Regional Administrator.*

[FR Doc. 80–15520 Filed 5–20–80; 8:45 am]

BILLING CODE 6560–01–M

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**40 CFR Part 81**

**[FRL 1497–7]**

## Designation of Areas for Air Quality Planning Purposes; Redesignation of Attainment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking: extension of comment period.

**SUMMARY:** On March 28, 1980 (45 FR 20501) EPA published a notice of proposed rulemaking. That notice proposed to revise the attainment status designation of the City of Great Falls for carbon monoxide (CO), from attainment to nonattainment. A thirty day comment period was provided. The purpose of this notice is to extend that period for an additional 33 days.

**DATES:** Comments received on or before May 31, 1980 will be considered in EPA's final decision.

**ADDRESSES:** Comments should be directed to: Ivan W. Dodson, Director, Environmental Protection Agency, Federal Building, Drawer 10096, 301 South Park, Helena, Montana 59601.

Copies of the materials submitted by the state, comments and other materials relating to this proposal may be examined during normal business hours at:

Environmental Protection Agency, Federal Building, Room 292, 301 South Park, Helena, Montana 59601.

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Alkema, Environmental Protection Agency, Federal Building, Drawer 10096, Helena, Montana 59601, 406–449–5414.

Dated: May 2, 1980.

**Roger E. Frenette,**

*Acting Regional Administrator.*

[FR Doc. 80–15519 Filed 5–20–80; 8:45 am]

BILLING CODE 6560–01–M

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**INTERSTATE COMMERCE COMMISSION**

**49 CFR Part 1057**

**[Ex Parte No. 311 (Sub-No. 4)]**

## Review of the Motor Carrier Fuel Surcharge Program

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Proposed rule, extension of time for filing comments.

**SUMMARY:** On April 18, 1980, a Notice of Proposed Rulemaking was published (45 FR 26399) seeking comments on possible improvements or altenatives to the Commisson's current motor fuel surcharge program. Comments are now due May 19, 1980. The National Tank Truck Carriers, Inc., seeks an extension of this filing date. A postponement until May 26, 1980, is warranted for all concerned persons. This will permit completion of a written record that is able to further develop various suggestions that were made at a series of nationwide public conferences that were held between May 2–4, 1980. The extension will not unduly delay resolution of the issues.

**DATE:** The due date for the filing of comments is changed to May 26, 1980.

**ADDRESS:** An original and 15 copies of comments should be sent to: Office of Proceedings, Room 5340, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Felder, (202) 275–7693.

Dated: May 9, 1980.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80–15569 Filed 5–20–80; 8:45 am]

BILLING CODE 7035–01–M

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 674**

## Alaska Salmon Fishery

**AGENCY:** National Oceanic and Atmospheric Administration, (NOAA)/ Commerce.

**ACTION:** Approval and partial disapproval of amendments to the fishery management plan (FMP) for salmon off the coast of Alaska and proposed implementing regulations.

**SUMMARY:** The North Pacific Fishery Management Council has adopted, and

the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, with one exception, has approved certain amendments to the fishery management plan (FMP) for the High Seas Salmon Fishery off the Coast of Alaska. These amendments would make several changes to conform the FMP and implementing regulations to State of Alaska regulations so there is a degree of uniformity inside the three-mile territorial sea and in the fishery conservation zone (FCZ) outside the territorial sea. Changes in the implementing regulations are proposed.

**DATE:** Written comments on these proposed regulations will be received until July 14, 1980.

**ADDRESS:** Send comments to: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. Please mark "AK Salmon" on outside of envelope.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Services, P.O. Box 1668, Juneau, Alaska 99802) Telephone: 907 586–7221.

**SUPPLEMENTARY INFORMATION:** On May 18, 1978 the National Marine Fisheries Service published interim emergency regulations implementing the approved portion of the Fishery Management Plan (FMP) for the Alaska salmon fishery. The FMP was published in its entirety in the **Federal Register** on June 8, 1979 (44 FR 33250). The emergency regulations were reimplemented on July 11, 1979, (44 FR 40519), were amended once on July 17, 1979 (44 FR 41467), and were published as final regulations on September 6, 1979 (44 FR 51988).

These amendments are designed to promote conservation of the ocean salmon resource while allowing utilization of those stocks for food production and to bring the regulations in the FCZ into conformity with the regulations promulgated by the State of Alaska for the conduct of the salmon troll fishery in State waters.

One provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing by hand trollers in the fishery conservation zone (FCZ). The Assistant Administrator determined that this provision was inconsistent with National Standard 4 of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.* (Act), because it would have prohibited fishing by certain hand trollers who had historically fished in this area, while it would have allowed power trollers with a similar history to continue to fish in the FCZ. Power trollers use power from their boats' engines to crank their reels, while hand trollers crank their reels manually. It was determined that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear. These amendments will:

(1) Allow entry into the troll fishery in the FCZ by hand trollers and those holders of valid State of Alaska entry permits for the power troll fishery (as of May 15, 1979), or a valid Federal permit;

(2) Provide for transfer of State permits under State law with review and oversight by the Department of Commerce;

(3) Strengthen the inseason management philosophy expounded in the FMP; by providing for an area-wide closure for ten days beginning approximately July 10th unless inseason assessment indicates that the coho salmon run is considerably stronger than usual or has moved inshore prior to that date;

(4) Require that all troll-caught chinook or coho salmon be landed with heads on;

(5) Prohibit the possession of salmon in any area where the taking of that species is prohibited;

(6) Restrict trollers to no more than four lines in the area south of the latitude of Cape Spencer, and no more than six lines north of that line;

(7) Permit no more than six operational gurdies aboard any licensed salmon trolling vessel; and

(8) Redefine regulatory areas 154, 157, and 189.

It has been determined that controlling the catch is necessary for the future well being of the stocks in this fishery. The amendments are designed to control expansion of fishing effort in the fishery off Alaska. Reduction of fishing effort on depleted wild chinook stocks would be desirable, but until further data is available to identify those stocks on the fishing grounds this mixed stock fishery will continue to take some of them. Some reduction of effort is expected from these amendments since it will reduce effort by individual boats who in the past have fished six or more lines in the FCZ but will now be restricted to four lines south of the latitude of Cape Spencer and six lines north of that line.

The ten-day closure to trolling in State waters and in the FCZ, expected to be made by field announcement on approximately July 10th is intended to spread the catch of cohos over a longer period and allow escapement from all segments of the run rather than the latter portion of the runs as has been the case for the last two years. The closure may also reduce the catch of chinook salmon. However, most of the chinook stocks will be available to the fishermen after the closure since they tend to remain in the same areas for extended periods, while coho tend to move rapidly toward their spawning areas. This closure will allow concentrations of coho to move inshore closer to terminal areas where the fishery for them can be more closely regulated by the State of Alaska.

Other closures by field announcement are possible if individual stocks of fish show signs of being overfished.

The amendments require that all chinook and coho salmon must be landed with the heads attached. In 1979 the regulations required that all finclipped salmon must be landed with heads on. This regulation was designed to insure recover of coded wire tags implanted in the nose of those finclipped fish. It was found during the season that many of the trollers who freeze their catch were removing the heads of all fish, including those with clipped fins, thus losing the coded wire tags and the information they contained from the data base for the management of the fishery. The requirement to land all chinook and coho with heads on will cause some further handling of those frozen fish since the heads must be removed and the fish reglazed after landing and checking for tags. In addition, it will somewhat reduce the carrying capacity of the individual vessels since fish with heads take more space than fish without heads. However, the importance of the tagging program, dependent on the recovery of those tags, makes it necessary to impose this restriction.

The amendments prohibit the possession of any species aboard a vessel while fishing in an area closed to the taking of that species. This amendment is designed to permit closure of areas to the taking of one species while allowing the fishery to continue for other species. Permitting possession of species prohibited to be taken in that area would make the closure unenforceable.

State of Alaska regulations have prohibited the use of more than four lines per vessel in State waters for many years. There has been no limit on the number of lines that could be used in the FCZ. The amendment restricts individual vessels to no more than four lines in the FCZ south of the latitude of Cape Spencer and no more than six lines north of that line. That amendment will reduce the fishing effort to some extent but still allow six lines in the offshore waters of the Fairweather

grounds north of Cape Spencer where more gear is needed to fish successfully. It will also tend to enable more accurate measurement of catch per unit of effort (CPUE).

**FMP Amendments**

The Fishery Management Plan for High Seas Salmon off the Coast of Alaska East of 175 Degrees East Longitude which was published on June 8, 1979 in the **Federal Register** (44 FR 33250) is amended as follows:

(All changes made in sequential order by section and **Federal Register** page number.)

Summary (Pg. 33251)—Under "Gear * * * (2) :" change to read: "Commercial fishing is allowed only by troll gear in the Fishery Conservation Zone. South of the latitude of Cape Spencer (58°12'08" N.) no more than four lines may be fished. North of the latitude of Cape Spencer, no more than six lines may be fished. No more than six gurdies may be mounted and in operational condition in the Fishery Conservation Zone."

Summary (Pg. 33251)—Under "Size" change to read: "Chinook salmon must be at least 28 inches in length. All other salmon have no minimum size restriction. No chinook salmon may be mutilated in a manner which prevents determining that salmon's length."

Summary (Pg. 33251)—Following "Sex—no restrictions." insert new paragraph as follows: "Landing and Possession—(1) All troll caught chinook and coho salmon must have their head on until landed. (2) Vessels may not have on board any species of salmon when fishing in a area closed to the taking of that species."

Sec. 2.1 (Pg. 33252)—In the last paragraph change the year to 1981.

Table 3 (Pg. 33257)—Add the figures as follows:

| Year and species | Troll gear | | All gear | | | |
|---|---|---|---|---|---|---|
| | Southeastern | | Southeastern | | All Alaska | |
| | Number | Pounds | Number | Pounds | Number | Pounds |
| 1978: | | | | | | |
| Chinook | 375 | 5,828 | 401 | 6,100 | | |
| Coho | 1,101 | 6,800 | 1,714 | 11,500 | | |
| Pink | 618 | 1,000 | 21,200 | 67,800 | | |
| 1979 | | | | | | |
| Chinook | 338 | 5,132 | 366 | 5,500 | | |
| Coho | 918 | 6,100 | 1,300 | 8,900 | | |
| Pink | 629 | 2,280 | 11,000 | 43,400 | | |

Source: ADF&G Catch Statistics 1968-1977, and Preliminary Statistics for 1978 and 1979.

Sec. 3.3.2.1 (Pg. 33259)—Change the last sentence of the first paragraph to read as follows: "Beyond the 3-mile limit there was no restriction on the number of lines used through 1979."

Sec. 3.3.2.2 (Pg. 33259)—After the sentence ending "September 20" change the rest of the first paragraph to read: "Prior to 1980, the four-line limit for troll vessels was imposed only in Alaska waters. Elsewhere on the coast the line limit was six lines; in some jurisdictions there was no limit."

Sec. 8.3 (Pg. 33267)—Delete the last paragraph beginning "The Council intends * * *"

Sec. 8.3.1.1 (Pg. 33268)—Change paragraph 2 under subsection "B. Gear" to read: "Commercial fishing is allowed only by trolling gear in the FCZ east of Cape Suckling. South of the latitude of Cape Spencer no more than four lines may be fished. North of that latitude no more than six lines may be fished. No more than six gurdies may be mounted and in operational condition."

Sec. 8.3.1.2 (Pg. 33268)—Change the heading to "Size, Sex and Possession Restrictions and Landing Requirements."

Change paragraph 1 of subsection "A. Size" to read: "Chinook salmon—28 inch minimum total length." Delete sentence following which pertains to alternative measurement for beheaded chinook.

Change subsection "C. Landing Requirement" to read: "All troll caught chinook and coho salmon must be landed with the head on."

Change "D. Sport Bag Limit" to "E. Sport Bag Limit" and add a new subsection as follows: "D. Possession Prohibited: No vessel may have on board any species of salmon while fishing in an area closed to the taking of that species."

Change the "Rationale" portion of the section as follows: Delete the 6th paragraph beginning "All troll caught salmon * * *"

Change the seventh paragraph by deleting the last sentence beginning "Tagged fish * * *" and substitute the following: "Previous regulations have required that salmon having the adipose fin removed, which indicates the fish is tagged, must be landed with heads on. This approach has not resulted in satisfactory coded wire tag recovery rates. In order to improve such rates, all troll caught chinook and coho salmon must have their heads on when landed."

Insert a new paragraph after the paragraph just changed as follows:

"In order to facilitate compliance the enforcement of any inseason closures (see Section 8.3.1.4), the possession of any species of salmon for which a closure has been instituted, aboard a vessel engaged in fishing in the area closed, is prohibited."

Sec. 8.3.1.4 (Pg. 33269)—Add after paragraph "(f)" a new paragraph as follows: "The current State of Alaska management plan for 1980 includes an intention to institute a 10-day closure for the entire Southeast Alaska troll fishery beginning on or about July 10, unless evaluation of the coho salmon run indicates a well above average magnitude and good movement inshore. This closure is designed to assist in stabilizing or reducing coastal and offshore effort on coho, as well as assisting catch and escapement inshore, unless strong runs preclude the need for such a measure. The Council intends that a similar closure, if one occurs, should be instituted for the FCZ pursuant to the procedures outlined in Section 8.3.1.5."

Sec. 8.3.3.1 (Pg. 33270)—Delete all material in section 8.3.3.1 beginning with the paragraph that starts, "An FMP adopted by the Pacific Fishery

Sec. 8.5 (Pg. 33271)—Change "72 hours" to "one week."

**Procedural Explanation**

The necessary amendments to the regulations required to implement these Plan amendments all fall within one of three sections of Part 674. Each of these three sections has been amended previously, but has never been codified. Therefore, for clarity and understanding, the precise language of the proposed amendment is followed by a redraft of the entire section as it will appear if the proposed amendment is adopted in the final regulations.

The Assistant Administrator has determined that the regulations promulgating this amendment are significant within the meaning of both the National Environmental Policy Act, and Executive Order 12044. Consequently, an Environmental Impact Statement and a regulatory analysis are

being prepared, and may be examined at the Regional Office of the National Marine Fisheries Service, Juneau, Alaska (telephone: 907 586–7221).

Signed this 15th day of May, 1980, at Washington, D.C.

**Winfred H. Meibohm,**

*Executive Director, National Marine Fisheries Service.*

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

50 CFR 674 is proposed to be amended as follows:

1. Amend 674.4(a)(4) by changing "1980 to 1981". Section 674.4, as amended, reads as follows:

**§ 674.4 Permits.**

(a) *General.*—(1) *Power troll permits.* The only persons who may engage in commercial fishing for salmon in the management area using power troll gear are operators of fishing vessels who:

(i) On May 15, 1979, held a valid State of Alaska power troll permanent entry permit;

(ii) On May 15, 1979, held a valid State of Alaska power troll interim-use permit; or

(iii) Hold a permit issued by the Regional Director under paragraph (b) of this section.

(2) No permit is required of a crewmember or other person assisting in the operation of a commercial salmon troll vessel if the permit holder is on board and engaged in fishing.

(3) The right of access to the ocean salmon fishery provided herein constitutes a use privilege which may be modified or revoked without compensation.

(4) The permission to fish under this section expires at 11:59 p.m. (local time on April 14, 1981.

(b) *Permits issued by the Regional Director.*

(1) *Eligibility.* (i) Except as provided in paragraph (b)(1)(ii) of this section, any person is eligible for a permit described in paragraph (a)(1)(iii) of this section if that person, during any one of the calendar years 1975, 1976, or 1977: (A) Operated a fishing vessel in the management area; (B) engaged in commercial fishing for salmon in the management area; (C) caught salmon in the management area using power troll gear; and (D) landed such salmon. (ii) The following persons are not eligible: (A) Persons described in paragraphs (a)(1)(i) or (ii) of this section; (B) persons who once held but no longer hold a State of Alaska power troll permanent entry or interim-use permit; and (C) persons holding a permit under this paragraph (b).

(2) *Application.* (i) Each applicant for a permit under this paragraph shall submit a written application to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(ii) Each applicant shall provide the following information:

(A) The applicant's name, mailing address and telephone number;

(B) The name of the fishing vessel;

(C) The fishing vessel's United States Coast Guard documentation number or State registration number;

(D) The home port of the vessel;

(E) The length and registered tonnage of the vessel;

(F) The color of the vessel;

(G) The type of fishing gear used by the vessel; and

(H) The signature of the applicant.

(iii) The information required by paragraphs (b)(2)(ii)(B)–(G) shall be provided for each vessel which the applicant intends to use for commercial fishing under this Part. Any changes in such information occurring after a permit is issued shall be reported to the Regional Director within 30 days of that change.

(iv) Each applicant shall submit State fish tickets or other equivalent documents showing the actual landing of salmon taken in the management area by the applicant with power troll gear during any one of the years 1975–1977.

(3) *Issuance.* (i) Upon receipt of a properly completed application and any required document, the Regional Director shall promptly determine whether permit eligibility conditions have been met, and if so, shall issue a permit. If the permit is denied, the Regional Director shall notify the applicant in accordance with paragraph (e) of this section.

(ii) If an incomplete or improperly completed permit application is filed, or if any required document has not been filed, the Regional Director promptly shall notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days following the date of receipt of notification, the application shall be considered abandoned.

(4) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit that has been altered, erased, or mutilated shall be invalid.

(5) *Replacement.* Replacement permits may be issued to replace lost or unintentionally mutilated permits. An application for a replacement permit shall not be considered a new application.

(c) *Transfers.* Except for emergency transfers authorized under paragraph (d) of this section, this paragraph (c) governs transfer of authorization under this part to engage in commercial fishing for salmon.

(1) *Alaska Permanent Entry Permits.* (i) The authorization under paragraph (a)(1)(i) of this section transfers with the transfer of the Alaska power troll permanent entry permit. At the time the State permit is transferred, the authority of the transferor under paragraph (a)(1)(i) expires.

(ii) Any person to whom transfer of a State of Alaska power troll permanent entry permit is denied by the State, may apply to the Regional Director for approval of a transfer for purposes of paragraph (a)(1)(i) of this section. The Regional Director shall approve such transfer if it is determined that such person had the ability to participate actively in the fishery at the time the transfer application was filed with the State, that such individual has access to gear necessary for the fishery, that Alaska has not instituted proceedings to revoke the State permit because it was fraudulently obtained, and that the proposed transfer is not a lease.

(A) A request for transfer under this paragraph (c)(1)(ii) shall be filed with the Regional Director within 30 days of the State's denial of the transfer, and shall include (1) all documents and other evidence submitted to the State in support of the transfer and (2) a copy of the State's decision denying the transfer. The Regional Director may request additional information from the individual requesting transfer or from the State to aid in the consideration of the request.

(B) If the transfer is denied, the Regional Director shall notify the applicant in accordance with paragraph (e) of this section.

(C) The authorization to engage in commercial fishing for salmon that is granted under this paragraph (c)(1)(ii) is not transferable, except that such authorization may be transferred to the person who holds the Alaska power troll permanent entry permit from which such authorization was originally derived.

(D) If the authorization to engage in commercial fishing in the management area is transferred under this paragraph (c)(1)(ii) the person who holds the Alaska power troll permanent entry permit from which such authorization originally derived may not engage in commercial fishing for salmon in the management area under paragraph (a)(1)(i) of this section, unless such authorization is transferred to that person under paragraph (c)(1)(ii)(C) of this section and the Regional Director is so notified in writing.

(2) *Other Permits.* Authorization to engage in commercial fishing for salmon under paragraphs (a)(1) (ii) or (iii) of this

section is not transferable, except for emergency transfers under paragraph (d) of this section.

(d) *Emergency Transfer.* (1) The authorization to engage in the commercial salmon fishery under paragraph (a) of this section may be transferred on a temporary basis but not beyond the remainder of the calendar year, when sickness, injury, or other unavoidable hardship prevents the permittee from such fishing.

(2) Prior to any such emergency transfer, the permittee, or another person if the permittee is unable due to sickness or injury, shall submit to the Regional Director written request for an emergency transfer. Such request shall state the reasons why the permittee is prevented from fishing.

(3) Upon receipt of a request, the Regional Director promptly shall determine whether or not to authorize the emergency transfer, and shall notify the applicant in accordance with paragraph (e) of this section. The Regional Director may request additional information to aid in the determination. Such transfer shall not take effect until written authorization from the Regional Director is received.

(4) Paragraphs (d) (2) and (3) of this section apply to a holder of an Alaska power troll permit only if the State has denied an emergency transfer of that State permit. If the State has authorized an emergency transfer of a State permit, the transferee must notify the Regional Director in writing before the emergency transfer is effective for purposes of paragraph (a)(1) of this section. Such notification may be accomplished by mailing to the Regional Director a copy of the Alaska emergency transfer request form.

(e) *Appeals and Hearings.* (1) A decision by the Regional Director to:

(i) Deny a permit under paragraph (b)(3)(i) of this section; or

(ii) Deny a transfer under paragraph (c) or (d) of this section, shall be in writing, shall state the facts and reasons therefor, and shall advise the applicant of the rights provided in this paragraph (e).

(2) Any decision of the Regional Director shall be final 30 days from receipt by the applicant, unless an appeal is filed with the Assistant Administrator within that time. Failure to file a timely appeal shall constitute waiver of the appeal. (Address: Assistant Administrator, National Marine Fisheries Service, Room 400, Page 2 Building, 3300 Whitehaven Street, N.W., Washington, D.C. 20235).

(3) Appeals under this paragraph shall be in writing and set forth the reasons why the appellant believes the Regional Director's decision was in error, and shall include any supporting facts or documentation.

(4) The appellant may, at the time the appeal is filed with the Assistant Administrator, request a hearing with respect to any disputed issue of material fact. Failure to request a hearing at this time shall constitute a waiver of the hearing. If a request for a hearing is filed, the Assistant Administrator may order a hearing if it is determined that a hearing is necessary to resolve material issues of fact and shall so notify the appellant.

(5) If the Assistant Administrator orders a hearing, that order shall also serve to appoint a hearing examiner to conduct an informal fact finding inquiry into the matter. Following the hearing, the hearing examiner shall promptly furnish the Assistant Administrator with a report and appropriate recommendations.

(6) As soon as practicable after considering the matters raised in the appeal, and any report or recommendation of the hearing examiner in the event a hearing is held under this section, the Assistant Administrator shall notify the appellant in writing of the final decision. The notice shall summarize the findings of the Assistant Administrator and set forth the basis of the decision. The decision of the Assistant Administrator shall be final and unappealable.

(f) *Display.* Any permit described in paragraph (a) of this section shall be on board the vessel at all times while the vessel is in the FCZ, and shall be displayed for inspection upon request of any Authorized Officer.

(g) For purposes of this § 674.4, the definition of "person" excludes corporations, partnerships, associations or other nonhuman entities.

2. Section 674.21, is revised as follows:

**§ 674.21 Catch Limitations.**

(a) *Size Restrictions.*—(1) *Minimum size limit.* (i) *Chinook Salmon.* Only chinook salmon 28 inches or more in length may be retained.

(ii) *Other salmon.* There is no minimum size limit for sockeye, coho, pink, or chum salmon.

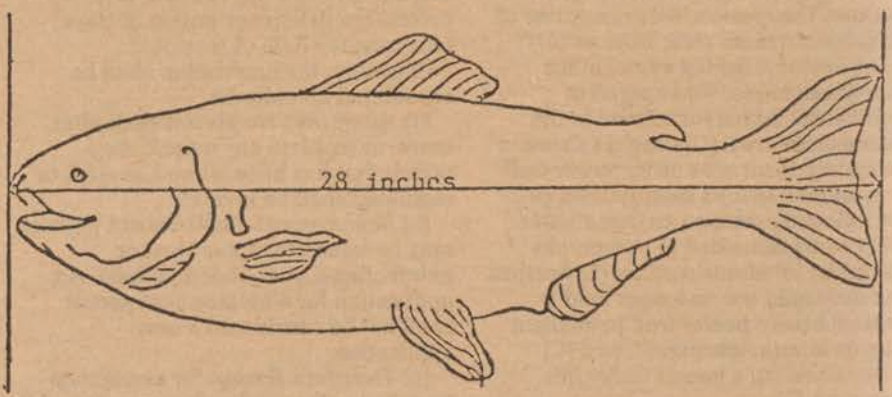
(2) *Method of Measurement.* For purposes of paragraph (1)(i) of this subsection, a chinook salmon is measured in a straight line passing over the pectoral fin, from the tip of the snout to the tip of the tail in its natural open position (see figure 1).

(3) *Mutilation.* No person on a fishing vessel in the management area shall mutilate or otherwise disfigure a salmon for which a minimum size is set by these regulations, in a manner which prevents determining that salmon's length.

(b) *Personal Use Daily Catch Limit.* No person may catch in the management area and retain more than six (6) salmon for personal use per day, or possess while in the management area more than twelve (12) salmon. No more than three of the salmon retained or possessed may be chinook.

(c) *Landing Requirements.* All chinook or coho salmon taken in the management area must have heads on until such salmon are delivered to a port of landing. Such salmon shall be made available for retrieval of the coded wire tag by an appropriate official at the port of landing.

(d) *Possession Prohibited.* The possession or retention of species of salmon in the management area or portion thereof which has been closed to the taking of such species of salmon, by vessels engaged in commercial fishing, is prohibited.



3. Revise § 674.24(a) to read as follows:

**§ 674.24 Gear restrictions.**

(a) *Commercial fishing.*—(1) *West Area.* Commercial fishing for salmon in the West area is not permitted.

(2) *East Area.* (i) *Gear Type.* Commercial fishing for salmon in the East area is permitted only with power troll gear or hand troll gear.

(ii) Vessels engaged in commercial fishing for salmon may not fish more than four lines south of a line beginning at the intersection of the inner boundary of the FCZ and the latitude of Cape Spencer at 58°12'08" N. lat., thence west along said latitude to 138°00' W. long., thence south along said longitude to 58°00' N. lat., thence west along said latitude to the intersection of the outer boundary of the FCZ and 58°00' N. lat. North of the line described above, such vessels may not fish more than six lines. All vessels engaged in commercial fishing for salmon must not have more than six gurdies mounted and in operational condition.

(iii) Commercial fishing with hand troll gear is permitted in the East area, subject to all other applicable provisions of this Part.

[FR Doc. 80-15808 Filed 5-20-80; 8:45 am]
BILLING CODE 3510-22-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Parts 23 and 810

### Proposed Finding of Nondetriment in Response to U.S. District Court Injunction on Export of Bobcats (*Lynx Rufus*)

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of proposed finding and request for comment.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora is a 59-nation treaty regulating import and export of species included in three appendices. Export of species included in Appendix II requires, prior to grant of an export permit, a finding by a Scientic Authority of the country of origin that such export will not be detrimental to the survival of the species. The bobcat [*Lynx Rufus*] is included in Appendix II with most other members of the cat family (Felidae). Since 1977, the Endangered Species Scientific Authority (ESSA), as Scientific Authority for the United States, annually reviewed the status and management of this and certain other species on a State-by-State basis in order to make determinations on whether export would not be detrimental. On September 26, 1979, the ESSA published findings favorable to export of bobcat pelts taken in the 1979–80 season in 35 States and the Navajo Nation. On December 12, 1979, as a result of a suit filed by Defenders of Wildlife, Inc., the U.S. District Court for the District of Columbia filed a Memorandum Opinion and Order which reversed the ESSA's previous findings for five of those States and parts of two others, thus enjoining export of bobcat pelts legally taken in those States or areas. Since the time judgment was entered, the scientific Authority function was reassigned to the Fish and Wildlife Service by the 1979 Amendments to the Endangered Species Act of 1973. Three of the States affected by the ruling, Florida, Massachusetts, and New Mexico, have submitted additional biological and management information to the Service. They have asked the Service to petition the District Court to lift its injunction based on this additional material. The Service, as Scientific Authority for the Convention, gives notice of its preliminary finding that this material provides extensive new evedence that export of bobcats taken in those States in 1979–80 will not be detrimental to the survival of the species. Final approval of such exports will depend on a favorable ruling by the courts.

**DATE:** All information received by June 5, 1980, will be considered.

**ADDRESS:** Please address correspondence to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240. Materials concerning this preliminary finding will be available for public inspection from 7:45 am to 4:15 pm, Monday through Friday, in room 536, 1717 H Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653–5948.

**SUPPLEMENTARY INFORMATION:** The ESSA's final findings for the 1979–80 harvest season of bobcat, lynx, and river otter were published on September 26, 1979 (44 FR 55539). Complete references to preliminary findings, standards, and summaries of information previously received for that and previous seasons may be found in that notice and in the preliminary notice of those findings (44 FR 40841, July 12, 1979). In those findings, the ESSA found in favor of export of bobcat pelts taken in the 1979–80 season in 35 States and the Navajo Nation.

In the suit, Defenders of Wildlife, Inc. v. Endangered Species Scientific Authority, et al, No. 79–3060 (D.D.C. December 12, 1979), Defenders of Wildlife asked the Court to prohibit export from all jurisdictions approved by the ESSA and to declare inadequate the standards used by the ESSA in reaching those determinations. The Court found the information upon which the Scientific Authority made its determinations sufficient in all but seven States. The Court enjoined export of bobcats taken in 1979–80 in Florida, Massachusetts, New Mexico, North Dakota, Wisconsin, Oregon east of the Cascades, and the high plains ecological area of Texas. Implicit in the Court's opinion is a determination that the standards applied by the Scientific Authority in making its determinations were adequate. Thus the Court prohibited export from the seven States on the basis that it considered the available information inadequate to support the ESSA findings for those States.

Each of the three States discussed in this notice provided the Service with considerable additional documentation relevant to the problems addressed by the Court. The Court's decision prohibits only export of pelts taken in the affected States and does not prohibit hunting, trapping or commerce in the species within the United States.

The Service proposes that export of bobcats legally taken in Florida, Massachusetts and New Mexico in the 1979–80 season will not be detrimental to the survival of the species, based on information summarized in the **Federal Register** notices cited above and on the following new information. In each case, this finding would have as a condition that pelts are clearly identified as to State of origin and season of taking, including tagging according to standards and conditions previously established by the Service.

*Florida.* New materials provided by the State of Florida include results of scent station surveys, a more detailed analysis of available and protected habitat, details on distribution of harvest, an estimate of a minimum statewide population, and additional

information on planned research. The State now has data from 87 scent station lines (10 stations in each line) which can be compared for the fall of 1978 and the fall of 1979. These lines are distributed throughout the State, and were designed specifically to higher visitation rate in 1979 than was found in 1978 for the entire State (confirmed statistically), in spite of the higher prices and apparently higher harvest pressure. These indices were also higher for each of the five State management regions when analyzed separately. Based on land use and vegetation cover data from the Florida Division of State Planning, the State estimates 25,411 square miles of suitable bobcat habitat (43 percent of State area), plus another 17,600 square miles of habitat considered less suitable but utilized by bobcats. Of the more suitable habitat, 4,260 square miles of Federal and State land, or 16.8 percent, are closed to hunting or trapping, in addition to such private land as may also be closed. Harvest distribution records for the State's five management regions indicate that 74 percent of the take in 1978–79 came from the two northernmost regions. These regions share habitat and land use patterns with other southeastern States where several studies have found high densities of bobcats, especially in pine plantations which by their short cycle of cutting and regeneration, provide both cover and early stages of succession supporting large numbers of prey species. Florida has estimated a minimum population level: A conservative estimate of one bobcat per square mile was derived from several radiotracking and livetrapping studies in the southeast, and extrapolated to the better habit alone, resulting in an estimate of over 25,000 bobcats. The projected harvest of 2,000 would amount to a harvest of eight percent of the population, which is well within conservative guidelines. (Bobcat populations can more than double annually due to reproduction, and natural adult mortality is low. In rigorous climates, young survival may fluctuate considerably due to varying levels of prey populations (cf. Crowe, 1975, J. Wildl. Mgmt., 39:408). In warmer climates, one would expect more consistent prey populations, resulting in higher juvenile survival, which could allow a take well above the estimated eight percent.) The State has also supplied details of research that is being initiated on the relationship between bobcat densities and several methods of determining population trends such as scent post surveys and monitoring of radioactively labelled scats.

The Court's Opinion stated for Florida:

> The Court finds for the plaintiff [Defenders of Wildlife] with regard to Florida. Although the Court applauds Florida's initiation of field research regarding bobcat habitat and population trends, the Court notes (1) that until now very little management attention has been paid to the bobcat, and (2) that much of what little harvest data had been collected has been lost or destroyed. (3) The Court is not satisfied that an appraisal of the bobcats' status in Florida [which] is sufficient to support a finding of no-detriment has been obtained. (4) There are no bag or possession limits.

The information cited above provides considerable new information concerning "an appraisal of the bobcats' status in Florida" (point 3 of Court Opinion for Florida), and also supports the conclusion that a bag limit is not needed in that State at present (point 4). Regarding points one and two, it is clear, and was acknowledged by the Court, that Florida has moved aggressively in the past two years in both regulatory and research initiatives. They have made an effort to reconstruct estimates of their lost harvest data from dealer records, which would indicate minimum harvest levels. The studies described above demonstrate that current harvest levels would not result in export which would be detrimental. Past harvests in Florida, especially those based on export demand, would reasonably be expected to be smaller than present harvests because the pelts were less valuable. Southern bobcat pelt prices have lagged behind and never reached the price levels of pelts from northern and western States. The loss of past harvest data would be more critical if Florida were depending on them in its present management. However, they have developed field indices and other methods which do not rely on those lost data.

*Massachusetts.* Additional information has been provided by Massachusetts concerning methods of estimating the State population, additional analyses of age structure, more details on available and protected habitat, more details on survey methodology, and additional analyses of harvest and tagging reports.

Massachusetts' analysis of available bobcat habitat is based on detailed studies which distinguish among 104 different habitat types from aerial surveys. The State recognizes 3,010 square miles of bobcat habitat within the 5,000 square mile area of western Massachusetts where the bobcat occurs. Of the available habitat, 473 square miles (16 percent of the available habitat) is closed to hunting or trapping, either as public refuges or as posted private land. Another 10 to 12 percent of this habitat, although open to hunting, is public land where habitat will be maintained. As was discussed in Court for Wyoming and other States, Massachusetts has several ways of confirming that the suitable habitat is actually occupied. A large staff of trained biologists, game wardens, and other experienced personnel spend a considerable amount of time in the field throughout the area and are involved in monthly meetings for review of wildlife status. Although not quantitative, these reviews would not apparent disappearances, declines or increases of the species in the areas covered. Such reviews have generally indicated increases of bobcats. Long-term harvest distribution records provide additional evidence: one of the first signs of decline would be disappearance of the species from significatnt parts of its range, yet current harvest is still from the same areas where bobcats historically were taken in some numbers. A recent more extensive analysis of age structure, discussed below, also provides assurance of the populations' stability.

New analyses of records derived from tagging indicate that of 25 bobcats trapped in the past three seasons (1977–80), only two bobcats were the target species. Most of the remainder were taken incidental to trapping for aquatic or semi-aquatic mammals (e.g., raccoon or mink) due to a State law against trapping on land. Hunters took 47 bobcats in the same period. Because bobcat hunting requires considerable expense for buying, maintaining, and training dogs, aside from the time and experience required to train for a successful hunt, increased pelt prices could be expected to have minimal influence on hunting take of bobcats. (Only three hunters have taken more than one bobcat in the past three years.) Only a small proportion of the bobcats harvested in the State were reported as exported, further indicating the minor impact of export on that population. The harvest rate has been sufficiently low (no more than 30 per year) that the population, which has been estimated by State biologists at 500 or more, could more than make up that loss each year by normal recruitment. The original density estimate was extrapolated only to better habitat, ignoring agricultural land which is probably also utilized. The estimate has recently been confirmed by use of a density estimate derived from nearby similar habitat in New York.

The State has now aged and analyzed additional specimens, resulting in samples of 22 for 1978–79 and 16 for

1979–80. These samples are large enough for a valid statistical comparison, and are not significantly different (Kolmogorov-Smirnov test), indicating no change in the age structure between the two seasons, and allowing the samples to be combined for a total sample of 38. Of these 38, nearly 24 percent are 3.5 years or older and seven individuals are over 6.5 years. Such a proportion of older animals is characteristic of a healthy population, not one heavily impacted by harvest. In addition, 19 animals, or 50 percent, are first-year animals, demonstrating a high level of successful breeding and providing further assurance of no detriment to the population.

In conclusion, neither the range of occurrence nor the location of harvest has demonstrably changed over recent time, indicating stability of distribution. The distribution of old and young age classes among the population sampled indicates continued healthy recruitment. The areas either closed to hunting and trapping, or controlled as public lands, promise continuing refuges and suitable habitat for bobcats. The recent corroboration of population density estimates gives even greater weight to finding the impact of export trade on the Massachusetts population of bobcats to be non-detrimental.

The Court's Opinion stated for Massachusetts:

> The Court concludes that ESSA's finding of no-detriment is inadequate notwithstanding the state's harvest quota. (1) Population estimates are tenuous and outdated and based on troublesome assumptions. (2) The most recent age structure analysis of that population is unsatisfactory.

The Court's concerns about population estimates (point 1 of Opinion), based on testimony concerning the State, apparently are that the State's population estimate is based on an extrapolation of a three-year study done in the early 1970's. Total population estimates can be useful in providing general guidelines, when used in conjunction with other information, but are not a necessary element of wildlife management or of findings on nondetriment. The validity and usefulness of the State's population estimate has been strengthened by the new information presented, although a finding of no detriment could be made without it in this case.

The Court criticized the State (Opinion, point 2) as having an unsatisfactory age structure analysis, apparently based on testimony (p. 372 of transcript) that only nine animals from 1977 had been analyzed. No testimony discussed an additional 15 animals that had previously been analyzed from 1978–79 in a letter which plaintiffs apparently did not have in their original records (p. 822–823 of transcript) but which is part of the official record. The even larger sample that has now been analyzed demonstrates more clearly that the relative abundance of the different age classes is characteristic of a healthy population.

*New Mexico.* Since the Court hearing, the New Mexico Legislature has granted authority for management of bobcat to the New Mexico Department of Game and Fish, effective April 1, 1980. The new legislation gives the agency full authority to limit seasons, set bag limits, or carry out other methods of limiting harvest and controlling trapping pressure as necessary. For other States, such methods of harvest limitation have been considered more effective than a Federal export quota for assuring a level of export which is not detrimental. New Mexico has requested that their previously assigned export quota of 6,000 be reduced to 4,000, which is below their recent harvest levels. New Mexico has now provided the Service with a detailed analysis of 4,401 bobcats from the 1978–79 season and 4,569 from the 1977–78 season. This analysis includes a breakdown by county, game management region, month, age, and sex. Analysis of trapper effort for the 1978–79 season includes details, for each of 32 counties and nine management regions, of catch per trapper, catch per square kilometer, and trappers per square kilometer. The State has also prepared a mathematical model, based on this large number of specimens, which analyzes the two seasons for each of the nine management regions. This model compares observed survival and replacement rates to those expected in a stable population at equilibrium. The expected equilibrium rates have been independently calculated in two ways. The first uses a theoretical population, assuming a maximum age of 16 years and a constant mortality rate. The second is derived from an actual age distribution from 367 female specimens. Both methods produce nearly identical results. By comparing the actual and expected values for each of the nine management regions between years, the model demonstrates that all tested segments of the State population have been near or above equilibrium levels, and that trapping mortality has been insignificant relative to normal environmental mortality factors. Because adjacent management regions with similar habitats show similar trends, the usefulness of the model is further confirmed. The model provides confidence that the past effect of trapping has not been detrimental to the population, and therefore, that export is not detrimental. The new availability of controls allows the State to anticipate and respond effectively in the future. The new law requires that bobcat trappers be subject to all laws regarding trapping, thus providing more control over the extent of harvest pressure, and allowing even better data gathering.

The Court's Opinion stated for New Mexico:

> The Court finds for plaintiff. (1) Presently the state of New Mexico is without authority to manage the bobcat, since it is classified as a predator. (2) The ESSA imposed quota of 6,000 is far in excess of past harvest estimates. (3) The trapping pressure on bobcat populations is not known. (4) There are no bag or possession limits. (5) What recent harvest data the state had in its possession had not been analyzed at the time New Mexico made its submission to ESSA.

The recently granted authority for management of bobcat directly responds to the first point cited in the Court Opinion regarding New Mexico, and has important effects on the second, third, and fourth points raised by the Court. The analysis of data described above now provides sufficient grounds, in connection with the authority of the New Mexico Department of Game and Fish to manage the bobcat, for a finding that export of bobcats harvested in that State will not be detrimental to the survival of the species.

**ENVIRONMENTAL ASSESSMENT:** The ESSA previously reviewed the potential effects of export findings for possible environmental impacts (43 FR 29475, July 7, 1978). The conclusion of that review was that approval of export generally would not be a major Federal action "significantly affecting the quality of the human environment" within the meaning of the National Environmental Policy Act, section 102(2)c. The Service concurs with that previous analysis, and considers that the present proposed action falls within its scope.

Dated: May 19, 1980.

**Lynn A. Greenwalt,**

*Director, Fish and Wildlife Service.*

[FR Doc 80-15752 Filed 5-20-80; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 45, No. 100
Wednesday, May 21, 1980

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

### Forest Service

### Garland, Hot Springs, Howard, Logan, Montgomery, Perry, Pike, Polk, Saline, Scott, Sebastian, Yell Counties, Arkansas, and LeFlore and McCurtain Counties, Okla.; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an environmental impact statement for the Ouachita National Forest Land and Resource Management Plan.

Public Law 94–588 (National Forest Management Act of 1976) directs the Secretary of Agriculture to develop land and resource management plans for units of the National Forest System in accordance with regulations prepared under the Act. The resulting land and resource management plan will provide for multiple use and sustained yield of goods and services from the Ouachita National Forest.

The planning process will integrate all resource planning—timber, range, fish and wildlife, water, wilderness, and recreation—together with resource protection and resource use activities. The process will be issue-oriented, i.e., public issues, management concerns, and development opportunities will be analyzed continually throughout the process.

A reasonable range of alternatives will be formulated by an interdisciplinary team to provide different ways to address and respond to the major public issues, management concerns, and resource opportunities identified during this planning process.

Alternatives will reflect a range of resource outputs and expenditure levels. In formulating these alternatives, the following criteria will be met:

(1) Each alternative will be capable of being achieved:

(2) A no-action alternative will be formulated, that is the most likely condition expected to exist in the future if current management direction would continue unchanged;

(3) Each alternative will provide for orderly elimination of backlogs of needed treatment for the restoration of renewable resources as necessary to achieve the multiple-use objectives of that alternative.

(4) Each identified major public issue and management concern will be addressed in one or more alternatives; and

(5) Each alternative will represent to the extent practicable the most cost efficient combination of management practices examined that can meet the objectives established in the alternative. Each alternative will state at least:

(1) The condition and uses that will result from long-term application;

(2) The goods and services to be produced, and the timing and flow of these outputs;

(3) Resource management standards and guidelines; and

(4) The purposes of the management direction proposed.

As an early step in the planning process, Federal, State, and local agencies, organizations, and individuals who may be interested in, or be affected by the decision will be invited to participate in a scoping process which includes: (a) identification of those issues to be addressed; (b) identification of those issues to be analyzed in depth; and (c) identification of those issues which are not significant, or which have been covered by prior environmental review. To accomplish this scoping effort, the Ouachita National Forest will send out information in early June, 1980. The information will be sent to and comments solicited from Federal, State, and local agencies, organizations, and individuals who have expressed an interest in National Forest Planning. The comment period will extend to July 30, 1980.

Written comments should be sent to: Forest Supervisor John V. Orr, Ouachita National Forest, P.O. Box 1270, Hot Springs, Arkansas 71901. The commercial telephone number is 501–321–5202.

The draft environmental impact statement and plan will be available by February, 1982 for a 90-day comment period. The final environmental impact statement and plan is scheduled for completion in September, 1982.

Lawrence M. Whitfield, Regional Forester, Southern Region of the Forest Service, is the responsible official for approval of the environmental impact statement and plan.

For further information about the planning process or the environmental impact statement, contact E. J. Wenner, Jr., Team Leader, Interdisciplinary Team, Ouachita National Forest (501–321–5202).

Dated: May 12, 1980.

**James S. Sabin, Jr.,**

*Acting Regional Forester.*

[FR Doc. 80–15525 Filed 5–20–80; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Kentucky Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kentucky Advisory Committee of the Commission will convene at 1:00 P.M. and will end at 4:00 P.M. on June 11, 1980, at Freedom Way at the Fairgrounds. Executive East, Dolphin Room, Louisville, Kentucky.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southern Regional Office of the Commission, Citizen Trust Bank Building, Room 362, 75 Piedmont Avenue, N.E. Atlanta, Georgia 30303.

The purpose of this meeting is to discuss meeting held with members of the Governor's staff re: the Kentucky State Police Study and plan for the Fair Housing Followup Study.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., May 16, 1980.

**Thomas L. Neumann,**

*Advisory Committee Management Officer.*

[FR Doc. 80–15505 Filed 5–20–80; 8:45 am]

BILLING CODE 6335–01–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[Docket No. 7-80]

### Proposed Foreign-Trade Zone, City of Detroit, Mich.; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Detroit, a Michigan public corporation, requesting authority to establish a general-purpose foreign-trade zone in the City, within the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 14, 1980. The applicant is authorized to make this proposal under Chapter 447, Act 154, Michigan Public Acts of 1963, effective September 6, 1963 (MSA 21.302(1)).

The proposal calls for the establishment of a 5-acre general-purpose zone on a 16-acre tract recently acquired by the City as an expansion of the Clark Street Port facility, near downtown Detroit and less than 1 mile from the Ambassador Bridge border crossing into Windsor, Canada. The City would assign zone administrative responsibilities to the Detroit/Wayne County Port Authority, a non-profit multi-jurisdictional board, and the zone operator would be the Detroit Marine Terminals, Inc., a local terminal operator. Initially a 10,000 square foot warehouse structure will be built on the site.

The application contains economic data and information concerning the need for a zone in Detroit. Several firms have indicated their intention to use the requested zone area for warehousing, assembly, processing, distribution and light manufacturing activities involving such products as auto accessories, gas heating equipment, non-ferrous metals, alcoholic beverages, and meat products.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report thereon to the Board. The committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; Louis A. Mezzano, District Director, U.S. Customs Service, 477 Michigan Avenue, Detroit, Michigan 48226; and Colonel Robert V. Vermillion, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48226.

As part of its investigation, the Examiners Committee will hold a public hearing on June 19, 1980, beginning at 9:00 am., in Room 859 (Eighth floor), U.S. Courthouse, 231 West La Fayette, Detroit. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2862) by June 12, 1980. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through July 21, 1980. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the Director, U.S. Department of Commerce District Office, Federal Building, Room 445, 231 West La Fayette, Detroit, Michigan 48226;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886–B, 14th and E Streets NW., Washington, D.C. 20230.

Dated: May 14, 1980.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 80-15528 Filed 5-20-80; 8:45 am]

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[Docket No. 8-80]

### Proposed Foreign-Trade Zone and Subzone Facilities, Greater Detroit Metropolitan Area; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc. (GDFTZ), a nonprofit Michigan corporation affiliated with the Greater Detroit Chamber of Commerce, requesting authority to establish a general-purpose foreign-trade zone in the City of Dearborn, Wayne County, and special-purpose subzone in the City of Romeo, Macomb County, adjacent to the Detroit Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 14, 1980. The applicant is authorized to make this proposal under Chapter 447, Act 154, Michigan Public Acts of 1963, effective September 6, 1963 (MSA 21.302(1)).

The proposed general-purpose zone would be established at the Woodfab Company distribution complex on a 5.5-acre tract located at 6700 Chase Road, off I–94 in the City of Dearborn, some 5 miles west of downtown Detroit and 10 miles from the Detroit Metropolitan Airport. Woodfab would be the zone operator and would commence its zone activity within an existing 75,000 square foot structure. Expansion can be accommodated within the requested tract or at the operator's 60-acre land bank located adjacent to the Detroit Metropolitan Airport. Initial zone activities would consist of warehousing, assembly, processing, exhibition and light manufacturing on a variety of products including bearings, chemicals, snow melting equipment, plumbing supplies, fishing rods, and graphic arts materials.

The special-purpose subzone would be established at the 257-acre tractor assembly plant of the Ford Motor Company located at 701 East 32 Mile Road in the City of Romeo, Macomb County, about 35 miles north of Detroit. The site consists of over one million square feet of space devoted to the manufacture of components for and the assembly of agricultural and industrial tractors. Owned by the Ford Motor Company, the plant facility currently employs 2,250 people.

Currently about 90% of the Romeo plant's output is sold in the U.S. in direct competition with certain foreign-made tractors which are imported duty-free. The company is presently paying Customs duties ranging from 3 to 18 percent on some of its imported components. Subzone status is being requested to eliminate duty assessments on these parts, thus helping make the plant more competitive with foreign plants.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report thereon to the Board. The committee consists of: Hugh J. Dolan (Chairman), Office of the Secretary, U.S. Department of Commerce, Washington, D.C. 20230; Louis A. Mezzano, District Director, U.S. Customs Service, 477 Michigan Avenue, Detroit Michigan 48226; and Colonel Robert V. Vermillion, District Engineer,

U.S. Army Engineer District, Detroit, P.O. Box 1027, Detroit, Michigan 48226.

As part of its investigation, the Examiners Committee will hold a public hearing on June 19, 1980, beginning at approximately 11:00 a.m. in Room 859 (Eighth floor), U.S. Courthouse, 231 West La Fayette, Detroit. It will begin immediately following the hearing to be held starting at 9:00 a.m. concerning a foreign-trade proposal by the City of Detroit (Doc. #7–80). The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expressions of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2862) by June 12, 1980. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the Examiners Committee, care of the Executive Secretary, at any time from the date of this notice through July 21, 1980. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the Director, U.S. Department of Commerce District Office, Federal Building, Room 445, 231 West La Fayette, Detroit, Michigan 48226;

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 6886–B, 14th and E Streets, NW, Washington, D.C. 20230.

Dated: May 14, 1980.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 80–15527 Filed 5–20–80; 8:45 am]

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## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcing Imposition of Import Restraint Levels for Certain Cotton and Man-Made Fiber Apparel From the People's Republic of China

May 19, 1980.

**AGENCY:** Committee for the Implementation of Textile Agreements.

**ACTION:** Establishing import restraint limits for cotton gloves in Category 331, women's, girls' and infants' cotton knit blouses in Category 339, men's and boys' woven cotton shirts in Category 340, men's and boys', women's, girls' and infants' cotton trousers in Category 347/348 and men's and boys', women's, girls' and infants' man-made fiber sweaters in Category 645/646, produced or manufactured in the People's Republic of China and exported to the United States during the twelve-month period beginning on May 31, 1980 and extending through May 30, 1981. Products in these categories, exported to the United States during the previous restraint period, but not entered, are also subject to these restraints.

**SUMMARY:** On May 19, 1980, the Government of the United States informed the Government of the People's Republic of China that the import restraint limits invoked under Section 204 of the Agricultural Act of 1956, as amended, on cotton and man-made fiber apparel in Categories 331, 339, 340, 347/348 and 645/646 are being imposed for the twelve-month period beginning on May 31, 1980 at the same levels established for those categories during the year which began on May 31, 1979.

**EFFECTIVE DATE:** May 31, 1980.

**NOTE:** Since additional discussions with the Government of the People's Republic of China on a bilateral textile agreement may take place, the letter published below is subject, therefore, to termination or revision as a result of those discussions.

**FOR FURTHER INFORMATION CONTACT:** Carl Rutha, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230. (202/377–5423).

**SUPPLEMENTARY INFORMATION:** On June 6, 1979, there was published in the **Federal Register** (44 FR 32433) a letter dated June 5, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that, effective on June 11, 1979 and for the twelve-month period beginning on May 31, 1979 and extending through May 30, 1980, the amounts of cotton and man-made fiber textile products in Categories 331, 339, 340, 347/348 and 645/646, produced or manufactured in the People's Republic of China, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, be limited to certain designated levels. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to impose levels of restraint for Categories 331, 339, 340, 347/348 and 645/646, in the twelve-month period beginning on May 31, 1980 and extending through May 30, 1981 at the same levels in effect for those categories during the twelve-month period which began on May 31, 1979.

**Paul T. O'Day,**

*Chairman, Committee for the Implementation of Textile Agreements.*

May 19, 1980.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, D.C. 20229.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on May 31, 1980 and for the twelve-month period extending through May 30, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 331, 339, 340, 347/348, aand 645/646, produced or manufactured in the People's Republic of China, in excess of the following levels of restraint:

| Category: | *12-month level of restraint* |
|---|---|
| 331 | 2,946,006 dozen pairs. |
| 339 | 535,659 dozen. |
| 340 | 354,613 dozen. |
| 347/348 | 1,068,632 dozen. |
| 645/646 | 334,834 dozen. |

Cotton and man-made fiber textile products in the foregoing categories that have been exported before, as well as on and after, May 31, 1980, shall be subject to this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports of cotton and man-made fiber textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5

U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 80-15783 Filed 5-20-80; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

### Evaluation of Health Risks of Formaldehyde by Government Scientists

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of evaluation by government scientists of the human health risks of formaldehyde exposure.

**SUMMARY:** The Commission announces that it has requested a group of scientists from the federal government to evaluate the risk to humans of exposure to formaldehyde. In making this evaluation, the panel of scientists will consider information relating to chronic human experience, animal carcinogenicity, mutagenicity, and the effects of formaldehyde on teratology and reproduction. The panel hopes to complete its evaluation by the end of July, 1980. The panel may hold public meetings at which interested persons will be allowed to present information. In addition, interested persons who wish to submit written information to be considered by the panel may do so.

**DATES AND ADDRESSES:** Persons wishing to submit written information to be considered by the panel should do so by June 20, 1980. The information should be submitted to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C., 20207 and should be entitled; *Evaluation of Health Risks of Formaldehyde.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Andrew Ulsamer, Directorate for Health Sciences, CPSC (301) 492-6957.

**SUPPLEMENTARY INFORMATION:** The Commission is concerned about the potential adverse health effects that may be associated with exposure of humans to formaldehyde. On October 16, 1979, representatives of the Formaldehyde Institute, an industry trade association, informed the Commission that preliminary test results from the Chemical Industry Institute for Toxicology (CIIT), a scientific organization supported by thirty-six U.S. chemical corporations, indicated that formaldehyde had caused nasal cancer in some laboratory rats. The test results reported in January by CIIT showed that the inhalation of 15 ppm of formaldehyde caused the development of additional squamous cell carcinomas of the nasal cavity in rats. (A total of 37 rats, males and females, were affected.)

In January 1980 representatives of the CPSC and other federal agencies visited CIIT to review this ongoing study. The findings of carcinogenicity in rats exposed to 15 ppm of formaldehyde were confirmed by the six government pathologists participating in this review.

To help assess the human health implications of this study and the health implications of exposure to formaldehyde, the Commission has requested a group of scientists from the federal government to consider this matter. This request has been made under the auspices of the National Toxicology Program. Dr. Griesemer of the National Cancer Institute will coordinate the activities of this group of scientists. The group has been divided into five sections with membership as follows:

**Formaldehyde Panel**

Dr. Richard Griesmer (Chairman), National Cancer Institute.
Dr. Andrew Ulsamer, (Liaison), Consumer Product Safety Commission.

*Animal Carcinogenicity*

*Dr. Paul Netteschein, National Inst. of Environmental Health Sciences.
Dr. Joseph Arcos, Environmental Protection Agency.
Dr. Umberto Saffiotti, National Cancer Institute.
Dr. Elizabeth Weisburger, National Cancer Institute.
Dr. David Groth, National Inst. for Occupational Safety and Health.

*Epidemiology*

*Dr. Aaron Blair, National Cancer Institute.
Dr. John Gamble, National Inst. for Occupational Safety and Health.
Dr. William Lloyd, Occupational Safety and Health Administration.
Dr. Richard Everson, National Inst. of Envir. Health Sciences.
Dr. Richard Keenlyside, National Inst. for Occupational Safety & Health.

*Mutagenicity*

*Dr. Frederick DeSerres, National Inst. of Envir. Health Sciences.

*Reproduction/Teratology*

*Dr. James Beall, Department of Energy.
*Dr. Thomas Collins, Food and Drug Administration.

*Risk Assessment*

*Dr. David Gaylor, National Center for Toxicological Research.

The group of scientists will examine data relevant to the general areas of carcinogenicity, epidemiology, mutagenicity, and reproduction/teratology in assessing the human health implications of exposure to formaldehyde.

(At the conclusion of this notice the Commission has provided a list of published and unpublished studies relating to the four major reference categories of data listed above)

As part of the carcinogenicity evaluation the panel will consider the effects of irritants on carcinogenicity and past experience with nasal carcinogenicity in animals and humans.

In evaluating the CIIT study, the panel will consider the following questions:

a. Is there evidence indicating that formaldehyde may be tumorgenic/carcinogenic at doses other than 15 ppm?

b. Are there confounding factors in the CIIT study such as the irritating properties of formaldehyde, viral infection, special susceptibility of the rat to irritants, or protocol defects. If so, what are the relative merits of these factors?

c. What conclusions can be drawn from the tumorgenic/carcinogenic results in the CIIT study?

In addition to the above questions, the panel will consider the following questions on potential human carcinogenicity:

a. What is the applicability of the conclusions in response to question (c), above, to the human situation?

b. If it is determined that the CIIT data are applicable to humans, then what are the confounding factors and how do they impact in the human situation? For example, what is our experience in relating animal data from other irritant carcinogens to the human situation? How do other formaldehyde studies in animals and epidemiological studies affect conclusions about the human carcinogenicity of formaldehyde? Do short term mutagenicity data support findings of carcinogenicity?

c. What conclusions can be reached concerning the human carcinogenicity of formaldehyde? Are there conditions to these conclusions?

d. Are there additional data needed?

e. Are these findings relevant to exposure from other routes?

f. Is there evidence that formaldehyde is teratogenic or causes reproductive effects?

The group of scientists hopes to complete its evaluation by the end of July 1980. Although at the present time no public meetings have been scheduled, the panel may hold public meetings at which interested persons may present information on the issues being considered. Any such meetings will be announced in the Commission's Public Calendar, which is available from

*Individual responsible for section.

the Office of the Secretary of the Commission.

In order to assist in this investigation into the risk to humans from exposure to formaldehyde, the Commission requests interested persons to make available any additional information or data they may have that is relevant to the issues being considered by the panel. Any information should be submitted by June 20, 1980.

(Section 2, 27, Pub. L. 92-573, 86 Stat. 1207, 1228 (15 U.S.C. 2051,2076).)

Dated: May 16, 1980.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

**Carcinogenesis**

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Carcinogenicity

1. Mitchell and Nettesheim. Lifetime exposure of hamsters to formaldehyde and benzo(a)pyrine. (Unpublished).
2. Dalbey and Nettesheim. Lifetime exposure of hamsters to formaldehyde and diethyl nitrosamine. (Unpublished).
3. CIIT, Triangle Park, N.C. Lifetime exposure of rats and mice to formaldehyde (ongoing).
4. Rush, G.M. et al. Inhalation studies with combined formaldehyde hydrogen chloride vapors (unpublished). Inhalation studies with formaldehyde is in progress.

Mutagenicity

1. Dr. Zeiger, NIEHS—Ames test and malignant cell transformation (ongoing).
2. Dr. Caspary, NCI—Ames test, Unscheduled DNA synthesis, and malignant cell transformation (ongoing).
3. CIIT, Triangle Park, N.C.—Ames test, Unscheduled DNA synthesis, malignant cell transformation and sister chromosome exchange (ongoing).

Human Experience

1. Weiss, H., Infant mortality in mobile home residents vs non-mobile home residents. (Unpublished).
2. NCI—(a) Embalmers in New York—Mortality study (ongoing).
(b) Embalmers in California—Mortality study (ongoing).
(c) Medical Technologists in California—Mortality study (ongoing).
3. Matanoski, G.—Mortality study of pathologists (ongoing).
4. NAS—Cohort study of Veterinarians (ongoing).
5. EPA-M. Woodbury mobile home study in Wisconsin—Home formaldehyde vapor and health effects.
6. CIIT—a) Embalmers in West Virginia—chronic obstructive respiratory disease incidence. (Unpublished)
b) Embalmers Ontario, Canada—mortality study (ongoing).
7. Kessler, I.I., Baltimore—High risk occupational groups (ongoing).
8. Lee, W.R., England—Textile workers—Respiratory and other tumors (ongoing).
9. NIOSH—Workers in paper, pulp, and plywood industry (ongoing).
10. Thun, M., New Jersey—Morbidity risk factors and formaldehyde release in U.F. Foam insulated houses (unpublished).
11. Breysse, P.A., University of Washington—Formaldehyde exposure in mobile homes (ongoing).
12. William, L.P.—State health, Portland, Oregon—Survey of mobile home residents in two different climate regions—coastal and inland (ongoing).

[FR Doc. 80-15616 Filed 5-20-80; 8:45 am]
BILLING CODE 6355-01-M

## DEFENSE COMMUNICATIONS AGENCY

### Scientific Advisory Group; Closed Meeting

The DCA Scientific Advisory Group will hold closed meetings on 19 and 20 June 1980. The 19 and 20 June meetings will be at the Defense Communications Agency, Director's Management Information Center at Headquarters, Defense Communications Agency, 8th Street and South Courthouse Road, Arlington, Virginia.

The subject of the meetings will be Post-Attack Command, Control & Communications.

Any person desiring information about the Advisory Group may telephone (Area Code 202–692–1765) or write Chief Scientist—Associate Director, Technology, Headquarters, Defense Communication Agency, 8th Street and South Courthouse Road, Arlington, Virginia 22204.

These meetings are closed because the material to be discussed is classified requiring protection in the interest of National Defense.

**Sheridan L. Risley,**

*Committee Management Officer.*

[FR Doc. 80-15552 Filed 5-20-80; 8:45 am]
BILLING CODE 3610-05-M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### USAF Scientific Advisory Board, Meeting

May 12, 1980.

The USAF Scientific Advisory Board Aeronautics Panel Task on Aeropropulsion System Test Facility will meet on June 11, 1980 at the Arnold Engineering Development Center, Tullahoma, TN. The purpose of the meeting is to review the Aeropropulsion System Test Facility program. The Panel will meet from 8:30 a.m. to 5:00 p.m.

This meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at (202) 697–8845.

**Carol M. Rose,**

*Air Force Federal Register, Liaison Officer.*

[FR Doc. 80–15528 Filed 5–20–80; 8:45 am]

BILLING CODE 3910–01–M

### USAF Scientific Advisory Board; Meeting

May 12, 1980.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel will meet on June 24 & 25, 1980 at HQ Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio. The purpose of the meeting is to plan the Cross-Matrix Panel's activities for the next eighteen months. The Panel will meet from 8:30 a.m. to 5:00 p.m. each day.

This meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697–8845.

**Carol M. Rose,**

*Air Force Federal Register, Liaison Officer.*

[FR Doc. 80–15529 Filed 5–20–80; 8:45 am]

BILLING CODE 3910–01–M

### Office of the Secretary

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group B (Mainly Low Power Devices) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session 26 June 1980, at 201 Varick Street, 9th Floor, New York, New York 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The low power device area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. I, 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

**M. S. Healy,**

*OSD, Washington Headquarters Services, Department of Defense.*

May 16, 1980.

[FR Doc. 80–15591 Filed 5–20–80; 8:45 am]

BILLING CODE 3810–70–M

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session on 26 June 1980, at the Westinghouse Corporation, Westinghouse Circle, Horseheads, New York 14845.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as infrared and night vision sensors. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. I, 10(d) (1976), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

**M. S. Healy,**

*OSD, Washington Headquarters Services, Department of Defense.*

May 16, 1980.

[FR Doc. 80–15590 Filed 5–20–80; 8:45 am]

BILLING CODE 3810–70–M

### Privacy Act of 1974; Systems of Records: Deletions and Amendments

**AGENCY:** Office of the Secretary of Defense (SD).

**ACTION:** Notification of deletions and amendments to systems of records.

**SUMMARY:** The Office of the Secretary of Defense proposed to delete three and amend three systems of records subject to the Privacy Act of 1974. The deleted systems and reasons for their deletions are specifically set forth below under "Deletions." The three systems being amended are set forth below under "Amendments."

**DATES:** These systems shall be deleted and amended as proposed without further notice on June 20, 1980 unless comments are received on or before June 20, 1980, which would result in a contrary determinations and require republication for further comments.

**ADDRESS:** Privacy Act Officer, Office of the Secretary of Defense, Room 5C315, Pentagon, Washington, D.C. 20301.

**FOR FURTHER INFORMATION CONTACT:** Mr. James S. Nash, telephone: 202–695–0970.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense (OSD) systems of records notices as prescribed by the Privacy Act have been published in the **Federal Register** as follows:

FR Doc. 79–370542 (44 FR 74088) December 17, 1979.

FR Doc. 80–7517 (45 FR 15604) March 11, 1980.

FR Doc. 80–8135 (45 FR 17056) March 17, 1980.

FR Doc. 80–13709 (45 FR 29390) May 2, 1980.

FR Doc. 80–13707 (45 FR 29590) May 5, 1980.

The proposed deletions and amendments are not within the purview of the provisions of the Office of Management and Budget (OMB) Circular A–108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act. This OMB guidance was set forth in the **Federal Register** (40 FR 45877) on October 3, 1975.

May 16, 1980.

**M. S. Healy,**

*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*

*Deletions*

**DCOMP SP02**

**SYSTEM NAME:**

Industrial Personnel Security Clearance Case Files (44 FR 74098, December 17, 1979).

**REASON:**

This system has been redesignated as DGC 04, appearing with minor revisions in the amendments section of this document.

**DCOMP SP03**

**SYSTEM NAME:**

Administrative Files on Active Psychiatric Consultants to DoD (44 FR 74099, December 17, 1979).

**REASON:**

This system has been redesignated as DGC 05, appearing with minor revisions in the amendments section of this document.

**DCOMP SP04**

**SYSTEM NAME:**

Motions for Discovery of Electronic Surveillance Files (44 FR 74100, December 17, 1979).

**REASON:**

This system has been redesignated as DUSDPR 01, appearing with minor revisions in the amendments section of this document.

Amendments

Following the identification code of the OSD record system and the specific changes made therein, the complete revised record system, as amended, are published in their entirety. Citations are in the December 17, 1979, issue of the **Federal Register** for all of the OSD systems of records.

**DGC 04**

**SYSTEM NAME:**

Industrial Personnel Security Clearance Case Files (44 FR 74098, December 17, 1979).

**CHANGES:**

**SYSTEM LOCATION:**

Delete the entire entry, and insert:

"Primary System and Decentralized Segments—Active case files, Directorate for Industrial Security Clearance Review (DISCR), Office of the Assistant General Counsel for Fiscal Matters, OAGC(FM), Office of the General Counsel (OGC), Department of Defense of Defense (DoD), Pentagon, Washington, D.C. 20301.

Inactive case files, U.S. Army Investigative Records Repository, Fort Meade, Maryland 20755."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete the entry under the above heading, and insert:

"Government contractor employees whose industrial security clearance cases were referred to the OAGC(FM), DISCR, for adjudication under Executive Order 10865, as amended by Executive Order 10909, as implemented by DoD Directive 5220.6; these cases pertain only to the individuals who cannot be granted clearance by the Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA), Columbus, Ohio."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

In the second paragraph under this heading, change the comma in the third line to a period. Also, in the fifth line, change the word "documentation" to "documents".

In the third paragraph, delete the words within the parenthesis.

In the forth paragraph, third line, beginning with the word "anticipation", delete the rest of the paragraph, and insert: "order to furnish an index and register of administrative determinations under the Freedom of Information Act (FOIA), Pub. L. 93–502, Section 552.a(2)(C) of Title 5, United States Code."

Delete the fifth paragraph, and insert:

"Additionally, correspondence files include copies of Screening Board determinations and Appeal Board determinations from July 1967 to date in order to furnish an index and register of administrative determinations under the Freedom of Information Act (FOIA), Pub. L. 93–502, Section 552.a(2)(C) of Title 5, United States Code.

All final decisions in cases arising under DoD Directive 5220.6, since 1967, are published and indexed for public perusal. Names of applicants, witnesses, sources of information, etc., and identifying information, relative to those persons are deleted from these records to protect the privacy of persons involved."

In the seventh paragraph, beginning with the word "Counsels' ", delete the rest of the paragraph, and insert: "Counsel's Office and Screening Board, DISCR."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete "December 7, 1966." in the third line and insert: "January 17, 1961, and DoD Directive 5220.6, 'Industrial Personnel Security Clearance Program' dated December 20, 1976."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete the entire entry under the above heading and insert:

"The purpose and use of this record system is to determine whether it is clearly consistent with the national interest to grant or continue an individual's access to classified information.

*Internal users, uses and purposes:*

DISCO, DLA, initiates investigation at request of employer and may grant but not deny clearance.

OAGC(FM), DISCR, determines individual's eligibility for security clearance and notifies the individual, and DISCO, DLA, of final decision.

U.S. Army, JAG, U.S. Army Claims Services, Ft. Meade, Maryland 20755 in cases where claims for reimbursement are requested by an applicant.

*External users, uses, and purposes:*

Department of Justice in cases where individual seeks Federal court review of adverse administration determinations under the Industrial Security Clearance Program."

**SAFEGUARDS:**

Delete the second sentence under this entry.

**RETENTION AND DISPOSAL:**

Delete the first two paragraphs under this heading, and insert:

"Destroyed 25 years after file is no longer active.

Primary alphabetical card index files are retained permanently in Central Office, DISCR. Alphabetical Index Cards for case control purposes in sub-offices, i.e., Screening Board, Department Counsel's Office and Appeal Board are retained during active processing of cases and then destroyed."

In the third paragraph, insert the word "are" between the words "Files" and "destroyed."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete the entry under the above heading, and insert:

"The Assistant General Counsel for Fiscal Matters, AGC (FM), Directorate for Industrial Security Clearance Review (DISCR), Pentagon, Washington, D.C. 20301."

**NOTIFICATION PROCEDURE:**

Delete the entry under the above heading, and insert:

"Information may be obtained from: OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301. Telephone: 202–697–8350."

**RECORD ACCESS PROCEDURE:**

In the first paragraph, line one, delete "ODASD(SP)," and insert: "OAGC(FM),".

In the second paragraph, second line, insert "(SSN)" after the words "Social Security Number".

Delete the remainder of the entry under the above heading, and insert:

"The records requested and available, subject to statutory exemptions, may be made available to the record subject for review at the following locations:

Directorate for Industrial Security Clearance Review (DISCR), Office of the General Counsel, DoD, Room 3D282, Pentagon, Washington, D.C. 20301.

Administrative Director, Eastern Hearing Office DISCR, Office of the General Counsel, DoD, 26 Federal Plaza, Room 36–112, New York, New York 10007.

Administrative Director, Western Hearing Office DISCR, Office of the General Counsel, DoD, 9920 S. LaCienega Blvd., Suite 1026, Inglewood, California 90301.

Fees for copies must be borne by the record subject or his authorized representative requesting the review of the records."

**CONTESTING RECORD PROCEDURES:**

Delete the third line, and insert: "are contained in 32 CFR 286b and OSD Administrative instruction No. 81."

**RECORD SOURCE CATEGORIES:**

Delete entry under the above heading, and insert:

"Defense Investigative Service (DIS); Office of the Secretary of Defense (OSD); Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA); U.S. Army Investigative Records Repository; record subjects; attorneys or representatives."

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Delete the entry under the above heading and entry, and insert:

"Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5)."

**DGC 05**

**SYSTEM NAME:**

Administrative Files on Active Psychiatric Consultants to Department of Defense (DoD). (44 FR 74099, December 17, 1979)

**CHANGES:**

**SYSTEM LOCATION:**

Delete the second and third lines under the above heading, and insert: "Office of the Assistant General Counsel for Fiscal Matters, OAGC(FM), Office of the General Counsel, DoD."

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

In the forth line, add the work "the" between the words "in" and "performance".

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete the entry under the above heading, and insert:

"DoD Directive 5220.6, 'Industrial Personnel Security Clearance Program,' December 20, 1076; Executive Order 10865, February 20, 1960, as amended by Executive Order 10909, January 17, 1961."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Delete the first word of the first paragraph under the above heading, and insert the following words: "The purpose of this system".

Delete the second paragraph under the above heading, and insert the following:

*"Internal users, uses, and purposes:*

Psychiatric consultants having active professional service agreements with and having been granted security clearance by the Department of Defense (DoD) are used by DISCR, OAGC(FM), and Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA), in processing requests for industrial personnel security clearance of individuals.

*External users, uses, and purposes:*

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

**SAFEGUARDS:**

Delete the second sentence under the above heading.

**RETENTION AND DISPOSAL:**

Delete the entire entry under the above heading, and insert:

"Destroy six months after agreement between consultant and DoD has been terminated."

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete the entry under the above heading, and insert:

"The Assistant General Counsel for Fiscal Matters, AGC(FM), Directorate for Industrial Security Clearance Review, Pentagon, Washington, D.C. 20301."

**NOTIFICATION PROCEDURE:**

Delete the second line under the above heading, and insert:

"OAGC(FM), DISCR"

Also, add the following to the last line of the address:

"Telephone: 202–697–8350".

**RECORD ACCESS PROCEDURES:**

In the first paragraph under the above heading, delete "ODASD(SP),", and insert: "OAGC(FM),".

Delete the third and fourth paragraphs under the above heading, and insert:

"The records requested may be made available to individuals for review at the following location: DISCR, OAGC(FM), Room 3D282, Pentagon, Washington, D.C. 20301".

**CONTESTING RECORD PROCEDURES:**

Delete the third line under the above heading, and insert: "are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

**RECORD SOURCE CATEGORIES:**

Delete the entry under the above heading, and insert:

"Copy of Letter of Consent (for security clearance), DISCO Form 560, and correspondence with individual psychiatrists."

**DUSDPR 01**

**SYSTEM NAME:**

Motions for Discovery of Electronic Surveillance Files (44 FR 74100, December 17, 1979).

**CHANGES:**

In the above system name, add the word "DoD" before the word "Motions".

System location:

**DELETE THE ENTIRE ENTRY UNDER THE ABOVE HEADING, AND INSERT:**

"Primary System—Counterintelligence and Investigative Programs Directorate, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301."

**CATEGORIES OF RECORDS IN THE SYSTEM:**

In the fourth line, beginning with the word "and", delete the remainder of the paragraph, and insert: "copies of DoD Components' responses to the Office of the Secretary of Defense (OSD), and copies of OSD's responses to the Department of Justice."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete the entry under the above heading, and insert:

"Title 28, United States Code, Section 516, 'Conduct of Litigation Reserved to Department of Justice'."

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete the entry under the above heading, and insert:

*Internal users, uses, and purposes:*

Preparation of response to Department of Justice, as well as any subsequent inquiries from that office.

*External users, uses, and purposes:*

Department of Justice's response to court-approved motion for discovery."

**RETRIEVABILITY:**

Delete the entry under the above heading, and insert:

"Filed by year by case name."

**SAFEGUARDS:**

In the second line of the above entry, delete the words "SP&P personnel.", and insert the words: "Counterintelligence and Investigative Programs Directorate personnel."

**RETENTION AND DISPOSAL:**

In the fourth line of the above entry, delete the period at the end of the paragraph, and insert: "(WNRC).".

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete the entry under the above heading, and insert:

"Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Pentagon, Washington, D.C. 20301."

**NOTIFICATION PROCEDURE:**

Delete the entry under the above heading, and insert:

"Information may be obtained from: Office of the Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301, Telephone: 202-697-9678".

**RECORD ACCESS PROCEDURES:**

Delete the first paragraph under the above heading, and insert:

"Requests from individuals should be addressed to: Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301."

In the second paragraph, second line, insert: "(SSN)" after the words "Social Security Number".

Delete the entire third paragraph.

Beginning with line 13, delete the rest of the entry under the above heading, and insert: "Office of the Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301".

**CONTESTING RECORD PROCEDURES:**

Delete the entry under the above heading, and insert:

"The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

**DGC 04**

**SYSTEM NAME:**

Industrial Personnel Security Clearance Case Files.

**SYSTEM LOCATION:**

Primary System and Decentralized Segments—Active case files, Directorate for Industrial Security Clearance Review (DISCR), Office of the Assistant General Counsel for Fiscal Matters, OAGC(FM), Office of the General Counsel (OGC), Department of Defense, (DoD), Pentagon, Washington, D.C. 20301.

Inactive case files, U.S. Army Investigative Records Repository, Fort Meade, Maryland 20755.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Government contractor employees whose industrial security clearance cases were referred to the OAGC(FM), DISCR, for adjudication under Executive Order 10865, as amended by Executive Order 10909, as implemented by DoD Directive 5220.6; these cases pertain only to the individuals who cannot be granted clearance by the Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA), Columbus, Ohio.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Alphabetical card index files for identification and location of case files within the DISCR.

Individual case files include general correspondence relating to case, investigative reports prepared by various investigative agencies conducting security clearance investigations. DISCO referral recommendation, determinations of the Screening Board, Examiners and the Appeal Board, DISCR, with implementing documents, including but not limited to, Statement of Reasons (SOR) issued to individual, his answer to the SOR, transcripts of hearings and exhibits.

DISCR case correspondence files maintained by case number, including case correspondence initiated by DISCR, with individuals, employers, attorneys, congressmen and investigative agencies.

Additionally, correspondence files include copies of Screening Board determinations and Appeal Board determinations from July 1967 to date in order to furnish an index and register of administrative determinations under the Freedom of Information Act (FOIA), Pub. L. 93-502, Section 552.a(2)(C) of Title 5, United States Code.

All final decisions in cases arising under DoD Directive 5220.6, since 1967, are published and indexed for public perusal. Names of applicants, witnesses, sources of information, etc., and identifying information, relative to those persons are deleted from these records to protect the privacy of persons involved.

DISCR Reader Files including DISCR-initiated correspondence, Screening Board determinations and Appeal Board determinations.

Decentralized Reader File segments of copies of Examiner's determinations and Appeal Board determinations to Department Counsel's Office and Screening Board, DISCR.

Chronological correspondence file of letters from assigned trial counsel to individuals, attorneys or counsel, and other Federal offices for hearing arrangements.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Executive Order 10865, "Safeguarding Classified Information Within Industry," dated February 20, 1960, as amended by Executive Order 10909, dated January 17, 1961, and DoD Directive 5220.6, "Industrial Personnel Security Clearance Program" dated December 20, 1976.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATAGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The purpose and use of this record system is to determine whether it is clearly consistent with the national interest to grant or continue an individual's access to classified information.

*Internal users, uses and purposes:*

DISCO, DLA, initiates investigation at request of employer and may grant but not deny clearance.

OAGC(FM), DISCR, determines individual's eligibility for security

clearance and notifies the individual, and DISCO, DLA, of final decision.

U.S. Army, JAC, U.S. Army, Claims Services, Ft. Meade, Maryland 20755 in cases where claims for reimbursement are requested by an applicant.

*External users, uses, and purposes:*

Department of Justice in cases where individual seeks Federal court review of adverse administration determinations under the Industrial Security Clearance Program.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders, vertical file cards.

**RETRIEVABILITY:**

Active files alphabetically by name or by case number.

Inactive files by individual's name, date and place of birth, and Social Security Number (SSN).

**SAFEGUARDS:**

Records are stored in security combination lock file containers accessible only to DISCR authorized personnel.

**RETENTION AND DISPOSAL:**

Destroyed 25 years after file is no longer active.

Primary alphabetical card index files are retained permanently in Central Office, DISCR. Alphabetical Index Cards for case control purposes in sub-offices, i.e., Screening Board, Department Counsel's Office and Appeal Board are retained during active processing of cases and then destroyed.

All Reader Files are destroyed within 60 days of issue.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Assistant General Counsel for Fiscal Matters, AGC(FM), Directorate for Industrial Security Clearance Review (DISCR), Pentagon, Washington, D.C. 20301.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301. Telephone: 202–697–8350.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301.

Written requests should include the individual's full name, date and place of birth, Social Security Number (SSN), and notarized signature.

The records requested and available, subject to statutory exemptions, may be made available to the record subject for review at the following locations:

Directorate for Industrial Security Clearance Review (DISCR), Office of the General Counsel, DoD, Room 3D282, Pentagon, Washington, D.C. 20301.

Administrative Director, Eastern Hearing Office DISCR, Office of the General Counsel, DoD, 26 Federal Plaza, Room 36–112, New York, New York 10007.

Administrative Director, Western Hearing Office DISCR, Office of the General Counsel, DoD, 9920 S. LaCienega Blvd., Suite 1026, Inglewood, California 90301.

Fees for copies must be borne by the record subject or his authorized representative requesting the review of the records.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Defense Investigative Service (DIS); Office of the Secretary of Defense (OSD); Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA); U.S. Army Investigative Records Repository; record subjects; attorneys or representatives.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Parts of this record system may be exempt under 5 U.S.C. 552a(k)(5).

**DGC 05**

**SYSTEM NAME:**

Administrative Files on Active Psychiatric Consultants to Department of Defense (DoD).

**SYSTEM LOCATION:**

Directorate for Industrial Security Clearance Review (DISCR), Office of the Assistant General Counsel for Fiscal Matters, OAGC(FM), Office of the General Counsel, DoD.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Psychiatric consultants who have entered into agreement with the Department of Defense to conduct psychiatric examination of individuals applying for industrial security clearance for access to classified information required in the performance of their work for classified Government contractors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records filed alphabetically by last name of psychiatrist, consisting of correspondence concerning agreement to conduct psychiatric examinations requested by the Government; and initiation and confirmation of security clearance issued to psychiatrists.

Current list of active DoD psychiatric consultants.

Alphabetical card index file for identification and address of active psychiatric consultants.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976; Executive Order 10865, February 20, 1960, and Executive Order 10909, January 17, 1961.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The purpose of this system is to maintain a record of active psychiatric consultants available to conduct psychiatric examinations of individual applicants for industrial personnel security clearance in convenient geographical areas.

*Internal users, uses, and purposes:*

Psychiatric consultants having active professional service agreements with and having been granted security clearance by the Department of Defense (DoD) are used by DISCR, OAGC(FM), and Defense Industrial Security Clearance Office (DISCO), Defense Logistics Agency (DLA), in processing requests for industrial personnel security clearance of individuals.

*External users, uses, and purposes:*

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders, vertical file cards.

**RETRIEVABILITY:**

Alphabetically by surname.

**SAFEGUARDS:**

Records are stored in security combination locked file cabinets accessible only to DISCR authorized personnel.

**RETENTION AND DISPOSAL:**

Destroy six months after agreement between consultant and DoD has been terminated.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Assistant General Counsel for Fiscal Matters, AGC(FM), Directorate for Industrial Security Clearance Review, Pentagon, Washington, D.C. 20301.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301, Telephone: 202–697–8350.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to OAGC(FM), DISCR, Room 3D282, Pentagon, Washington, D.C. 20301.

Written requests should include the individual's full name, date and place of birth, and notarized signature.

The records requested may be made available to individuals for review at the following location: DISCR, OAGC(FM), Room 3D282, Pentagon, Washington, D.C. 20301.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Copy of Letter of Consent (for security clearance), DISCO Form 560, and correspondence with individual psychiatrists.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**DUSDPR 01**

**SYSTEM NAME:**

DoD Motions for Discovery of Electronic Surveillance Files.

**SYSTEM LOCATION:**

Primary System—Counterintelligence and Investigative Programs Directorate, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C–290, Pentagon, Washington, D.C. 20301.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Those individuals and/or organizations on which the Department of Justice has requested information upon which to base their reply to court-approved motions for discovery of electronic surveillance.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Chronological listing for identification and location of files. Individual case files to include original and subsequent requests from the Department of Justice; file copy of memorandum to the DoD Components directing search of their records, indices, etc.; copies of DoD Components' responses to the Office of the Secretary of Defense (OSD), and copies of OSD's responses to the Department of Justice.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 28, United States Code, Section 516, "Conduct of Litigation Reserved to Department of Justice".

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*Internal users, uses, and purposes:*

Preparation of response to Department of Justice, as well as any subsequent inquiries from that office.

*External users, uses, and purposes:*

Department of Justice's response to court-approved motion for discovery.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders.

**RETRIEVABILITY:**

Filed by year by case name.

**SAFEGUARDS:**

Records are stored in security combination lock file containers accessible only by Counterintelligence and Investigative Programs Directorate personnel.

**RETENTION AND DISPOSAL:**

Records are permanent. They are retained in active file until end of calendar year in which project is completed, held one additional year in inactive file and subsequently retired to Washington National Records Center (WNRC).

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Pentagon, Washington, D.C. 20301.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: Office of the Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301, Telephone: 202–697–9678.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301.

Written requests for information should contain the full name of the individual, date and place of birth, Social Security Number (SSN), and notarized signature.

The records requested may be made available to individuals for review at the following location: Office of the Director, Counterintelligence and Investigative Programs, Office of the Deputy Under Secretary of Defense for Policy Review, Room 3C290, Pentagon, Washington, D.C. 20301.

**CONTESTING RECORD PROCEDURES:**

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Department of Justice formal written inquiries, and internal corresponsence necessary to gather information to make replies to such inquires.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 80–15479 Filed 5–20–80; 8:45 am]

BILLING CODE 3810–70–M

## DELAWARE RIVER BASIN COMMISSION

### Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 28, 1980, commencing at 2:00 p.m. The hearing will be a part of the Commission's regular May business meeting which is open to the public. Both the hearing and the meeting will be held in the main conference room of the Commission's office building. The subject of the hearing will be applications for approval of the following projects as amendments to the Comprehensive Plan pursuant to Article 11 of the Compact and/or as project approvals pursuant to Section 3.8 of the Compact.

1. *Camden County Municipal Utilities Authority (D–71–9CP Phase II (3.8).* A project to modifiy sewage treatment facilities at the Authority's Main Plant in the City of Camden, New Jersey. Designated as Phase II, the proposed actions involve construction of a preliminary treatment building,

installation of bar screens, grit tanks and other related facilities. The project is part of the Camden County regional sewerage plan.

2. *State of New York (D–77–20CP Rev.).* A project of the Department of Environmental Conservation to continue on a permanent basis a schedule of conservation releases from the New York City Cannonsville, Neversink and Pepacton reservoirs. The schedule calls for releases at the same levels and under the same general conditions as those approved by the Commission on a temporary, experimental basis in May, 1977.

3. *Metropolitan Edison Company (D–74–32 Rev.).* A project to modify cooling water and industrial wastewater treatment facilities at the Company's Titus Generating Station, Cumru Township, Berks County, Pennsylvania. The size of the cooling tower will be changed, and the cooling water flow pattern will be altered so as to achieve greater reuse. Cooling water and treated wastewater will continue to discharge to the Schuylkill River.

Documents relating to the above-listed projects may be examined at the Commission's offices. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the date of the hearing.

**W. Brinton Whitall,**

*Secretary.*

May 13, 1980.

[FR Doc. 80–15530 Filed 5–20–80; 8:45 am]

BILLING CODE 6360–01–M

## DEPARTMENT OF ENERGY

## Office of Hearings and Appeals

## Issuance of Decisions and Orders Week of March 3, through March 7, 1980

Notice is hereby given that during the week of March 3 through March 7, 1980, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

*Appeals*

*Ashland Oil, Inc., Ashland, Kentucky, Motor Gasoline BEA–0133*

Ashland Oil, Inc., filed an Appeal of a December 6, 1979 order issued by Region IV Office of Petroleum Operations of the Economic Regulatory Administration which directed Ashland to supply specified quantities of motor gasoline to Delta Petroleum Corporation. The December 6 order was issued at the direction of the Office of Hearings and Appeals, which previously had found that Delta and its customers were suffering a serious hardship due to the significant price disparity between the wholesale prices which Delta was paying and the prices which its competitors were paying. In considering Ashland's Appeal, the DOE found that Ashland had failed to show that it or its customers would suffer any injury as a result of the order. The DOE noted that the December 6 order contained a provision that permitted Ashland to purchase from Champlin Petroleum Company, Delta's original base period supplier, the same amount of motor gasoline which Ashland was obligated to furnish Delta. The DOE further found that Ashland had not filed a timely Notice of Objection to the Proposed Decision and Order granting Delta exception relief. The DOE noted that although the type of information necessary to support Ashland's contentions was discussed in a previous determination denying Ashland's request for a stay of the December 6 order, *Ashland Oil, Inc.*, 5 DOE Par. —— (January 18, 1980), the firm had failed to file any supplemental information to substantiate its claims. Accordingly, Ashland's Appeal was denied.

*Dechert, Price and Rhoads, Philadelphia, Pennsylvania, Freedom of Information BFA–0176*

Dechert, Price and Rhoads filed an Appeal from a denial by the Deputy Assistant Secretary for Utility and Industrial Energy Applications of the Resource Applications Division of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Assistant Secretary properly withheld DOE compilations of uranium purchases by utilities under Exemption 4 of the Act. Accordingly, the firm's Appeal was denied.

*Pioneer Logging Machinery, Inc., Lexington, South Carolina, Motor Gasoline DEA–0651*

On September 19, 1979, Pioneer Logging Machinery, Inc., filed an Appeal from an Assignment Order issued to Southeastern Petroleum Distributing Company on August 13, 1979 by the Economic Regulatory Administration. Under the terms of the Order, Southeastern was required to supply Pioneer with motor gasoline in months for which Pioneer had no base period supply relationship. In its Appeal, Pioneer sought an increase in the volumes of motor gasoline assigned by the ERA in the August 13 order. In considering the request, the DOE found that the ERA based its assignement on the appropriate standards for making such determinations. In addition, the DOE noted that Pioneer had raised issues which would more appropriately have been raised in an exception application. Since the firm had failed to make a *prima facie* showing that exception relief should be approved, the DOE determined that it would be inappropriate to approve exception relief in the context of the Appeal proceeding. Accordingly, the Pioneer Appeal was denied.

*Rally Oil Company, Long Island, New York, Appeal BEA–0173*

Rally Oil Company filed an Appeal from two Orders issued by the Region II Office of Petroleum Operations of the Economic Regulatory Administation. Those Orders were issued pursuant to an Interim Decision and Order which the Office of Hearings and Appeals issued in connection with an Application for Exception filed by Rally. In its Appeal, Rally requested that the Orders be modified to conform with the requirements of the Interim Decision and Order pursuant to which they were issued. In considering the Appeal, the DOE found that the Orders did not conform with the Interim Order in that (i) they required the suppliers to deliver specified percentages of the motor gasoline assigned directly to the outlets operated by Rally rather than to Rally directly, (ii) they did not contain a provision requiring the suppliers to supply volumes for months which were specified in the Interim Order but which had passed prior to the issuance of the Orders, and (iii) the Orders were permanent orders and not limited to the six months specified in the Interim Order. The DOE modified the Orders to conform with the requirements of the Interim Order.

*Petition for Special Redress*

*National Oil Jobbers Council, Washington, D.C., Reporting requirements, BSG–0016, BES–0060, BST–0080, BEH–0012.*

The National Oil Jobbers Council filed an Application for Temporary Stay, Application for Stay, and Petition for Special Redress in which it sought relief from the requirement that various of its members respond to a Special Report Order issued by the DOE Office of Enforcement. At a hearing convened in connection with the proceeding, the NOJC and the Office of Enforcement agreed to the issuance of an Order whose terms modified the SRO issued by the Office of Enforcement. The Petition for Special Redress was therefore granted on the basis of the terms agreed to by the parties to the proceeding.

*Requests for Exception*

*AJO Improvement Company, AJO, Arizona, Natural Gas BEE–0086*

Ajo Improvement Company filed an Application for Exception in which the firm requested that it be relieved of any obligation to prepare and submit Form EIA–149 to the DOE's Energy Information Administration. In considering the request, the DOE found that exception relief was necessary to prevent the firm from suffering an inordinate burden as a result of the requirement that it file Form EIA–149 in its entirety. Accordingly, exception relief was granted. The order specifies a modified form which Ajo may file in lieu of the complete EIA–149 Form.

*Borough of Chambersburg, Chambersburg, Pennsylvania, Reporting requirements, DEE–6575*

Borough of Chambersburg filed an Application for Exception in which it requested that it be relieved of its obligation to prepare and submit Form EIA–149 to the DOE's Energy Information Administration. In considering the request, the DOE found that Borough had not demonstrated that the level of inconvenience involved in complying with the reporting requirement constituted a serious hardship, a gross inequity, or an unfair distribution of burdens. Accordingly,

the Application for Exception was denied.

*Buccaneer Boats, St. James City, Florida, Motor Gasoline BEO-0264*

Buccaneer Boats filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to relieve the financial hardship being experienced by the firm. Accordingly, exception relief was granted.

*Delta Petroleum Corporation, Ft. Lauderdale, Florida, Motor Gasoline DEE-2368*

Delta Petroleum Corporation filed an Application for Exception from the provisions of 10 CFR 211.9. In its Application, the firm sought the assignment of a new, lower-priced supplier which would be directed to furnish the firm with its base period use of motor gasoline that it was entitled to receive from Champlin Petroleum Company. In considering the request, the DOE found that the application of the provisions of 10 CFR Part 211 caused a serious hardship to the firm as a result of the significant disparity between Delta's cost of motor gasoline from Champlin and the comparable costs of its competitors. Accordingly, exception relief was granted.

*Foresthill Chevron, Foresthill, California, Motor Gasoline BEO-0998*

Foresthill Chevron filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to alleviate an unfair distribution of burdens being experienced by the citizens of Foresthill as a result of a severe shortage in the volume of motor gasoline available to the community. Accordingly, exception relief was granted.

*Gas Service, Inc., Nashua, New Hampshire, Reporting Requirements, BEE-0056*

Gas Service, Inc., filed an Application for Exception in which the firm requested that it be relieved of the requirement that it submit Form EIA-149 to the DOE's Energy Information Administration. In considering the request, the DOE found that compliance with the reporting requirements would be burdensome to the applicant and therefore resulted in a gross inequity. Accordingly, exception relief was granted which permitted the applicant to file the requested data in simplified form.

*Greenhorne & O'Mara, Inc., Riverdale, Maryland, DEE-6901, motor gasoline*

Greenhorne & O'Mara, Inc., filed an Application for Exemption from the provisions of 10 CFR 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was incurring a gross inequity or unfair distribution of burdens as a result of DOE allocation regulations. Accordingly, exception relief was denied.

*Ingram Corporation, New Orleans, Louisiana, Crude Oil, DPI-0005*

Ingram Corporation filed an Application for Exception from the provisions of 10 CFR Part 213 in which the firm sought a refund of license fees which it paid on imports of crude oil. In considering the request, the DOE found that Ingram had diligently sought a fee-free allocation and that the processing of Ingram's application for benefits under 10 CFR 213.29 had been unduly delayed. The DOE determined that Ingram should be relieved of the requirement that it pay license fees only insofar as that requirement arose from delays in the processing of its application for a fee-free license.

*Kirschner Brothers Oil Company, Haverford, Pennsylvania, Gasohol, DEE-7408*

Kirschner Brothers Oil Company filed an Application for Exception in which it requested an increase in its base period allocation of motor gasoline for the purpose of blending and marketing gasohol. On January 18, 1980, the DOE issued a Proposed Decision and Order tentatively denying Kirschner's request because Kirschner failed to show that it had committed substantial resources to its proposed gasohol operation. In addition, the DOE found that Kirschner already had adequate supplies of unleaded motor gasoline which it could devote to blending gasohol. On January 25, 1980 Kirschner filed a Notice of Objection to the issuance of the Proposed Decision as a final order of the Department of Energy. Subsequently, the firm stated that it was attempting to comply with the conditions set forth in the Proposed Decision and would not file a Statement of Objections. Consequently, the DOE concluded that the Proposed Decision and Order should be issued as a final order.

*LeBlanc's Arco, Lake Elsinore, California, motor gasoline, DEE-5129*

LeBlanc's Arco filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to alleviate the firm's financial hardship caused by a change in the base period.

*Louisiana Power and Light Company, New Orleans, Louisiana; reporting requirements BEE-0316*

Louisiana Power and Light Company filed an Application for Exception in which it requested that it be relieved of the requirement of submitting Form EIA-149 to the DOE's Energy Information Administration. In considering the request, the DOE found that the information required by Form EIA-149 was necessary to enable the Energy Information Administration to compile a national data base which accurately reflects natural gas usage. The DOE concluded that strong public policy objectives favored collection of information which would permit the agency to properly evaluate the effects of Titles II and IV of the Natural Gas Policy Act of 1978 and to modify existing regulations. Accordingly, exception relief was denied.

*Mobil Petroleum Company, New York, New York, Refined petroleum products, FEE-4296*

Mobil Petroleum Company, Inc., filed an Application for Exception from 10 CFR 212.83(h) (the equal application rule). The exception would permit Mobil Petroleum to increase the prices that it charges for covered products sold in the Territory of Guam to reflect a gross receipts tax imposed by Guam on retail sales. The DOE found that although Mobil Petroleum was permitted under section 212.83 to include the tax in its nationwide pool of increased nonproduct costs, in practice Mobil Petroleum might well be prevented by the equal application rule from recovering the full amount of the Guam tax in its sales on Guam. The DOE concluded that it would be unfair to Mobil Petroleum and non-Guamanian customers of Mobil Petroleum to require that the firm recover a local tax similar in effect to a sales tax in its nationwide sales. The Mobil exception request was therefore granted.

*Pennsylvania Southern Gas Company, Sayre Pennsylvania, reporting requirements DEE-8127*

*Lone Star Gas Company, Dallas, Texas, DEE-8285*

*Anderson Clayton, Oilseed Processing Division, Phoenix, Arizona, DEE-8296*

*City Public Service Board of San Antonio, San Antonio, Texas, DEE-8297*

Pennsylvania Southern Gas Company, Lone Star Gas Company, Anderson Clayton Oilseed Processing Division, and City Public Service Board of San Antonio, Texas, filed Applications for Exception from the requirement that they submit Form EIA-149 to the DOE's Energy Information Administration. In considering the requests, the DOE found that the completion of Form EIA-149 by the four firms was essential to the compilation of a national data base that would reflect accurately natural gas supply and demand within the United States. Accordingly, the Applications were denied.

*Peoria Public Schools, Peoria, Illinois, temperature, BEO-0476*

Peoria Public Schools filed and Application for Exception from the provisions of 10 CFR Part 490 in which it sought exception relief from the Emergency Building Temperature Restrictions for certain classrooms used by handicapped and elderly students. In considering the request, the DOE found that exception relief was necessary to alleviate a significant adverse impact that these students were experiencing as a result of the Temperature Restrictions. Accordingly, exception relief was granted.

*University of Wisconsin-Madison, Madison Wisconsin, temperature, BEE-0552*

The University of Wisconsin-Madison filed an Application for Exception from the provisions of 10 CFR Part 490 in which it sought permission to raise the maximum heating temperature above 65°F in two rooms on the University campus. In considering the request, the DOE found that compliance with the Emergency Building Temperature Restrictions could have a significant adverse impact upon the health of two of the University's employees. Accordingly, exception relief was granted.

*Uresti Texaco Service, Bellaire, Texas, motor gasoline, DEO-0364.*

Uresti Texaco Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor

gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious hardship as a result of its base period allocation of motor gasoline. Accordingly, exception relief was denied.

**Requests for Temporary Exception**

*Big Bear Oil Company, Pittsburgh, Pennsylvania, motor gasoline, BEL–0040*

On January 13, 1980, the Big Bear Oil Company filed an Application for Temporary Exception from the provisions of 10 CFR 211.9 in which the firm sought the issuance of orders by the DOE terminating the supplier/purchaser relationship between the firm and the Pitt Oil Company and assigning a new lower-priced supplier to furnish the firm with that portion of its base period use of motor gasoline. In considering the request, the DOE found that the firm was not presently experiencing a serious hardship as a result of a significant disparity in the price at which it and its competitors can obtain motor gasoline. Accordingly, the firm's request was denied.

*Diamond Shamrock Corporation, Amarillo, Texas, gasohol, BEL–0774*

Diamond Shamrock Corporation filed an Application for Temporary Exception from the provisions of 10 CFR Parts 211 and 212. Diamond Shamrock requested that it be granted temporary exception relief which would enable the firm to market gasohol as a separate grade and category of motor gasoline for cost pass-through purposes. In addition, the firm requested that it be permitted to exclude the alcohol portion of any gasohol which it blends from the firm's calculation of its allocable supply of motor gasoline. In considering the request, the DOE found that temporary exception relief was necessary in order to enable Diamond Shamrock to successfully undertake a gasohol test marketing program and the firm's program would further the national policy objective of decreasing United States dependence on foreign oil supplies. Accordingly, temporary exception relief was granted Diamond Shamrock.

**Requests for Stay**

*Vickers Petroleum Corporation, Ardmore, Oklahoma, crude oil, BES–0051*

Vickers Petroleum Corporation filed an Application for Stay in which it requested that the DOE stay the requirement that the firm purchase 187, 867 entitlements as specified in the December 1979 Entitlement Notice. In considering the Application for Stay, the DOE found that the DOE Office of Petroleum Operations had incorrectly calculated Vickers' December 1979 entitlement obligation. Accordingly, the firm's Application for Stay was granted.

**Supplemental Order**

*Energy Cooperative, Inc., East Chicago, Indiana, crude oil, DEX–8112*

Energy Cooperative, Inc. (ECI) filed an Application for Temporary Exception from the provisions of 10 CFR 211.65 (Crude Oil Buy/Sell Program) and 10 CFR 211.67 (Entitlements Program). On October 3, 1979, the Department of Energy issued a Decision and Order in which it determined that temporary exception relief should be granted to the firm in the form of a crude oil allocation of 3,034,896 barrels under the Buy/Sell Program for the period October through December 1979. The Order also directed The Permian Corporation to supply ECI with 1,835,000 barrels of Crude oil during the same period but stayed that directive in order to give the Occidental Petroleum Corporation and Permian an opportunity to file written objections to it.

On December 21, 1979, the DOE issued a Proposed Supplemental Decision and Order in which it tentatively determined that the portion of the October 3 Decision and Order relating to Permian should be rescinded. Occidental and Permian filed a Statement of Objections to the Proposed Supplemental Decision and Order on February 4, 1980. However, Occidental and Permian subsequently requested that their Statement of Objections be withdrawn. Accordingly, the DOE issued the December 21 Proposed Supplemental Decision and Order in final form.

**Interim Orders**

The following firms were granted Interim Exception relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

*Company Name, Case Number, and Location*

General Services Administration, DEN–7664, Washington, D.C.
Haase Oil Co., BEN–0018, Ellendale, ND
Mutual Oil Co., DEN–2576, Greenville, South Carolina
Milner Super Gas, BEN–0252, Aiken, SC

**Protective Orders**

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

*Company Name, Case Number, and Location*

Texaco, Inc., BEJ–0043, White Plains, New York
ICG Vista Pet., Inc., Washington, D.C.

**Petitions Involving the Emergency Building Temperature Restrictions**

The following firm filed an Application for Exception from the provisions of the Emergency Building Temperature Restrictions Regulations. The request, if granted, would permit the firm to change the temperature in its facility from the temperature level prescribed in the regulations. The DOE issued a Decision and Order which determined that the request be denied.

*Company Name, Case Number, and Location*

Elaine Powers Figure Salons, Inc., DEE–7452, Milwaukee, Wisconsin

**Petitions Involving the Motor Gasoline Allocation Regulations**

The following firm filed an Application for Exception, from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be granted.

*Company Name, Case Number, and Location*

The Friendly Country Store, BEO–0350, Berlin, MD

**Petitions Involving the Motor Gasoline Allocation Regulations**

The following firm filed an Application for Exception from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be dismissed without prejudice to a refiling at a later date.

*Company Name, Case Number, and Location*

Edgewater Standard, DEE–6172, Orlando, Florida

**Petitions Involving the Motor Gasoline Allocation Regulations**

The following firms filed an Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

*Company Name, Case Number, and Location*

American Auto Salvage, BEO–0132, Riverview, FL
Bob's Skelly Service, BEO–0825, Netwon, IA
Budget Rent-a-Car of Kentucky, DEE–6992, Louisville, KY
Buh, Inc., DEE–5232, Pierz, MN
Burack Service, BEO–0554, Deerfield Bch., FL
Carl Karcher Enterprises, BEO–0371, Anaheim, CA
Frank Bower Chevron, DEE–5906, Twenty-nine Palms, CA
Fred Halon, DEE–4019, Longmeadow, MA
Jack Griffith Pet. Products, DEE–4206, Stillwater, OK
Manatee Cty. Bd. of Commissioners, BEO–0278, Bradenton, FL
McKee's Marathon, BEO–0711, Richmond, VA
Ralph Richards, BEO–0367, Corsicana, TX
Ray's Shell Service, DEE–4814, Mission Hills, CA
Stamp's Marathon, BEO–0296, Kokomo, IN
Stothard Corp., DEE–3990, Washington, DC
Wade Hampton Shell, DEE–7725, Greenville, SC
Woodruff Standard, BEO–0085 Woodruff, WI

**Dismissals**

The following submissions were dismissed without prejudice to refiling at a later date:

*Name and Case Number*

American Accessories, Inc., DEE–5084
Pester Ref. Co., BED–0012; BED 0032
Aluminum Co. of America, BEE–0891
Art Danielson, Et al., BEO–1059
Common Ground, BFA–0201
McLoon Oil Co., DEE–4298
Urbano Service Stat., BEL–0613

White River Shell, DEE–7301
Bateman Oil Co., DEE–4620
Franmar Corp., DEE–7620
Phillips Pet. Co., BSG–0013
Hampton Road Fina Station, DEE–6297
Lipham Oil Co., DEE 7155
Marcum Oil Co., BEE–0010
Mid-County Distributors, DEE–7270
Mutual Oil Co., DES–2576
O'Halloran Oil Corp., BEO–0647
Sun Oil Co. of PA, BEA–0100
Texaco, Inc., BEA–0104
Atlantic Richfield, BEA–0105
Mobil Oil Corp., BEA–0110
Gulf Oil, BEA–0111
Cities Service, BEA–0117
Amoco Oil, BEA–0118
Clark Oil & Ref., BEA–0119
Exxon Co., USA BEA–0124
Beckham & Sons Phillips 66 Service, DEE–7404
Budget Rent-a-Car of Boston DEE–7285
City of Carmel-by-Sea, DEE–5320
Franklin Oil Co., DEE–6346
Gelco Courier Serv. DEE–7535
Hollypark Car Wash DEE–5970
J. P. Mills, Inc. DST–0023
Mid-State Oils, Inc., DEE–2759; DES 2759
Mooresville Oil Co., DEE–3225
Robert Whiting/RMS Enterprises, Inc., DRO–0315
Picozzi's Service DEE–6096
Stephans Van Terminal, DEE–3494
Suncoast Oil Co. of Florida, DEE–2870

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**Melvin Goldstein,**

*Director, Office of Hearings and Appeals.*

May 8, 1980.

[FR Doc. 80–15503 Filed 5–20–80; 8:45 am]

BILLING CODE 6450–01–M

## Requests for Interpretation Months of February and March 1980

Notice is hereby given that during the months of February and March 1980, the requests for interpretation listed in the Appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F, with the Office of General Counsel, Department of Energy (DOE). Notice of requests received subsequently will be published at the end of each calendar month. Copies of the requests for interpretation listed herein are on file in and should be obtained from the DOE's Public Reading Room, Information Access Office, Room 5B–180, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–5968.

The statement of issue that follows each request for interpretation listed in the Appendix is not intended to be definitive or final. Rather, the issue statement should be regarded as the initial restatement by the DOE of the question that appears to have been presented for resolution. The issue may, of course, be refined and modified during the interpretive process.

Interested parties may submit written comments on the listed interpretation requests within 30 days of this notice. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Assistant General Counsel for Interpretations and Rulings, Office of the General Counsel, Department of Energy, Room 5E–052, 1000 Independence Avenue, SW., Washington, D.C. 20585. Any comments submitted should be served on the requesting parties as identified in the Appendix below. When appropriate, aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information contact Diane Stubbs, Office of General Counsel, 1000 Independence Avenue, SW., Room 5E–052, Washington, D.C. 20585, (202) 252–2931.

Signed: May 13, 1980.

**Merrill F. Hathaway, Jr.,**

*Acting Assistant General Counsel for Interpretations and Rulings.*

**Appendix A**

| Date received | Name and location of requester | File No. |
|---|---|---|
| Feb. 8, 1980. | The Alpetco Company, Alan L. Mintz, Esq., Van Ness, Feldman & Sutcliffe, Suite 500, 1220 19th Street, NW., Washington, D.C 20036. | A–523 |

Issue: Would DOE's decision in Interpretation 1978–1 that the State of Alaska and Alaska Petrochemical Company (APC) could enter into a valid and binding agreement for the sale and purchase of the State's royalty crude oil providing for a waiver of the supplier/purchaser rule apply to a similar agreement between Alpetco, the assignee of APC, and the State of Alaska under 10 CFR 211.63?

| | | |
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| Feb. 25, 1980. | Jones & Pellow Oil Company, Jeffery J. Allen, Jones & Pellow Oil Company, 2821 Northwest 50th Street, Oklahoma City, Oklahoma 73112. | A–524 |

Issue: Where condensate was recovered from a property in 1978 in the course of testing, was crude oil "produced" from that property for purposes of the "newly discovered crude oil" provisions of 10 CFR 212.79(b)?

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| Feb. 26, 1980. | Tesoro Alaska Petrochemical Company, Kathleen A. Dotzel, Esq., Tesoro Petroleum Corporation, 8700 Tesoro Drive, San Antonio, Texas 78286. | A–525 |

**Appendix A—Continued**

| Date received | Name and location of requester | File No. |
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Issue: May the State of Alaska and Tesoro enter into a valid and binding agreement for the sale of Alaska's royalty crude oil, where the provisions of that agreement would waive the benefits otherwise available under the supplier/purchaser rule as set forth in 10 CFR 211.63?

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| Mar. 3, 1980. | Tipperary Refining Company, Ralph Freeman, Vice President—Processing and Refining Tipperary Refining Company, P.O. Box 3179, 500 West Illinois, Midland, Texas 79702. | A–526 |

Issue: Are the sales of crude oil from Atlantic Richfield Company to Tipperary Refining Company under the Buy/Sell Program, 10 CFR 211.65, computed under 10 CFR 212.94(b)(1) and Special Rule No. 2 of the Mandatory Petroleum Price Regulations by utilizing the refiner-seller's weighted average per barrel landed cost (plus certain fees and adjustments) for August 1979, the month the contract was entered into, or September 1979, the month the crude oil was delivered?

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| Mar. 6, 1980. | Standard Oil Company (Indiana), K. M. Nolen, Esq., Standard Oil Company (Indiana), 200 East Randolph Drive, Post Office Box 5910–A, Chicago, Illinois 60680. | A–527 |

Issue: Where condensate was recovered and sold from a property in 1978 in the course of testing, was crude oil "produced" from that property for purposes of the "newly discovered crude oil" provisions of 10 CFR 212.79(b)?

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| Mar. 18, 1980. | Texas Oil Marketers Association, Gregg R. Potvin, Esq., Bassman, Mitchell & Levy, 1612 K Street, NW., Suite 1000, Washington, D.C. 20006. | A–528 |

Issue: Following conversion from consignee agent to an independent jobber of motor gasoline, how does the new jobber calculate his maximum lawful price pursuant to 10 CFR 212.93?

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| Mar. 13, 1980. | Brubart Realty Corporation, Richard E. Schwartz, Esq., R. Timothy Columbus, Esq., Collier, Shannon, Rill, Edwards & Scott, 1055 Thomas Jefferson Street, NW., Washington, D.C. 20007. | A–529 |

Issue: Is a lessor-landlord of a retail gasoline station that provides substantial marketing services to the retailer a "reseller" as defined in 10 CFR 212.31?

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| Mar. 26, 1980. | Amoco Oil Company, Matthew J. Gallo, Esq., Standard Oil Company (Indiana), 200 East Randolph Drive, Post Office Box, 5910–A, Chicago, Illinois 60680. | A–530 |

Issue: Where a covered product is sold during the base period on a buy/sell exchange for a noncontrolled product, is a supply obligation created under 10 CFR Part 211 for the controlled products?

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| Mar. 19, 1980. | Osceola Refining Company, Antoinette B. Little, Esq., The Kalamazoo Building, 107 West Michigan Avenue, Kalamazoo, Michigan 49007. | A–531 |

Issue: Under 10 CFR 211.11, was the motor gasoline allocation transferred from seller to buyer when a contract for the sale of real and personal property used in the seller's business was executed and then later rescinded?

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| Mar. 25, 1980. | Sergeant Oil & Gas Co., Inc., J. B. Durrett, Jr., President, Sergeant Oil & Gas Co., Inc., 3613 Buffalo Speedway, P.O. Box 812, Houston, Texas 77001. | A–532 |

Issue: Is Sergeant Oil and Gas Co., Inc., which purchases a motor gasoline and diesel fuel mixture and separates the mixture into its original component parts, a refiner subject to 10 CFR Part 212, Subpart E of the Mandatory Petroleum Price Regulations, or a reseller subject to Subject F?

| | | |
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| Mar. 24, 1980. | National Pest Control Association, Inc., A. Jack Grimes, Director, Government Affairs, National Pest Control Association, Inc., 8150 Leesburg Pike, Suite 1100, Vienna, Virginia 22180. | A–533 |

**Appendix A—Continued**

| Date received | Name and location of requester | File No. |
|---|---|---|
| | Issue: Does motor gasoline used in sanitation services to control pests as carriers of diseases to humans and plants, provided by a pest extermination that is a bulk purchaser of motor gasoline, qualify under 10 CFR 211.103 as an "agriculture production" use entitling the purchaser to a first priority allocation level of motor gasoline? | |
| Mar. 25, 1980. | T. E. Bird, Thomas C. Brown, Esq., Gary K. Hoffman, Esq., 3100 Broadway, Suite 811, Kansas City, Missouri 64111. | A-534 |
| | Issue: Would T. E. Bird violate 10 CFE 210.62(a) if he required a purchaser of crude oil to remit payment each month 5 days earlier than had previously been required? | |
| Mar. 28, 1980. | Chevron U.S.A., Inc., Paul M. Premo, Manager, 1700 K Street, NW., Washington, D.C. 20006. | A-535 |
| | Issue: May the State of Alaska and Chevron enter into a valied and binding agreement for the sale of Alaska's royalty crude oil, where the provisions of that agreement would waive the benefits otherwise available under the supplier/purchaser rule as set forth in 10 CFR 211.63? | |

[FR Doc. 80-15502 Filed 5-20-80; 8:45 am]

BILLING CODE 6450-01-M

## Atlantic Richfield Co.; Proposed Remedial Orders

**AGENCY:** Department of Energy.

**ACTION:** Notice of proposed remedial order to Atlantic Richfield company and opportunity for objection.

Pursuant to 10 CFR 205.192(c) the Office of Special Counsel for Compliance (Special Counsel) of the Economic Regulatory Administration of the Department of Energy (DOE) hereby gives notice that a Proposed Remedial Order (PRO) was issued on April 25, 1980 to the Atlantic Richfield Company (Atlantic), 515 South Flower Street, Los Angeles, California 90015.

By this PRO, Special Counsel sets forth findings of fact and conclusions of law concerning Atlantic's refusal to assume the supply obligations of other base period suppliers of Carl King Inc. (Carl King). According to the PRO, Carl King, a branded Atlantic distributor with offices in Camden, Delaware properly and timely designated Atlantic to be its sole base period supplier pursuant to 10 CFR 211.105(d) of the Mandatory Petroleum Allocation Regulations. That provision permits a "wholesale purchaser-reseller" which is a "branded independent marketer" and which had multiple base period suppliers to designate as its sole base period supplier that firm which was supplying it on February 28, 1979 and under whose brand it was selling on that date, thereby requiring the designated supplier to assume the supply obligations of the reseller's other base period suppliers.

Atlantic's refusal to accept Carl King's designation, and its subsequent failure to assume the supply obligations of Carl King's other ten base period suppliers violated and violates 10 CFR 211.105(d). The PRO requires Atlantic to assume this additional obligation to supply Carl King immediately upon issuance of Remedial Order by the Office of Hearings and Appeals.

A copy of the PRO, with confidential information deleted, may be obtained by written request from: Milton Jordan, Director, Division of Freedom of Information, and Privacy Act Activities, forrestal Building, Room GB-145, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Attention: George W. Young, Jr.

In accordance with the provisions of 10 CFR 205.193, on or before June 5, 1980, any aggrieved person may file a Notice of Objection to the PRO. If a Notice of Objection is not filed, the Proposed Remedial Order may be issued as a final order. Such notice shall be filed with: Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Room 8114, Washington, D.C. 20461.

Copies of the Proposed Remedial Order may be obtained in person from: Office of Freedom of Information, Reading Room, Forrestal Building, Room GA-152, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C. on the 13th day of May 1980.

**Paul L. Bloom,**

*Special Counsel for Compliance.*

[FR Doc. 80-15620 Filed 5-20-80; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

## da Vinci Co., Inc.; Action Taken on Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of action taken and opportunity for comment on consent order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a consent order and provides an opportunity for public comment on the consent order and on potential claims against the refunds deposited in an escrow account established pursuant to the consent order.

**DATES:** Effective Date: March 8, 1980.

**COMMENTS BY:** June 20, 1980.

**ADDDRESS:** Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

**FOR FURTHER INFORMATION CONTACT:** Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, phone 214/767-7745.

**SUPPLEMENTARY INFORMATION:** On March 8, 1980, the Office of Enforcement of the ERA executed a consent order with da Vinci Company, Inc. of Shawnee, Oklahoma. Under 10 CFR 205.199J(b), the consent order which involves a sum of more than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution only if the DOE expressly finds it to be in the public interest to do so. Because of the complex settlement negotiations in this case and the necessity to conclude this matter simultaneously with other proceedings associated with this consent order, the DOE has determined that it is in the public interest to make the consent order effective upon its execution.

### I. The Consent Order

da Vinci Company, Inc., with its office located in Shawnee, Oklahoma, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of crude oil sales, the Office of Enforcement, ERA, and da Vinci Company, Inc., entered into a consent order, the significant terms of which are as follows:

1. The period covered by the audit was September 1973 through March 31, 1979, and it included all sales of crude oil which were made during that period.

2. da Vinci Company, Inc. allegedly misapplied the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart D, when determining the prices to be charged for crude oil; and as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In order to expedite resolution of the disputes involved, the DOE and da Vinci have agreed to a settlement in the amount of $500,000, plus interest, plus $50,000 as a civil penalty. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and da Vinci.

4. Because the sales of crude oil were made to refiners and the ultimate consumers are not readily identifiable, the refund will be made through the DOE in accordance with the terms of the consent order.

5. The provisions of 10 CFR § 205.199J, including the publication of this Notice, are applicable to the Consent Order.

**II. Disposition of Refunded Overcharges**

In this Consent Order, da Vinci agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $500,000 plus $50,000 in civil penalties on execution of the Consent Order. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

**III. Submission of Written Comments**

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation. "Comments on da Vinci Consent Order." We will consider all comments we received by 4:30 p.m., local time, on June 20, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 5th day of May 1980.

**Wayne I. Tucker,**

*District Manager, Southwest District Enforcement, Economic Regulatory Administration.*

[FR Doc. 80–15622 Filed 5–20–80; 8:45 am]

BILLING CODE 6450–01–M

## Texas Oil & Gas Corp.; Action Taken on Consent Order

Pursuant to 10 CFR 205.199J, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of final action taken on a Consent Order. Under the terms of 10 CFR 205.199J(c), no Consent Order involving sums in excess of $500,000 shall become effective until ERA publishes notice of its executive and solicits and considers public comments with respect to its terms.

On April 8, 1980, ERA published a notice of a Proposed Consent Order which was executed between Texas Oil and Gas Corporation and the ERA (45 FR 23720, April 8, 1980). With that notice, and in accordance with 10 CFR 205.199J, ERA invited interested persons to comment on the proposed Consent Order. Also, in that notice, and in accordance with 10 CFR 205.283, interested parties who believe that they have a claim to all or a portion of the refund were instructed to provide written notification of ERA.

Four parties submitted written notification of claim; one party submitted comments on the terms and conditions of the Consent Order. After consideration of the comments received, the ERA has concluded that the Consent Order as executed between ERA and Texas Oil and Gas Corporation is an appropriate resolution of the compliance proceedings descibed in the notice published April 8, 1980, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, on May 19, 1980.

Issued in Dallas, Texas this 9th day of May 1980.

**Wayne I. Tucker,**

*District Manager, Southwest District Enforcement, Economic Regulatory Administration.*

[FR Doc. 80–15621 Filed 5–20–80; 8:45 am]

BILLING CODE 6450–01–M

## Office of Assistant Secretary for International Affairs

### Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Governments of the United States of America and Japan and the Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following transfer from Japan to the United Kingdom (Windscale) for the purpose of reprocessing: RTD/EU(JA)–32, from Fukushima I, units 1, 2 and 5, owned by the Tokyo Electric Power Company, 224 fuel assemblies, containing 41,759 kilograms of uranium enriched to 1.06% in U–235, and 259 kilograms of plutonium.

The Department of Energy has received letters of assurance from the Japanese Government that the recovered uranium and plutonium will not be transferred from the United Kingdom without the prior consent of the United States Government.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by Section 131 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2160) are submitted

to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: May 16, 1980.

For the Department of Energy.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-15626 Filed 5-20-80; 8:45 am]

BILLING CODE 6450-01-M

## Western Area Power Administration

### Parker-Davis Project; Order Confirming, Approving, and Placing Increased Power and Transmission Rates in Effect on an Interim Basis

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Notice of a Rate Order—Parker-Davis Project.

**SUMMARY:** Notice is given of a Rate Order No. WAPA-3 of the Assistant Secretary for Resource Applications placing increased power and transmission rates into effect on an interim basis for power marketed and transmitted by Western Area Power Administration's (Western) Parker-Davis Project, Arizona, California, and Nevada.

The rate adjustment will increase annual revenues about $2.3 million to meet cost recovery criteria.

All Parker-Davis Project wholesale firm power customers will have a single rate increase of 24 percent consisting of a capacity charge of $1.82/kW/mo and an energy charge of 4.15 mills/kWh resulting in a composite rate of 8.3 mills/kWh. All firm transmission service contracts that permit periodic rate adjustment will be increased from $5.30/kW/yr to $6.80/kW/yr. Additionally, a $3.67/kW/season transmission service charge for transmission service will be initially implemented for those Colorado River Storage Project (CRSP) wholesale firm power customers utilizing the Parker-Davis Project system for delivery of CRSP energy. Also, rates for nonfirm transmission service will be increased from 1.0 mills/kWh to 1.3 mills/kWh, an increase of 30 percent.

The rate order also contains statements and discussion of the principal factors leading to the decision on the rate increase, and explanations and responses to the comments, criticisms, and alternatives offered during the rate increase proceedings.

**EFFECTIVE DATE:** The rate adjustments and new rate will be effective the first day of the first full billing period beginning on or after June 16, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert A. Olson, Area Manager, Boulder City Area Office, Western Area Power Administration, Department of Energy, P.O. Box 200, Boulder City, Nevada 89005, (702) 293-8115.

Mr. Conrad Miller, Chief, Rates and Statistics Branch, Western Area Power Administration, Department of Energy, P.O. Box 3402, Golden, Colorado 80401, (303) 231-1535.

Mr. James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, Federal Building, Room 3349, 12th and Pennsylvania Avenue NW., Washington, DC 20461, (202) 633-8338.

**SUPPLEMENTARY INFORMATION:**

By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis.

Rate adjustments on the Parker-Davis Project were conducted consistent with procedural rules applicable to Western. Final Procedures for Public Participation in General Adjustments were published in the **Federal Register** on March 23, 1978 (43 FR 12076), April 5, 1978 (43 FR 14359), and February 7, 1979 (44 FR 7796).

Proceedings on the proposed rates were initiated on June 14, 1979, with an announcement published in the **Federal Register**, 44 FR 34192 (June 14, 1979), stating that a tentative power rate adjustment was being considered. A public information forum was held on July 9, 1979, with a public comment forum following on August 31, 1979.

The notice published in the **Federal Register** on March 17, 1980, at 45 FR 17061 announced a proposed rate order and opportunity for interested parties to submit comments in writing and to request an oral presentation.

An oral presentation was not requested.

Written comments were received from two parties. No new issues were raised or existing issues expanded. Both commenters disagreed that the Assistant Secretary for Resource Applications has authority to set rates on a provisional basis. One commenter took issue with Western not including the sale of surplus energy for future years in the Power Repayment Study, based on Water and Power Resources Service forecasts of the probability of surpluses. These comments were made previously and were addressed in the proposed rate order published with the March 17, 1980, **Federal Register** notice.

After review and consideration of the comments, I am issuing a rate order confirming and approving rates to be placed in effect on an interim basis and will promptly submit such rates to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued in Washington, DC, May 15, 1980.

**Ruth M. Davis,**

*Assistant Secretary, Resource Applications.*

In the Matter of: Western Area Power Administration—Parker-Davis Project Power and Transmission Rates; Rate Order No. WAPA-3.

### Order Confirming, Approving, and Placing Increased Power and Transmission Rates in effect on an Interim Basis

May 15, 1980.

Pursuant to Section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior under the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented by subsequent enactments, particularly by Section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Parker-Davis Project, for the Water and Power Resources Service (formerly the Bureau of Reclamation) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. The rate order is issued pursuant to the delegation to the Assistant Secretary and the rate adjustment procedures at 43 FR 12076 (March 23, 1978), as amended by 44 FR 7796 (February 7, 1979).

### Background

*Public Notice and Comment*

On June 14, 1979, the Western Area Power Administration (Western) announced a tentative rate adjustment for Parker-Davis Project power

marketed by Western (44 FR 34192). Interested persons were invited to participate in public forums and to submit written comments relative to the proposed rate adjustment. A public information forum was held in Las Vegas, Nevada, on July 9, 1979. The Boulder City Area Manager presented an overview of the project rate history, costs, and projected revenues and costs throughout the remainder of the repayment period. A question and answer session followed, after which the meeting was concluded.

A public comment forum was held in Phoenix, Arizona, on August 31, 1979. Oral presentation were made by seven customer representatives, and one written comment was received.

*Existing Rates*

The wholesale firm power service rate subject to this order supersedes Rate Schedule LC–F2 ($1.39/kW/mo and 3.5 mills/kWh), for wholesale firm power service from the Parker-Davis Project. The existing rate was approved by the Secretary of the Interior, effective on the first day of the first full billing period beginning on or after June 1, 1977.

The existing firm transmission service charge for the use of the Parker-Davis Project transmission system except for the transmission of Colorado River Storage Project (CRSP) power, was initially implemented by contract at $5.30/kw/yr on March 1, 1976. There has been no transmission service charge for CRSP electric service customers utilizing the Parker-Davis Project transmission system for the transmission of CRSP power. The existing rate for nonfirm transmission service is 1.0 mill per kilowatthour.

*Project History*

The Parker Dam Power Project was authorized by Section 2 of the Rivers and Harbors Act of August 30, 1935 (49 Stat. 1039), and the Davis Dam Project was authorized April 26, 1941, by the Acting Secretary of the Interior under provisions of the Reclamation Project Act of 1939 (43 U.S.C. 485 *et seq.*). The Parker-Davis Project was formed by the consolidation of the two projects under the terms of the Act of May 28, 1954 (68 Stat. 143).

Parker Dam, which creates the Lake Havasu reservoir, is located on the Colorado River between Arizona and California, 155 miles downstream from Hoover Dam. The dam was constructed by the Bureau of Reclamation, partially with funds advanced by the metropolitan Water District of Southern California. Under contract, the Metropolitan Water District is entitled to one-half of the net energy generated. Davis Dam, which creates the Lake Mohave reservoir, is located on the Colorado River between Arizona and Nevada, 67 miles downstream from Hoover Dam. The Parker-Davis Project is operated in conjunction with other hydroelectric installations in the Colorado River Basin.

Construction of Parker Dam was authorized for the purposes of controlling floods, improving navigation, regulating the flow of the streams of the United States, providing for storage and for the delivery of the stored waters thereof, for the reclamation of the public lands and Indian reservations, and other beneficial uses and for the generation of electric energy as a means of financially aiding and assisting such undertakings.

Davis Dam was constructed to provide reregulation of the fluctuating water releases from Lake Mead at Hoover Dam, from hourly to seasonal, to facilitate water delivery for downstream irrigation requirements, for delivery of water beyond the boundary of the United States as required by the Mexican Water Treaty, and for the generation of electric energy as a means of financially aiding and assisting such undertakings.

A total of 254,000 kilowatts is available from the Parker-Davis Project in the summer season, and 186,000 kilowatts in the winter season. Average annual generation is 1.2 billion kilowatthours. Transmission system capacity commitments were 933,625 kilowatts in FY 1977.

**Discussion**

*Power Repayment Study*

The current power repayment study for fiscal year 1977 indicates that the existing power rates are inadequate, based on January 1977 price levels, to pay the costs allocated and assigned to the power function within allowable time periods. Such inadequate revenues would result in a deficit which would be due primarily to higher interest rates charged against the unamortized portion of new additions and replacement investment.

A revised power repayment study was conducted which indicated the average annual revenue would have to be increased about $2.3 million to meet cost recovery criteria. New firm power rates and transmission charges were developed to generate the revenue required by the revised power repayment study.

*Rate Design and Rates*

A capacity and energy rate study and a transmission service charge study were made to assist in designing rates.

Estimated future power costs were examined to determine an appropriate apportionment between capacity and energy components. Analyses of future costs indicated it would be equitable and reasonable to split power production costs evenly between the capacity and energy components.

The annual charge for use of the Parker-Davis transmission system was developed based on annual transmission costs and capacity commitments for FY 1977. Of the total assumed transmission commitments of 613 MW in 1982 excluding Colorado River Storage Project, the new transmission rate of $6.80/kW/yr would be applicable to 171 MW. The existing transmission rate of $5.30/kW/yr cannot be changed at this time on some existing firm transmission contracts. The new seasonal charge of $3.67/kW/season for the transmission of CRSP power was developed based on proportionate usage of the Parker-Davis transmission facilities. Nonfirm transmission service is, by its nature, intermittent and therefore was not considered to be a significant factor in rate setting and in the rate design. Revenues from project use and Government camps represent about 6 percent of total power revenues. The rates for power for project use and for Government camps are not affected by this order.

The results of a revised power repayment study and subsequent rate design indicated that an average composite yield of 8.3 mills/kWhr, or a capacity component of $1.82/kW/mo and an energy component of 4.15 mills/kWhr, for all wholesale firm power customers, would satisfy the repayment criteria. Over 60 percent of project power revenues would be received from firm power sales.

The transmission charges provide for: an increase of firm transmission service charge, as permitted under existing contracts, to $6.80/kW/yr for the use of the Parker-Davis Project transmission system for firm transmission other than for Colorado River Storage Project power as permitted under existing contracts; implementation of a transmission charge of $3.67/kW/season for the Colorado River Storage Project, Southern Division, contractors using the Parker-Davis Project transmission system for the transmission of Colorado River Storage Project power; and establishment, by rate schedule, of an increase to a 1.3 mills/kWh charge for nonfirm transmission service.

*Surplus Energy Revenues*

A number of the customers presented comments regarding the alleged failure

of Western to consider the probability of surplus water releases previously forecasted by the Water and Power Resources Service which might result in surplus energy generation through Davis and Parker Powerplants. The customers contended that there is a high probability of surplus energy becoming available for sale during the time frame 1981 through 1985. It was indicated that surplus energy sales would result in added revenues available for the project and thus eliminate the need for a power rate adjustment at this time or at least reduce the proposed rate adjustment.

Further, the Department of the Interior's Manual 730.4.7E (adopted by Department of Energy's Order RA 6120.2 dated September 20, 1979 (was cited by the customers as the authority for Western to consider potential surplus revenues derived from anticipated higher than normal streamflows on the Colorado River. One customer stated that Western had acted contrary to the manual while another commented that Western chose to disregard the instructions.

It is noted that DM 730.4.7E and Department of Energy's Order RA 6120.2.10(e)(4), state, "Power quantities used for estimating revenues, unless defined by contract, are determined by the theoretical *reservior operation studies* based on historical streamflows. In preparing these operational studies, hydrological data, current to within 5 years if possible, and available engineering data will be used, recognizing restrictions imposed by other project functions. Input data will be revised and updated whenever new information indicates that a significant change in the forecast can be expected in the future where there is a significant variance between the forecasted and actual results, but in any event not less frequently than once every 5 years unless an accepted explanation is provided concerning why this is not necessary." (Emphasis added.)

A reservior operation study is a quantitative hydrology study which indicates the number of acre-feet of water which would be released and the number of kilowatthours which would be generated under a variety of water conditions, such as upper quartile, average, lower quartile, and adverse. Forecasts of energy sales and revenues are based on average water conditions.

The Water and Power Resources Service forecast relied on by the customers is a study of the probability of water releases of the purpose of flood control covering a relatively short time of the power repayment period. The study is not a reservior operation study and does not indicate how much water will be released or the resultant energy that could be generated. A probability study simply indicates the likelihood of occurrence of a specific event; in this case, the likelihood that surplus water releases for flood control will occur in the 1981–1985 time frame. This likelihood, whether a surplus or a deficit, does not invalidate the use of average water conditions for forecasting energy sales and revenue as discussed above.

The repayment study does not show future costs for purchased power to meet contract commitments in low water years because the assumption is made that revenues from surplus energy sales would offset such costs. This assumption is favorable to the power customers. Consistent with this assumption, it would not be proper to make the further assumption that the possibility of surplus releases during the 1981–1985 period will become a reality. If such surplus releases do occur, the resulting sales and revenues as reflected in historical accounts, will tend to reduce future rate increases that might be required.

*Replacements*

The customers commented on the method of forecasting replacement costs indicating that these costs may not be accurately projected and integrated into the repayment study. One commentator felt the power repayment study may be overstating the funds estimated for facilities replacement. The customers also were concerned that the 1968 Replacement Service Life Report used as a basis for forecasting future replacement cost may be outdated and in need of review.

The method of estimating future replacement costs in the repayment study was accomplished by a computer model developed by the Water and Power Resources Service. This computer model utilizes estimated service life values to calculate future replacements of plant investments. It should be noted that for the 5 succeeding years following the current study year, budget estimates are utilized for replacement costs. For the period following the 5 years, the computer model is employed to forecast future year replacement costs.

The 1968 Replacement Service Life Report is the basis for the service lives utilized by the replacement computer program to project future replacement costs appearing in the power repayment study. The customers believe that some of the estimated service lives are unrealistic. Western acknowledged that the study is 10 years old and may require review. Therefore, correspondence with the Water and Power Resources Service was initiated suggesting a joint review of the service life report. It has been generally agreed that the review will require 18–24 months to complete. The customers have expressed a desire to be involved in this review and it is Western's intent to seek customer involvement. Appropriate notification will be given the customers as the review progresses. Any new service life study or revisions to the 1968 study will be reflected, when available, in future power repayment studies.

*CRSP Transmission Charge*

The question of the implementation of a transmission charge for delivery of CRSP power over the Parker-Davis system was presented by a number of customers. The comment made by three of the customers concerned the basis for the transmission charge to be levied by the Parker-Davis Project.

The General Marketing Criteria for Colorado River Storage Project published in the **Federal Register** on February 9, 1978 (43 FR 5559), specifically referred to transmission charges by other Federal projects. On page 5564 of the **Federal Register** notice, first column, paragraph D states: "WAPA will transmit CRSP power to customers over existing transmission systems of other projects to the extent that capacity is determined to be available. Capacity in these other project transmission systems to the extent possible will be available for the term of the CRSP contracts involved. No additional charges will be imposed unless additional substation or switching station capacity is required or where utilization of another project's system would delay project repayment beyond the point in time which would otherwise be the case. *At some future date, the Secretary may charge for transmission service for delivery of CRSP power over other Federal Systems such as the Parker-Davis and Pick-Sloan Missouri Projects.* The customer will pay for such service at a rate determined by the Secretary which may be assessed as early as 1978 but shall not be later than the termination date of the customer's existing power sales contracts as they may be amended, or in any event, by October 1, 1989." (Emphasis added.)

We believe it is proper to charge those contractors/customers in the Southern Division of the Colorado River Storage Project for transmission of CRSP energy over the Parker-Davis system. Those receiving the benefits of the service should defray the costs of service. It would not be equitable for those CRSP contractors utilizing the Parker-Davis system to continue receiving

transmission service for their CRSP entitlement at no cost, at the expense of the other users of the Parker-Davis system.

One customer objected to the proposed transmission charge for wheeling CRSP power over the Parker-Davis system on the basis that it is not properly chargeable to individual customers but should be charged to the CRSP itself.

This question arose once before during the development of the revised CRSP "General Power Marketing Criteria" in 1976. The coordinating committee, which was comprised of representatives of the Water and Power Resources Service and of all CRSP customers, recommended the adoption of Section 10D of those criteria, which is quoted above. The coordinating committee recommended and DOE adopted these provisions on the basis of their being the most equitable solution to the problem of transmission costs for the delivery of CRSP power over other Federal systems.

*Transmission Costs*

One customer was in agreement with the concept that all users of the transmission system should bear the cost of the system. However, it was believed that all contractors/customers should participate proportionately with their usage. The customers expressed concern that "presently unrecovered costs" (due to some contracts not being subject to the increase at this time) should not be recouped in the future from contractors who are subject to the increase at this time, and that at the earliest possible date the impediments, not required by statute, which prevent application of increases to all transmission contractors should be removed.

There are contractual restraints in a few contracts that do not allow for a transmission rate adjustment at this time. Two of these contracts expire in 1987. The rates in these contracts will be adjusted at the earliest opportunity.

One representative pointed out differences between its actual transmission costs compared to those forecast in the brochure which suggested that the amount of the rate increase needed was overstated.

The differences stem from the estimate of future load based on contracts in effect in FY 1977. Since the repayment study was prepared, there have been numerous contract revisions and these will be reflected in future power repayment studies.

*Future Transmission Capacity Commitments*

It was indicated by one customer that Western's power repayment study excludes any growth in transmission capacity commitments through 1982 and therefore is unrealistic in view of growth of electric requirements. Further, because transmission capacity commitments for 1982 are claimed to be understated, the customer indicated that the projected revenues are also understated and the amount of the increase is overstated.

In estimating future revenues, Western's study was based on contractual commitments as of July 1977 or the best information available at the time of the study. To the extent any estimates of revenues (or costs) ultimately prove to be inaccurate, corrections will be made in future power repayment studies.

*Leavitt Act*

The Ak-Chin Indian Community argued that it was entitled to equitable relief from the new transmission charge for the delivery of CRSP power under the first provision of the Leavitt Act which authorizes and directs the Secretary of the Interior "* * * to adjust or eliminate reimbursable charges of the Government of the United States existing as debts against individual Indians or tribes of Indians in such a way as shall be equitable and just in consideration of all the circumstances under which such charges were made: * * *" (Act of July 1, 1932, 47 Stat. 564, 25 U.S.C. 386a.)

This portion of the Leavitt Act authorized the Secretary of the Interior to grant relief on a project-by-project basis from then existing obligations under the Indian Appropriations Act for Fiscal Year 1915 (Act of August 1, 1914, 38 Stat. 582, 583) to reimburse the Government for expenditures made for Indian irrigation projects. Neither it nor the first proviso, which defers construction costs assessed "against Indian owned lands within any Government irrigation project," applies to reclamation projects. Solicitor Finney Opinion, 54 I.D. 90 (1932). Also, both portions of the acts, which derived from separate bills, provide relief only from irrigation costs and do not apply to power costs. Consequently, the Leavitt Act does not afford a basis for the requested relief.

*Authority of Assistant Secretary for Resource Applications*

One commentator disagreed that the Assistant Secretary for Resource Applications has the authority to set rates on a provisional basis, after which they are submitted to the Federal Energy Regulatory Commission for approval on a final basis.

My authority to confirm, approve and place rates in effect on an interim basis for the Parker-Davis Project stems from Delegation Order 0204–33, as explained in the first paragraph of this order. The legal issues raised by the comment are answered by the opinion of the General Counsel of the Department of Energy issued October 14, 1978, discussing a draft of the delegation order. In that opinion the General Counsel pointed out that the authority to establish rates on an interim basis "is a necessary corollary of, and inherent in, the basic authority to set rates."

*Lower Colorado River Basin Development Fund*

A written statement filed on behalf of the Central Arizona Water Conservation District and the State of Arizona asserted that the Colorado River Basin Project Act of 1968 (Public Law 90–537, 43 U.S.C. 1501 *et seq.*) makes it necessary to set power rates for the Parker-Davis Project at a level which will assure project payout no later than the year 2005. Thereafter, rates should be at a level that would provide surplus revenues which, along with surplus revenues from the Boulder Canyon Project and the Pacific Northwest-Pacific Southwest Intertie Project in Nevada and Arizona, would provide at least 24 percent of the reimbursable costs of the Central Arizona Project.

Section 403(c)(2) of the Colorado River Basin Project Act [43 U.S.C. 1543(c)(2)] provides that there shall be credited to the Lower Colorado River Basin Development Fund "* * * any Federal revenues from the Boulder Canyon and Parker-Davis Projects which, after completion of repayment requirements of the said Boulder Canyon and Parker-Davis Projects, are surplus, as determined by the Secretary, to the operation, maintenance, and replacement requirements of those projects * * *" Other provisions of the Act deal with the application and distribution of these funds.

The legislative history of the Act shows that Congress anticipated that the original investment in the Parker-Davis Project would be essentially paid off in the year 2005, after which surplus revenues would be available. The revised power repayment study shows that the payout target will be met, but the determination of a surplus is complicated by the unforeseen rise in the cost of additions and replacements and the interest charges thereon. The decision to implement some form of

contribution from the Parker-Davis Project to the Lower Colorado River Basin Development Fund will need to be made at a later date to satisfy the original intent of Congress.

*Environmental Assessment*

One customer representative objected to the fact that an environmental assessment was not included with the preliminary rate proposal.

A study of the environmental and economic impacts of the proposed rate increase has been accomplished concurrent with the power repayment study. This study, called an environmental review, is designed to determine the extent of environmental impacts that can be expected from the rate adjustment. Study results indicate that the proposed rate increase will not significantly affect air or water quality, recreation resources, fish and wildlife, or any physical operation criteria of the Colorado River or related power production facilities.

It is clear that the proposed rate increase are not major Federal actions significantly affecting the quality of the human environment, within the meaning of NEPA, and that no environmental impact statement or environmental assessment is required.

*Public Utility Regulatory Policies Act 1978*

Comments were made by numerous customer representatives regarding the applicability of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.* (PURPA) to the Parker-Davis rate adjustment proceedings.

The PURPA Standards are not currently applicable to the rate adjustment proceedings because Parker-Davis did not have sales not for resale in excess of 500 million kilowatthours. However, some of the analyses suggested by the PURPA Standards may be included in the development of future proposed rates.

*Suspend Proceedings*

A request was made to the Administrator, by one representative, to suspend the rate proceedings because of a number of legal, procedural, and information deficiencies.

We are not aware of any valid basis that would justify suspending these proceedings.

*Availability of Information*

Information regarding this rate adjustment, including studies, comments, transcripts and other supporting material, is available for public review in the Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, Nevada 89005; Office of the Administrator, Western Area Power Administration, P.O. Box 3402, Golden, Colorado and in the Office of the Director of Power Marketing Coordination, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

*Submission to the Federal Energy Regulatory Commission*

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

*Price Stability*

Western is a "government enterprise" within the meaning of the price standards of the President's Council on Wage and Price Stability. The rate increase approved herein complies with the operating margin limitation of these standards because the revenues will be only those necessary to repay Parker-Davis Project costs and expenses.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective June 16, 1980, Rate Schedules PD–F1, PD–T1, PD–T2, and PD–T3 for wholesale power and transmission service. These rates shall remain in effect on an interim basis for a period of 12 months unless such period is extended, or until the FERC confirms and approves these or substitute rates on a final basis, whichever occurs first.

Issued at Washington, D.C. 15th day of May 1980.

**Ruth M. Davis,**

*Assistant Secretary Resource Applications.*

**U.S. Department of Energy—Western Area Power Administration; Boulder City Area**

Schedule PD–F1 (Replaces LC–F2)

*Parker-Davis Project, Arizona-California-Nevada; Schedule of Rates for Wholesale Firm Power Service*

*Effective:* The first day of the first full billing period beginning on or after June 16, 1980.

*Available:* In the area served by the Parker-Davis Project.

*Applicable:* To wholesale power customers for general electric service supplied through one meter at one point of delivery.

*Character and Conditions of Service:* Three-phase alternating current at sixty (60) Hertz, delivered and metered at the voltages and points of delivery specified by the service contract.

*Monthly Rate:* Capacity Charge: $1.82 per kilowatt of billing demand.

Energy Charge: 4.15 mills per kilowatthour for each kilowatthour scheduled and/or delivered, not to exceed the delivery obligation under the electric service contract.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand established during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

*Billing for Unauthorized Overruns:* For each billing period in which there is a contract violation involving an unauthorized overrun of the contractual firm power and/or energy obligations, such overrun shall be billed at ten (10) times the above rates.

*Adjustments:*

*For Transformer Losses:* If delivery is made at transmission voltage but metered on the low-voltage side of the transformer, the meter readings will be increased two (2) percent to compensate for tranformer losses.

*For Power Factor:* None. The customer will normally be required to maintain a power factor at the point of delivery of between 95 percent lagging and 95 percent leading.

**U.S. Department of Energy—Western Area Power Administration; Boulder City Area**

Schedule PD–T1

*Parker-Davis Project, Arizona-California-Nevada; Schedule of Rates for Firm Transmission Service*

Effective: The first day of the first full billing period beginning on or after June 16, 1980.

Available: In the area served by the Parker-Davis Project.

Applicable: To firm transmission service customers where power and energy are supplied to the Parker-Davis system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the Parker-Davis system specified in the service contract.

Character and Conditions of Service: Transmission service for three-phase alternating current at sixty (60) Hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Transmission Service Charge: $6.80 per kilowatt per year for each kilowatt contracted for at the point of delivery as specified in the service contract; payable monthly at the rate of $0.567 per kilowatt.

Adjustments:

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and contracting officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

**U.S. Department of Energy—Western Area Power Administration; Boulder City Area**

Schedule PD–T2

*Parker-Davis Project, Arizona-California-Nevada; Schedule of Rates for Transmission Service of Colorado River Storage Project (CRSP) Power and Energy*

Effective: The first day of the first full billing period beginning on or after June 16, 1980.

Available: In the area served by the Parker-Davis Project.

Applicable: To Colorado River Storage Project (CRSP) Southern Division customers where such power and energy are supplied to the Parker-Davis system by CRSP at points of interconnection with the CRSP system for transmission and delivery, less losses, to Southern Division customers at points of delivery on the Parker-Davis system specified in the service contract.

Character and Conditions of Service: Transmission capacity for three-phase alternating current at sixty (60) Hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Transmission Service Charge: $3.67 per kilowatt of the maximum allowable rate of delivery made available at each point of delivery during each season as specified in the service contract; payable monthly at the rate of $0.612 per kilowatt.

Adjustments:

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and contracting officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

**U.S. Department of Energy—Western Area Power Administration; Boulder City Area**

Schedule PD–T3

*Parker-Davis Project, Arizona-California-Nevada; Schedule of Rates for Nonfirm Transmission Service*

Effective: The first day of the first full billing period beginning on or after June 16, 1980.

Available: In the area served by the Parker-Davis Project.

Applicable: To nonfirm transmission service customers where power and energy are supplied to the Parker-Davis system at points of interconnection with other systems and transmitted and delivered subject to the availability of transmission capacity, less losses, to points of delivery on the Parker-Davis system specified in the service contract.

Character and Conditions of Service: Transmission service on an intermittent basis for three-phase alternating current at sixty (60) Hertz, delivered and metered at the voltages and points of delivery specified in the service contract.

Rate: Transmission Service Charge: 1.3 mills per kilowatthour for each kilowatthour scheduled; payable monthly.

Adjustments:

For Reactive Power: None. There shall be no entitlement to transfer of reactive kilovoltamperes at delivery points, except when such transfers may be mutually agreed upon by Contractor and contracting officer or their authorized representatives.

For Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer in accordance with the service contract.

[FR Doc. 80–15623 Filed 5–20–80; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–180436; FRL 1496–8]**

### Arkansas State Plant Board; Crisis Exemption To Use Temephos

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA gives notice that the Arkansas State Plant Board (hereafter referred to as "Arkansas") availed itself of a temporary crisis exemption to use temephos (Abate 4E) in the Sulphur River in Arkansas to control the buffalo gnat or black fly.

**DATE:** The crisis exemption has expired.

**FOR FURTHER INFORMATION CONTACT:** Jack E. Housenger, Registration Division (TS–767), Room E–107, Office of Pesticides and Toxic Substances, EPA, 401 M St., SW., Washington, DC 20460, 202/426–0223.

**SUPPLEMENTARY INFORMATION:** According to Arkansas, buffalo gnat populations have increased dramatically over the past two years, resulting in significant losses of domestic livestock in the Sulphur River Basin in Arkansas and Texas. On March 14, 1980, the Sulphur River, from the Texas State line to the point where the Sulphur River enters the Red River in Arkansas, was treated in quarter-mile strips at ten different sites. A total of ten gallons of Abate 4E Insecticide were applied aerially by a State-certified applicator. The program was monitored and samples were taken by the Arkansas State Plant Board and the State Cooperative Extension Service. Arkansas reported that the treatment appeared to be successful and that no adverse effects to the environment occurred. Treatment of the Sulphur River was carried out jointly with Texas.

(Sec. 18, as amended (92 Stat. 819; 7 U.S.C. 136))

Dated: May 14, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80–15517 Filed 5–20–80; 8:45 am]

BILLING CODE 6560–01–M

**[OPP–180433; FRL 1496–5]**

### California Department of Food and Agriculture; Issuance of Specific Exemption To use Paraquat Dichloride on Onions To Control Wild Oats

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted a specific exemption to the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use paraquat dichloride on 2,500 acres of onions in two counties in California to control wild oats.

**DATE:** This specific exemption expires on June 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jack E. Housenger, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Room E–107, Washington, DC 20460, 202/426–0223.

**SUPPLEMENTARY INFORMATION:** According to the Applicant, the major weed problem in onion fields located in Siskiyou and Modoc Counties is wild oats. There are currently no products registered in California to control this weed in onions. The Applicant claims that hand weeding is too costly. Paraquat dichloride consistently provides 80 percent or better wild oat control, the Applicant stated. The Applicant further claimed that wild oats reduce onion yield in excess of 35 percent; this represents a monetary loss of $1.1 million.

The Applicant proposed to make one application of Ortho Paraquat CL in Siskiyou and Modoc Counties. There would be a pre-harvest interval of 90 days.

EPA has determined that residue levels of paraquat are not likely to exceed 0.05 part per million (ppm) in either green or dry bulb onions and that this level is adequate to protect the public health. A petition has been submitted for the establishment of a 0.05 ppm tolerance for paraquat in or on green or dry bulb onions and is currently under review.

EPA has also determined that a single application of paraquat should not have an unreasonable adverse effect on the

environment; nor should it pose a hazard to non-target organisms.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of wild oats has occurred; (b) there is no pesticide presently registered and available for use to control wild oats in California; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if the wild oats are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until June 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Ortho Paraquat CL (EPA Reg. No. 239–2186) may be applied at a rate of 1 to 2 quarts of product (0.5 to 1.0 pound active ingredient) per acre;

2. Applications may be made by or under the direct supervision of applicators State-certified in this category of pest control.

3. Applications may be made with ground equipment using 20 to 30 gallons of water per acre;

4. A maximum of 2,500 acres in the counties named above may be treated;

5. One application per season may be made;

6. No application will be permitted within 90 days of harvest;

7. Residues of paraquat from this use are not expected to exceed 0.05 ppm on green or dry bulb onions. Onions with residues of paraquat not in excess of this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

8. All applicable label directions, precautions and restrictions must be adhered to;

9. The EPA shall be immediately informed of any adverse effects resulting from the use of paraquat in connection with this exemption; and

10. The Applicant is responsible for ensuring that all of the provisions of the specific exemption are met and must submit a report on the results of this program to the EPA by December 31, 1980.

(Sec. 18, as amended, (92 Stat. 819; 7 U.S.C. 136))

Dated: May 12, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80–15513 Filed 5–20–80; 8:45 am]

BILLING CODE 6560–01–M

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**[OPP–180437; FRL 1496–6]**

## Georgia Department of Agriculture; Crisis Exemption To Use Maneb and Zinc-Maneb

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA gives notice that the Georgia Department of Agriculture (hereafter referred to as "Georgia") has availed itself of a crisis exemption to use maneb and zinc-maneb to control blue mold *(Peronospora tabacina)* on tobacco in the field.

**DATE:** Since the program is expected to take more than fifteen days, Georgia has requested a specific exemption to continue the program until August 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jack E. Housenger, Registration Division (TS–767), Room E–107, Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202/426–0223.

**SUPPLEMENTARY INFORMATION:** According to Georgia, blue mold has been primarily a pest on tobacco in the beds, not in the field. This is due to the fact that by the time tobacco is transplanted to the field, the ideal combination of temperature and humidity does not generally persist for periods long enough to favor widespread development of the mold. However, Georgia reported, problems did occur in 1979, and an estimated $2.1 million were lost because of blue mold on tobacco in the field. Georgia stated that Agri-Mycin, the only registered product available for control of blue mold in the field, was not available to many growers because of its demand in the fruit growing industry. Georgia further reported that Ridomil, a new fungicide registered by EPA to Ciba-Geigy which is expected to control blue mold in the field, will not be available in sufficient quantity to treat the Georgia acreage. According to Georgia, several maneb (manganese ethylenebisdithiocarbamate) formulations are registered for use on tobacco, but for use only on beds. Georgia states that these products containing maneb, alone and in combination with zinc, serve very effectively in a preventive program. Georgia's crisis exemption extended their use to tobacco in the fields.

Georgia reported that two applications will be made on a maximum of 33,000 acres of tobacco, using approximately 63,000 pounds of active ingredient. Georgia anticipates no unreasonable adverse effects on man or the environment from this use. Georgia has submitted a request for a specific exemption for continuation of this use of maneb and zinc-maneb.

(Sec. 18, as amended (92 Stat. 819; 7 U.S.C. 136))

Dated: May 14, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80–15516 Filed 5–20–80; 8:45 am]

BILLING CODE 6560–01–M

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**[PP 8G2118/T241; FRL 1497–2]**

## Ethalfluralin; Establishment of a Temporary Tolerance

**AGENCY:** Environmental protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has established a temporary tolerance for residues of the herbicide ethalfluralin [*N*-[-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluromethyl)benzeneamine] in or on the raw agricultural commodity groupings seed and pod vegetables, forage legumes, peanuts, and peanut hulls at 0.05 part per million (ppm).

**FOR FURTHER INFORMATION CONTACT:** James M. Stone, Acting Product Manager (PM) 23, Room: E–351 (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202–755–1397).

**SUPPLEMENTARY INFORMATION:** Elanco Products Company, P.O. Box 1750, Indianapolis, IN 46206, submitted a pesticide petition (PP 8G2118) to the EPA. This petition requested that a temporary tolerance be established for residues of the herbicide ethalfluralin [*N*-[-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl) benezenamine] in or on the raw agricultural grouping seed and pod vegetables, forage legumes, peanuts, and peanut hulls at 0.05 ppm.

This temporary tolerance is to permit the marketing of the above raw agricultural commodities treated in accordance with the experimental use permit 1471–EUP–63 that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as

amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material were evaluated, and it was determined that establishment of the temporary tolerance would protect the public health. Therefore, the temporary tolerance has been established on the condition that the experimental use permit be used with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Company must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company will also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance will expire April 16, 1981. Residues not in excess of this amount remaining in or on the raw agricultural commodities after the expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 561; (21 U.S.C. 346a(j))

Dated: May 14, 1980.

**Douglas D. Campt,**

*Director, Registration Division Office of Pesticide Programs.*

[FR Doc. 80-15510 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

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[PF-125A, FRL 1497-4]

## Filing of Pesticide Petition; Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** ICI Americas, Inc., Concord Pike and Murphy Road, Wilmington, DE 19897. Proposes that 40 CFR 180.365 be amended by establishing tolerance limitations for the combined residues of the insecticide 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate and its metabolites 5,6-dimethyl-2-(formylmethylamino)-4-pyrimidinyl dimethylcarbamate and 5,6-dimethyl-2-(methylamino)-4-pyrimidinyl dimethylcarbamate (both calculated as parent compounds) in or on various raw agricultural commodities.

**ADDRESS:** Written comments and inquiries should be directed to: William H. Miller, Product Manager (PM) 16, Room E-343, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, 202/755-2562.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "PF-125A" and the petition number.

**SUPPLEMENTARY INFORMATION:** On April 12, 1979, the EPA announced (44 FR 21882) that ICI Americas, Inc., Wilmington, DE 19897, submitted a petition (PP 9F2175) which proposed to amend 40 CFR 180.365 by establishing tolerance limitations for the combined residues of the insecticide 2-(dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate and its metabolites 5,6-dimethyl-4-pyrimidinyl-2-(formylmethylamino)-4-pyrimidinyl dimethylcarbamate and 5,6-dimethyl-2-(methylamino)-4-pyrimidinyl dimethylcarbamate (both calculated as parent) in or on certain agricultural commodities. The application proposed tolerances for alfalfa hay at 50.0 ppm; fresh alfalfa (green chop) at 10.0 ppm; pecans at 0.05 ppm; meat, fat, meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and milk, poultry, and eggs at 0.05 ppm.

This amendment proposes to increase the proposed tolerances as follows:

**§ 180.365 2-(Dimethylamino)-5,6-dimethyl-4-pyrimidinyl dimethylcarbamate tolerance for residues.**

| Commodity: | Parts per million |
|---|---|
| Alfalfa hay | 75.0 |
| Fresh alfalfa (green chop) | 15.0 |
| Pecans | 0.1 |

The proposed analytical method for determining residues is a gas chromatographic procedure using a nitrogen detector.

All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act)

Dated: May 14, 1980.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-15511 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

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[OPP-180390A]; FRL 1496-7]

## Hawaii Department of Agriculture; Issuance of Specific Exemption To Use Oxamyl To Control Leafminers

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted a specific exemption to the Hawaii Department of Agriculture (hereafter referred to as the "Applicant") to use oxamyl on 190 planting acres of watermelons to control leafminers (*Liriomyza* spp.). The Applicant initiated a crisis exemption for this use of oxamyl on September 11, 1979, and so notified the Administrator. Notification of this crisis exemption was published in the **Federal Register** of November 21, 1979 (44 FR 66987).

**DATE:** The specific exemption expires on January 31, 1981.

**FOR FURTHER INFORMATION CONTACT:** Donald Rodier, Registration Division (TS-767), Rm. E-124, EPA, 401 M St., SW., Washington, DC 20460, 202/426-0223.

**SUPPLEMENTARY INFORMATION:** According to the Applicant, the problem with the leafminer is twofold: (1) pesticides used throughout the growing season to control other pests destroy natural predators of leafminers; and (2) the short life cycle of the leafminer enables a resistant population to develop quickly. The Applicant reported that some growers lost their entire crop and other growers have used up to three daily applications of Dibrom with little success. The Applicant estimates a loss of $225,000 if the leafminer is not controlled. Data indicate oxamyl to be effective for this use.

The Applicant proposed to make a maximum of six applications of Vydate L (EPA Reg. No. 352-372), which contains the active ingredient (a.i.) oxamyl, on 190 acres of watermelons in the counties of Oahu, Kauai, Maui/Molokai, and Hawaii. Watermelons are planted two to three times a year; the 190 acres represent a total planting acreage rather than actual acreage.

EPA has determined that residues of oxamyl in watermelons are not likely to exceed one part per million (ppm) from this use if a two-day pre-harvest interval is observed. This residue level has been judged adequate to protect the public

health. No unreasonable adverse effects on the environment are anticipated from the program.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of leafminers has occurred; (b) there is no effective pesticide presently registered and available for use to control the leafminer in Hawaii; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the leafminer is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until January 31, 1981, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Vydate L may be applied at a dosage rate of from two to four pints (0.5–1.0 pound a.i.) per acre. Up to six applications may be made per acre per growing season;

2. A total of 190 planting acres located in the areas named above are authorized under this exemption;

3. Applications are to be made only by State-certified applicators using ground equipment;

4. A pre-harvest interval of two days must be observed;

5. Watermelons with residues of oxamyl (methyl N', N'-dimethyl-N-[(methylcarbamoyl)oxy]-1-thiooxamidate) not exceeding 1.0 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

6. All applicable label use directions, precautions, and restrictions must be adhered to;

7. The control program shall be coordinated by the University of Hawaii Cooperative Extension Service;

8. Any adverse effects resulting from the use of oxamyl under this specific exemption shall be reported to the EPA immediately; and

9. The Applicant is responsible for assuring that all the provisions of this specific exemption are met and must submit a full report on the results achieved under the exemption to the EPA by June 1, 1981.

(Sec. 18, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: May 14, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80-15515 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

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**[PF-185; FRL 1497-3]**

## Filing of Pesticide and Food Additive Petitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that American Cyanamid Co. has filed requests with the EPA to establish tolerances for residues of a pesticide chemical on cottonseed at 0.1 part per million (ppm) and in cottonseed oil at 0.2 ppm.

**ADDRESS:** Written comments and inquiries should be directed to: Mr. Franklin Gee, Product Manager (PM) 17, Registration Division (TS–767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202/426–9417.

Written comments may be submitted while the petition is pending before the Agency. The comments are to be identified by the document control number "[PF–185]" and the specific petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

**SUPPLEMENTARY INFORMATION:** EPA gives notice that the following pesticide petitions have been submitted to the Agency to establish tolerances for residues of cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on cottonseed and cottonseed oil in accordance with the Federal Food, Drug, and Cosmetic Act. The analytical method for determining residues, where required, is given in each specific petition.

PP OF2347. American Cyanamid Co., P.O. Box 400, Princeton, NJ 08540. Proposes that 40 CFR 180.379 be amended by establishing a tolerance for residues of the insecticide cyano (3-phenoxyphenyl)methyl-4-chloro-alpha-(methylethyl)benzeneacetate in or on the raw agricultural commodity cottonseed at 0.1 ppm. The proposed analytical method for determining residues is gas-liquid chromatography.

FAP OH5257. American Cyanamid Co. Proposes that 21 CFR 193 be amended by establishing a tolerance for residues of the above insecticide in cottonseed oil at 0.2 ppm.

Dated: May 14, 1980.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-15512 Filed 5-20-80; 8:45 am]

BILLING CODE 6506-01-M

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**[OPP-180434; FRL 1497-1]**

## Idaho and Washington State Departments of Agriculture; Issuance of Specific Exemptions To Use Dinoseb To Control Broadleaf Weeds in Lentils

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted specific exemptions to the Idaho and Washington State Departments of Agriculture [hereafter referred to as "Idaho" and "Washington" individually, or the "Applicants" collectively) to use an alkanolamine salt formulation of dinoseb for the control of various broadleaf weeds on 40,000 acres of lentils in the northern counties of Idaho and 106,000 acres of lentils in Spokane and Whitman Counties, Washington. The specific exemptions are issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATE:** The specific exemptions expire on July 15, 1980.

**FOR FURTHER INFORMATION CONTACT:** Libby Welch, Registration Division (TS–767), Office of Pesticide Programs, Rm. E–124, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202/426–0223.

**SUPPLEMENTARY INFORMATION:** According to the Applicants, broadleaf weeds are the major problems threatening lentil production. Lack of weed control in lentils not only reduces yield, but also increases weed problems in succeeding rotational crops. The Applicants state that herbicide treatment should be made within a few days after planting and before crop emergence.

There are currently no EPA–registered herbicides for pre-emergence control of broadleaf weeds in lentils. The Applicants proposed to make one application of a product called Premerge 3 (EPA Reg. No. 464–490) at the rate of three pounds active incredient (a.i.) in at least twenty gallons of water per acre. The active ingredient in Premerge 3 is dinoseb. Dinoseb (3/sec-butyl-4-6-dinitrophenol), alkanolamine salts of the ethanol series, is currently registered as a pre-emergence treatment for control of broadleaf weeds in peas, potatoes, strawberries, and other crops at rates of

up to nine pounds active ingredient per acre. Tolerances have been established at 0.1 part per million (ppm) of dinoseb for these crops. That residue level is based on an application rate which is three times greater than the proposed use of dinoseb on lentils. The 0.1 ppm residue level of dinoseb in or on lentils has been judged adequate to protect the public health.

EPA has estimated that the maximum concentration for the nitrosamine impurity NDELA available for public exposure from the proposed use is 0.028 part per billion based on the proposed tolerance of 0.1 part per million (ppm) and assuming that the impurity is absorbed and stored in the same ratio as dionseb. This maximum quantity is an unmeasurable quantity which would not pose a quantifiable risk to human health. The maximum concentration for the nitrosamine impurity NDELA available for applicator hazard is estimated to be an acceptable risk situation provided the mixer/loader/applicators wear protective clothing or us closed cab equipment in the case of application.

No unreasonable adverse risk to the environment is expected to result from this use of dinoseb.

Idaho indicated that, without adequate control of weeds in lentils, the dollar loss could be greater than $5 million in Idaho; Washington estimated a potential loss $14,840,000.

After reviewing the applications and other available information, EPA has determined that (a) pest outbreaks of various braodleaf weeds have occurred or are about to occur; (b)( there is no pesticide presently registered and available for pre-emergence use to control these weeds in lentils in Idaho and Washington State: (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the weeds are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the applicants have been granted specific exemptions to use the pesticide noted above until July 15, 1980 to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The product Premerge 3, (EPA Reg. No. 464–490) manufactured by Dow Chemical, may be applied by ground equipment only at a rate of three pounds a.i. per acre;

2. Applications will be made by State-licensed commercial applicators or qualified growers. State University Extension Service personnel will provide directions and pertinent information to applicators and growers;

3. Applications will be made with ground equipment using a minimum of 20 gallons of water per acre;

4. A single application may be made after planting but before emergence of the lentils;

5. A maximum of 40,000 acres of lentils in the northern counties of Idaho and 106,000 acres in Whitman and Spokane Counties, Washington, may be treated;

6. All applicable directions, precautions, and restrictions on the EPA-registered label must be followed;

7. In addition, all mixers, loaders, and applicators are to be advised, prior to exposure to the pesticide, that Premerge 3 contains a nitrosamine contaminant which has the potential for causing cancer. All mixers, loaders, and applicators must be cautioned to wear protective gloves. Applicators should use closed cab equipment if available;

8. Residues of dinoseb from the program outlined above are not expected to exceed 0.1 ppm in or on lentils. Lentils with residues of dinoseb not in excess of this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

9. The EPA shall be informed immediately of any adverse effects resulting from the use of dinoseb in connection with this exemption; and

10. Idaho and Washington shall each be responsible for insuring that all provisions of its specific exemption are met and each must submit a report summarizing the results by December 31, 1980.

(Sec. 18, as amended (92 Stat. 819; 7 U.S.C. 136)).

Dated: May 14, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80-15514 Filed 5-20-80; 8:45 am]

**BILLING CODE 6560-01-M**

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**[FRL 1496-1]**

## Agency Comments on Environmental Impact Statements and Other Actions Impacting the Environment

Pursuant to the requirements of the section 102(2)(C) of the National Environmental Policy Act of 1969, and section 309 of the Clean Air Act, as amended, the Environmental Protection Agency (EPA) has reviewed and commented in writing on Federal agency actions impacting the environment contained in the following appendices during the period of April 1, 1979 and April 30, 1979.

Appendix I contains a listing of draft environmental impact statements reviewed and commented upon in writing during this review period. The list includes the Federal agency responsible for the statement, the number and title of the statement, the classification of the nature of EPA's comments as defined in Appendix II, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix II contains the definitions of the classifications of EPA's comments on the draft environmental impact statements as set forth in Appendix I.

Appendix III contains a listing of final environmental impact statements reviewed and commented upon in writing during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the EPA source for copies of the comments as set forth in Appendix VI.

Appendix IV contains a listing of final environmental impact statements reviewed but not commented upon by EPA during this review period. The listing includes the Federal agency responsible for the statement, the number and title of the statement, a summary of the nature of EPA's comments, and the EPA source for copies of the comments as set forth in Appendix VI.

Appendix V contains a listing of proposed Federal agency regulations, legislation proposed by Federal agencies, and any other proposed actions reviewed and commented upon in writing pursuant to section 309(a) of the Clean Air Act, as amended, during the referenced reviewing period. This listing includes the Federal agency responsible for the proposed action, the title of the action, a summary of the nature of EPA's comments, and the source for copies of the comments as set forth in the Appendix VI.

Appendix VI contains a listing of the names and addresses of the sources of EPA reviews and comments listing in Appendices I, III, IV, and V.

Note that this is a 1979 report; the backlog of reports should be eliminated over the next three months.

Copies of the EPA Manual setting forth the policies and procedures for EPA's review of agency actions may be obtained by writing the Public Information Reference Unit, Environmental Protection Agency, Room 2922, Waterside Mall SW, Washington, D.C. 20460, telephone 202/755–2808.

Copies of the draft and final environmental impact statements referenced herein are available from the originating Federal department or agency.

Dated: May 15, 1980.

**William N. Hedeman, Jr.,**

*Director, Office of Environmental Review.*

**Appendix I.**—*Draft Environmental Impact Statements for Which Comments Were Issued Between Apr. 1 and Apr. 30, 1979*

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Civil Aeronautics Board** | | |
| D-CAB-C51007-PR | Caribbean Area Service Investigation, Grant, Aircraft Noise at San Juan International Airport, P.R. | LO1 | C |
| | **Corps of Engineers** | | |
| DA-COE-A32067-MS | Dam and Lake Construction, Oil Interest, Tallahala Creek Lake, Pascagoula River, Jasper County, Miss. | EU2 | E |
| DR-COE-A36034-CA | Corte Madera Creek Flood Control Project, Unit 4, Marin County, Calif | LO1 | J |
| DS-COE-B39005-MA | Cape Cod Canal, Bourne and Sagamore, Barnstable County, Mass | LO2 | B |
| DS-COE-C30004-NY | Harbor of Refuge, Port Ontario, Oswego County, N.Y | EU2 | C |
| D-COE-D32010-VA | Lynnhaven Inlet, Bay and Connecting Waters, Maintenance and Dredging, Virginia Beach, Va | ER2 | D |
| DS-COE-F36063-MN | Mankato-North Mankato-Le Hillier Flood Control, Minnesota River, Blue Earth and Nicollet Counties, Minn. | LO1 | F |
| D-COE-G36071-NM | Middle Rio Grande Flood Protection, Bernalillo to Belen, N. Mex | LO1 | G |
| D-COE-K35015-GU | Harbor of Refuge, Apra Harbor, Guam | LO1 | J |
| D-COE-K36029-CA | Merced County Streams, Calif | LO1 | J |
| | **Department of Agriculture** | | |
| D-AFS-J61024-CO | Piedra River, Wild and Scenic River Study, San Juan National Forest, Archuleta County, Colo | LO1 | I |
| D-AFS-K62001-AZ | Western Spruce Budworm Management, Kaibab National Forest, Grand Canyon National Park, Coconino County, Ariz. | LO2 | J |
| D-AFS-L61122-OO | Colville National Forest, Sullivan-Salmo Planning Unit, Pend Oreille County, Washington and Boundary County, Idaho. | LO2 | K |
| D-AFS-L61123-ID | Land Management Alternatives, Cedars Planning Unit, Clearwater National Forest, Clearwater and Shoshone Counties, Idaho (USDA-FS-01-05-79-06). | LO2 | K |
| D-SCS-G36070-TX | Project Completion, Trinity River Watershed, Tex | LO2 | G |
| | **Department of Commerce** | | |
| DS-NOA-B91011-OO | Atlantic Groundfish Fishery Management Plan Amendment (DS-3) | LO1 | B |
| D-NOA-E60005-SC | North Carolina Coastal Management Program (CZM), Amendments | LO1 | E |
| DS-NOA-K64001-CA | Preliminary Fishery Management Plan, Pacific Billfishes and Oceanic Sharks, Calif | LO1 | J |
| D-NOA-K86005-GU | Guam Coastal Zone Management Program (CZM) | LO1 | J |
| D-NOA-K86006-HI | Fisheries Management Plan, Precious Coral Fisheries of the Western Pacific Region | LO1 | J |
| D-NOA-L64003-WA | Proposed Washington Coastal Zone Management Program (CZM), Amendment No. 1, Deletion of the Evans Policy Statement, Washington. | ER2 | K |
| | **Department of Interior** | | |
| D-BLM-G61007-NM | Grazing Management Program, East Socorro and Valencia Counties, N. Mex | LO1 | G |
| D-BLM-J01026-WY | Proposed Coal Leasing, Carbon Basin Area, Carbon County, Wyo | ER2 | I |
| D-BLM-K65031-AZ | Vermillion Resource Area, Proposed Livestock Grazing Management Program, Coconino and Mohave Counties, Ariz. | LO2 | J |
| D-IGS-J01022-MT | Big Sky Mine, Proposed Surface Coal Mining Operation, Peabody Coal Company, Mine Expansion and Reclamation Plan, Rosebud County, Mont. | EU1 | I |
| D-IGS-J07008-MT | Colstrip Project, Right-of-Way, Rosebud County, Mont | EU1 | I |
| DS-NPS-K61031-HI | Haleakala National Park, Boundary Expansion, General Management Plan, Maui County, Hawaii | LO1 | I |
| | **Department of Transportation** | | |
| DS-CGD-A52090-OO | Seadock, Texas Deepwater Port Authority Application Amendment, Offshore Texas | LO2 | A |
| RD-CGD-A52137-OO | 33 CFR Part 157, Tank Vessels of 20,000 DWT or More Carrying Oil in Bulk, Proposed Design, Equipment, Operating, and Personnel Standards and; 33 CFR Part 164, Tank Vessels of 10,000 Gross. | ER2 | A |
| D-FAA-C51006-NY | Albany County Airport Extension of Runway 1-19, Albany County, N.Y | ER2 | C |
| D-FAA-K51016-CA | Palmdale International Airport, Palmdale, Los Angeles County, Calif | ER2 | J |
| D-FHW-D40067-MD | Cabin Branch Interchange, U.S. 50, Cheverly, Prince Georges County, MD | LO2 | D |
| D-FHW-D40068-VA | VA-291, Northwest Expressway Extension and Old Forest Boulevard, Lynchburg, Campbell County, Va. | LO2 | D |
| D-FHW-E40165-NC | U.S. 19, Andrews Bypass to the Intersection of NC-28, Cherokee, Graham, Macon and Swain Counties, N. C. | LO2 | E |
| D-FHW-E40168-TN | TN-43, Junction of U.S.-45E and U.S.-45W Northward to Western Bypass of Martin, Madison, Gibson and Weakley Counties, Tenn. | LO2 | E |
| D-FHW-F40125-IN | Third Street Corridor, IN-37 to IN-45/46 Bypass, Bloomington, Monroe County, Ind | LO2 | F |
| D-FHW-F40127-WI | CTH "A", West County Line Road, Rock County, Wis | LO2 | F |
| D-FHW-H40024-IA | U.S. 71, Milford North to IA-9 in Spirit Lake, Dickinson County, Iowa (FHWA-IOWA-EIS-79-01-D). | ER2 | H |
| DS-FHW-K40014-CA | CA-101, Transportation Corridor, Salinas to Carrillo Street, Santa Barbara County, Calif | LO2 | J |
| D-FHW-K40065-CA | CA-92 Gap Closure, CA-92 and CA-101 Interchange, San Mateo County, Calif | LO1 | J |
| D-FHW-L40079-OR | Going Street Noise Mitigation Project, Portland, Multnomah County, Oreg | LO1 | K |
| | **Department of Housing and Urban Development** | | |
| D-HUD-E85043-TN | Stonebridge Subdivision, Memphis, Shelby County, Tenn. (HUD-R04-EIS-78-09D) | LO2 | E |
| D-HUD-F89003-WI | Plankinton House and Northwing Addition, Wisconsin Avenue, Urban Renewal Program, Milwaukee, Milwaukee County, Wis. | LO2 | F |
| D-HUD-G85135-TX | Cypress Meadows Subdivision, Harris County, Tex | LO2 | G |
| D-HUD-G85137-TX | Postwood North Subdivision, Harris County, Tex | LO2 | G |
| D-HUD-J85019-OO | Mesa, Hampden Hills at Aurora, Planned Development, Arapahoe County, Colo | ER2 | I |
| | **Department of Justice** | | |
| D-JUS-K81008-AZ | Federal Detention Center, Tucson, Ariz | LO1 | J |

**Appendix I.**—*Draft Environmental Impact Statements for Which Comments Were Issued Between Apr. 1 and Apr. 30, 1979* —Continued

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Nuclear Regulatory Commission** | | |
| DS-NRC-B06001-MA | Pilgrim Nuclear Power Station, Unit No. 2, Alternative Sites, Plymouth County, Mass. (Docket No. 50-471). | ER2 | B |
| | **Veterans Administration** | | |
| D-VAD-G81011-AR | John L. McClellan Memorial Hospital, 500-Bed Medical Center, Little Rock, Ark. | LO1 | G |

## Appendix II—Definitions of Codes for the General Nature of EPA Comments

*Environmental Impact of the Action*

LO—Lack of Objection

EPA has no objections to the proposed action as described in the draft impact statement; or suggests only minor changes in the proposed action.

ER—Environmental Reservations

EPA has reservations concerning the environmental effects of certain aspects of the proposed action. EPA believes that further study of suggested alternatives or modifications is required and has asked the originating Federal agency to reassess these impacts.

EU—Environmental Unsatisfactory

EPA believes that the proposed action is unsatisfactory because of its potentially harmful effect on the environment. Furthermore, the Agency believes that the potential safeguards which might be utilized may not adequately protect the environment from hazards arising from this action. The Agency recommends that alternatives to the action be analyzed further (including the possibility of no action at all).

*Adequacy of the Impact Statement*

Category 1—Adequate

The draft impact statement adequately sets forth the environmental impact of the proposed project or action as well as alternatives reasonably available to the project or action.

Category 2—Insufficient Information

EPA believes that the draft impact statement does not contain sufficient information to assess fully the environmental impact of the proposed project or action. However, from the information submitted, the Agency is able to make a preliminary determination of the impact on the environment. EPA has requested that the originator provide the information that was not included in the draft statement.

Category 3—Inadequate

EPA believes that the draft impact statement does not adequately assess the environmental impact of the proposed project or action, or that the statement inadequately analyzes reasonable available alternatives. The Agency has requested more information and analysis concerning the potential environmental hazards and has asked that substantial revision be made to the impact statement.

**Appendix III.**—*Final Environmental Impact Statements for Which Comments Were Issued Between Apr. 1 and Apr. 30, 1979*

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Corps of Engineers** | | |
| F-COE-C07002-NY | Lake Erie Generating Station, Niagara Mohawk Power Corp., Pomfret, Sheridan, Chautauqua County, N.Y. | EPA continues to have environmental reservations concerning the effects of the plant's particulate and sulfur dioxide emissions on air quality directly, and on vegetation and water quality indirectly. EPA is confident that its concerns regarding site selection, intake location and intake design will be resolved through the NPDES permitting program. | C |
| F-COE-G32028-TX | Freeport Harbor Federal Navigation Project, Brazoria County, Tex. | EPA's concerns were adequately addressed in the final EIS. | G |
| F-COE-K30007-CA | Sand Island Shore Protection Plan, Honolulu, Oahu Island, Hawaii | EPA's concerns were adequately addressed in the final EIS. | J |
| | **Department of Agriculture** | | |
| F-AFS-A82101-00 | Cooperative Gypsy Moth Suppression and Regulatory Program, 1979 Activities. | EPA's concerns were adequately considered in the final EIS. In addition, EPA made several state specific recommendations. | A |
| | **Department of Commerce** | | |
| F-MAR-A52131-00 | Tank Vessels Engaged in Domestic Trade (MA-EIS-7302-79016-F). | EPA's concerns were adequately addressed in the final EIS. | A |
| | **Department of the Interior** | | |
| F-BLM-G07014-NM | Star Lake, Bisti Regional Coal, Northeastern N.M. | EPA continues to express environmental reservations with the proposed actions as they relate to the potential coal and energy development within the study area of northwestern New Mexico. EPA's primary concern evolves from the possible cumulative and long-term socioeconomic and water resource impacts this proposed Federal action and the associated regional coal development may impose upon the inhabitants and communities within this area. EPA hopes that reservations with the project will encourage the best coordination of efforts of all concerned interests so that an environmentally sound approach to mitigate the possible impacts can be resolved. | G |
| FS-IBR-A61127-ND | Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, N. Dak. | Due to the extensive environmental impacts and uncertainties associated with the Garrison Project, as described in the FSEIS and the "Special Report on Reevaluation and Modification of the Garrison Diversion Unit", dated February 1979, EPA cannot support any of the proposals outlined for additional construction. Development of the 96,300 acre recommended plan has not altered our previous conclusion that water quality impacts from Garrison could be expected to be significant and continuing, with potential violations of some water quality standards. | A |

**Appendix III.**—*Final Environmental Impact Statements for Which Comments Were Issued Between Apr. 1 and Apr. 30, 1979* —Continued

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Department of Transportation** | | |
| F-FAA-F51014-MI | Relocation of households and construction of new runway, Twin County Airport, Menominee, Menominee County, Mich. | Generally, EPA's concerns were adequately addressed in the final EIS. EPA raised concern with the casual discussion to wetlands and has requested the Corps of Engineers to fully evaluate the impacts associated with the fill to assure compliance with the appropriate 404 regulations. | F |
| F-FHW-A42169-IL | Supplemental Freeway, Federal Aid Primary Route (FAP) 408, Barry to Quincy, Pike and Adams Counties, Ill. | EPA has environmental reservations concerning the potential secondary development impacts and the ability of the community to supply the necessary services. EPA is also concerned that the development adjacent to FAP 408 may result in further degradation and losses to the central business district of Quincy. | F |
| F-FHW-F40114-MN | MN-65, Cambridge Bypass, Isanti County, Minn | EPA's concerns were adequately addressed in the final EIS | F |
| | **Federal Energy Regulatory Commission** | | |
| F-FRC-K05006-CA | Kerckhoff Project No. 96, San Joaquin River, Calif | EPA's concerns were adequately addressed in the final EIS | J |
| | **Department of Housing and Urban Development** | | |
| F-HUD-B89009-MA | Lechmere Canal and Triangle Area Development Project, Cambridge, Middlesex County, Mass. (HUD-ROI-EIS-77-01-D). | EPA's concerns were adequately addressed in the final EIS | F |
| F-HUD-G85098-TX | Village East Estates, Vista Hills Subdivision, El Paso County, Tex. | EPA's concerns were adequately addressed in the final EIS | G |
| F-HUD-K85022-CA | Chinatown Redevelopment Project (CDBG), Los Angeles, Calif. | EPA's concerns were adequately addressed in the final EIS | J |
| F-HUD-K89028-CA | Adams Normandic 4321 Redevelopment Project, Los Angeles, Calif. | EPA's concerns were adequately addressed in the final EIS | J |

**Appendix IV.**—*Final Environmental Impact Statements Which Were Reviewed and Not Commented on Between Apr. 1 and Apr. 30, 1979*

| Identifying No. | Title | Source of review |
|---|---|---|
| | **Corps of Engineers** | |
| F-COE-E30004-FL | Beach Erosion Control and Hurricane Protection, Panama City, Fla | E |
| F-COE-L36039-ID | Little Wood River Flood Damage Reduction, Gooding and Shoshone, Lincoln County, Idaho | K |
| | **Department of Agriculture** | |
| F-AFS-B82206-ME | Cooperative Spruce Budworm Suppression Project, 1979, Me | B |
| F-AFS-L61104-WA | Tonasket Planning Unit, Land Management Plan, Okanogan National Forest, Okanogan and Ferry Counties, Wash. (USDA-FS-R6-FES(ADM)-78-8). | K |
| F-AFS-L61108-OR | Ochoco-Crooked River Planning Unit, Land Management Plan, Ochoco National Forest, Wheeler, Crook, and Grant Counties, Oreg | K |
| F-AFS-L6113-AK | Tongass National Forest, Land Management Plan, Southeast Alaska (TLMP) 10-01-79-05 | K |
| F-AFS-L65038-OR | Lakeview Federal Sustained Yield Unit, Ten Year Plan, Fremont National Forest, Lake and Klamath Counties, Oreg. (USDA-FS-R6-FES(ADM)-78-4). | K |
| F-AFS-L65041-OR | Siuslaw National Forest, 10 Year Timber Resource Plan, Benton, Coos, Douglas, Lane, Lincoln, Polk, Tillamook and Yamhill Counties, Oreg. | K |
| | **Department of Defense** | |
| FS-UAF-A10050-00 | MX; Milestone II, Air Mobile Basin Concept | A |
| | **Department of Transportation** | |
| F-FHW-A41178-FL | U.S. 41, FL-45, Halfway Creek to North of Estero, Lee County, Fla. (FHWA-FLA-EIS-72-13-FS) | E |
| F-FHW-E40080-NC | I-40, from I-85 West of Durham to I-40, Southeast of Durham, Orange County, N.C | E |
| F-FHW-E40105-NC | New connector from U.S. 52 to NC-24/NC-27, Albemarle, Stanly County, N.C. (FHWA-NC-EIS-77-04-F) | E |
| F-FHW-E40130-FL | Beaver Street, FL-10 to U.S. 90, Jacksonville, Duval County, Fla. (FHWA-FLA-EIS-77-5-F) | E |
| F-FHW-E40143-AL | Improvement of U.S. 72, Scottsboro to the Tennessee State Line, Jackson County, Ala. (FHWA-ALA-EIS-78-03F) | E |
| F-FHW-E40078-OH | OH-7, Meade and Poultney Townships, City of Shadyside, Belmont County, Ohio | F |
| | **Federal Maritime Commission** | |
| F-FMC-A52138-00 | Agreements Nos. 9929-2, 9922-3, and 9929-4 Modification to the Combi Line Joint Service Agreement and Agreements Nos. 10266 and 10266-1. | A |

**Appendix V.**—*Regulations, Legislation and Other Federal Agency Actions for Which Comments Were Issued Between Apr. 1 and 30, 1979*

| Identifying No. | Title | General nature of comments | Source for copies of comments |
|---|---|---|---|
| | **Department of Energy** | | |
| R-ERA-A04145-00 | 10 CFR Part 211, Mandatory Petroleum Allocation Regulations, Amendment to Extend Special Set-aside Program for Middle Distillates. | EPA recommended that the setaside also be made available to those persons with shortages of middle distillate necessary to meet air pollution standards. These air pollution standards are health based, and thus meet the "Public Health and Safety" test of the Emergency Petroleum Allocation Act. Shortages could result in combustion of more polluting oils which could adversely affect public health. EPA therefore proposes that this purpose be included as a possible use of the set-aside program. | A |
| A-ERA-A09067-00 | Notice, Proposed Outline for an Emergency Handbook. | EPA supports the concept of improving the capacity to respond to short-term energy emergencies. EPA requested to work closely in the preparation of sections which may address environmental issues. | A |
| | **Department of the Interior** | | |
| A-BLM-A021138-00 | 43 CFR Part 3300, Outer Continental Shelf (OCS), Leasing General (44 FR 6471). | EPA reiterated previous comments regarding development/production plans and OCS lease area and tract selection determinations.. | A |
| A-IGS-A02141-00 | 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continuental Shelf (OGS), data acquired under exploration. | EPA supports encouraging companies to engage in presale on-structure as well as Off-structure exploration, provided adequate environmental safeguards are exercised, EPA is concerned also about the availability of the environmental report sec. 251.9 and believes the nonproprietary information should be made available to EPA and other interested federal agencies.. | |
| | **Department of Transportation** | | |
| A-FAA-K51017-CA | San Luis Obispo County Airport Development Program, San Luis Obispo, Calif. | EPA offered comments to assist in the preparation of the draft EIS, specifically related to agricultural soil and the impacts of erosion and sedimentation as well as the noise related impacts. | A |
| | **General Services Administration** | | |
| A-GSA-E81016-TN | Supplemental Information, Union Station Proposed Renovation/Decontamination, Nashville, Tenn. | EPA foresees no significant adverse effects on water quality or the natural environment provided certain precautions are taken. | E |

## Appendix VI.—*Source for Copies of EPA Comments*

A. Public Information Reference Unit (PM-213), Environmental Protection Agency, Room 2922, Waterside Mall, SW., Washington, D.C. 20460.

B. Director of Public Affairs, Region 1, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massaachusetts 02203.

C. Director of Public Affairs, Region 2, Environmental Protection Agency, 26 Federal Plaza, New York, New York 10007.

D. Director of Public Affairs, Region 3, Environmental Protection Agency, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106.

E. Director of Public Affairs, Region 4, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30308.

F. Director of Public Affairs, Region 5, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

G. Director of Public Affairs, Region 6, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270.

H. Director of Public Affairs, Region 7, Environmental Protection Agency, 1735 Baltimore Street, Kansas City, Missouri 64108.

I. Director of Public Affairs, Region 8, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80203.

J. Office of External Affairs, Region 9, Environmental Protection Agency, 213 Fremont Street, San Francisco, California 94108.

K. Director of Public Affairs, Region 10, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

[FR Doc. 80-15508 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1497-8]

## Approval of PSD Permits—Region VIII

Notice is hereby given that between August 7, 1977 and March 12, 1980, the U.S. Environmental Protection Ageny Region VIII issued Prevention of Significant Deterioration of Air Quality (PSD) permits to the following sources:

| Applicant | Source | Approximate location | Date permit approved |
|---|---|---|---|
| Ottertail Power Co | "Coyote" 440 MW Power Plant | Mercer County, N. Dak | Aug. 30, 1977. |
| Ideal Basic Industries | Portland Cement Plant (1,600 tons/d) | LaPorte, Colo | Sept. 1, 1977. |
| Rio Blanco Oil Shale Co | 1,000 bbl/d Oil Shale Production | Rio Blanco County, Colo | Dec. 15, 1977. |
| C-B Oil Shale Venture | 5,000 bbl/d Oil Shale Production | Rio Blanco County, Colo | Dec. 15, 1977. |
| Portland Cement Co. of Utah | Portland Cement Kiln (1,600 tons/d) | Salt Lake City, Utah | Jan. 6, 1978. |
| Colorado Interstate Gas Co | 60 MM ft³/d "Table Rock" Gas Sweetening Plant | Table Rock, Wyo | Feb. 2, 1978. |
| Mountain Fuel Supply Co | 12.5 MM ft³/d "Butcher Knife Springs" Gas Sweetening Plant | Uinta County, Wyo | Mar. 30, 1978. |
| K. Jones & Associates | Automotive Training Facility | Clearfield, Utah | June 23, 1978. |
| Utah Power & Light | Wilberg Coal Preparation Plant (2.3 MM tons/yr) | Orangeville, Utah | July 17, 1978. |
| Salt Lake City Corp | Dept. Public Works Asphalt Plant (250 tons/h) | Salt Lake City, Utah | July 20, 1978. |
| Arrow Development Co | Structural Steel Fabrication Facility | Clearfield, Utah | July 25, 1978. |
| Empire Energy Corp | 3 MM tons/yr "Eagle" Coal Mines | Craig, Colo | Sept. 17, 1978. |
| Pathfinder Mines Corp | 300,000 tons/yr "Lucky MC" Uranium Mine | Shirley Basin, Wyo | Sept. 19, 1978. |
| Western Paving | Asphalt Plant (210 tons/h) | Utah | Sept. 28, 1978. |
| Kerr McGee Nuclear, Inc | 80,000 tons/yr Uranium Mine & Mill | Converse County, Wyo | Oct. 13, 1978. |
| Flinkote Co | Drywall Plant | Florence, Colo | Oct. 27, 1978. |
| Atlantic Richfield Co | 8 MM tons/yr "Coal Creek" Coal Mine | Gillette, Wyo | Nov. 17, 1978. |
| Trojan/IMC Chemical | Chemical Plant-Replace Oil With Coal Fired Boiler | Spanish Fork, Utah | Dec. 22, 1978. |
| Cotter Corporation | 1,500 tons/d Uranium Mill | Canon City, Colo | Jan. 10, 1979. |

| Applicant | Source | Approximate location | Date permit approved |
|---|---|---|---|
| Calco, Incorporated | 90 tons/d Lime Plant | Salida, Colo | Feb. 2, 1979. |
| H. K. Contractors, Inc | 9,500 tons/yr Asphalt Batch Plant | Rock Springs, Wyo | Feb. 9, 1979. |
| Wyoming Fuel, Incorporated | 4 MM tons/yr Coal Mine | Gillette, Wyo | Feb. 20, 1979. |
| Consol/Mobil | 5 MM tons/yr "Pronghorn" Coal Mine | Gillette, Wyo | Feb. 8, 1979. |
| Asamera Oil | Refinery Expansion (15,000 bbl/d Increase) | Commerce City, Colo | Feb. 28, 1979. |
| Uranium Resources & Dev Co | 30,000 tons/yr "Ransome" Uranium Mine | San Juan County, Utah | Apr 2, 1979. |
| Delzer Construction, Inc | 1.2 MM tons/yr "Fort Union" Coal Mine | Gillette, Wyo | Apr 12, 1979. |
| F E. Warren Air Force Base | 220 MM Btu/h Coal Fired Heating System | Cheyenne, Wyo | Apr 17, 1979. |
| Pioneer Nuclear | 160,000 tons/yr "Hardy" Uranium Mine | Converse County, Wyo | Apr 23, 1979. |
| Northern Energy Resources Co | 7 MM tons/yr "Spring Creek" Coal Mine | Decker, Mont | Apr 27, 1979. |
| Kerr McGee | 11 MM tons/yr "East Gillette" Coal Mine | Gillette, Wyo | May 2, 1979. |
| Colorado Wyoming Coal Co | Coal Mine Equipment Modifications | Craig, Colo | May 2, 1979. |
| U.S. Steel | 1.8 MM tons/yr Coal Mine & Coal Cleaning Plant | Somerset, Colo | May 4, 1979. |
| Marblehead Lime Co | Dead-burned Dolomite Plant increase in capacity by 400 tons/d. | Grantsville, Utah | May 4, 1979. |
| Energy Fuel Nuclear, Inc | 2,000 tons/d "White Mesa" Uranium Mill | San Juan County, Colo | May 8, 1979. |
| Wyoming-Ben, Inc | Increase in Bentonite processing plant capacity by 13 tons/h. | Thermopolis, Wyo | June 5, 1979. |
| Sheridan Enterprises, Inc | 1 MM tons/yr "Welsh" Coal Mine | Sheridan County, Wyo | June 11, 1979. |
| Nucor Steel | Steel Manufacturing Plant (60 tons/h Finished Steel). | Portage, Utah | June 12, 1979. |
| Colony Development Operation | 46,000 bbl/d Oil Shale Retort | Garfield County, Colo | July 11, 1979. |
| Union Oil Company | 9,000 bbl/d Oil Shale Retort | Garfield County, Colo | Aug. 1, 1979. |
| Climax Molybdenum Co | Crushing Facility Modification (35,000 tons/d) | Climax, Colo | Aug. 2, 1979. |
| Shell Oil Co | 6 MM tons/yr "Buckskin" Coal Mine | Gillette, Wyo | Aug. 6, 1979. |
| Peabody Coal Co | 5 MM tons/yr "North Antelope" Coal Mine | Gillette, Wyo | Aug. 6, 1979. |
| Chevron Oil Co | "Painter" Oil and Gas Processing Plant | Uinta County, Wyo | Aug. 10, 1979. |
| Atlantic Richfield Co | 10.5 MM tons/yr modification to "Black Thunder" Coal Mine. | Gillette, Wyo | Aug. 14, 1979. |
| Great Plains Resources | 250 M tons/yr "Dutchman" Coal Mine | Sheridan, County, Wyo | Aug. 16, 1979. |
| Continental Lime Co | 150 M tons/yr Lime Plant | Delta, Utah | Aug. 27, 1979. |
| Mobile Oil Company | 15 MM tons/yr "100%" Coal Mine | Gillette, Wyo | Sept. 5, 1979. |
| ASARCO | Ag, Pb, Cu, Mine and Mill (3 MM tons/yr ORE) | Lincoln County, Mont | Sept. 20, 1979. |
| Little America Refining Co | Petroleum Refinery (increase in capacity of 25 M bbl/d). | Casper, Wyo | Sept. 28, 1979. |
| Tenneco Oil Co | Soda Ash Plant (1 MM tons/yr) | Green River, Wyo | Oct. 5, 1979. |
| Parsons Asphalt Products, Inc | Asphalt Concrete Batch Plant (450 tons/h) | Box Elder County, Utah | Oct. 25, 1979. |
| Occidental Oil Shale | Two Experimental In-situ Oil Shale Retorts | Garfield County, Colo | Nov. 1, 1979. |
| United Nuclear Corp | 700,000 tons/yr "Morton Ranch" Uranium Mine and Mill. | Converse County, Wyo | Nov. 1, 1979. |
| Pioneer Uravan | 1,000 tons/d Uranium and Vanadium Mill | San Miguel County, Colo | Nov. 15, 1979. |
| Monolith Portland Cement | Portland Cement Mfg. Plant (Increase By 700 tons/d). | Laramie, Wyo | Dec. 14, 1979. |
| Pacific Gas and Electric Co | 5.2 MM tons/yr "Sage Point" Coal Mines | Carbon County, Utah | Dec. 17, 1979. |
| Carter Mining Co | 12 MM tons/yr Expansion of "Rawhide" Coal Mine. | Gillette, Wyo | Dec. 17, 1979. |
| Carter Mining Co | 7 MM tons/yr "South Rawhide" Coal Mine | Gillette, Wyo | Dec. 17, 1979. |
| Atlas Steel | Aluminum Sweating Furnace (1.5 MM #A1) | Ogden, Utah | Dec. 17, 1979. |
| Coastal States Energy | 5.4 MM tons/yr "Skyline" Coal Mine | Carbon County, Utah | Dec. 21, 1979. |
| Energy Fuels | Coal Strip Mine Lease Area Addition | Oak Creek, Colo | Dec. 31, 1979. |
| Rodney Rasmussen Co | Asphalt Batch Plant (500 tons/h) | Wyoming | Dec. 31, 1979. |
| Colorado-Ute Power Co | 440 MW "Craig" Unit No. 3 | Craig, Colo | Jan. 31, 1980 |
| Shell Oil Co | Modification to "Buckskin" Mine Handling Facility | Gillette, Wyo | Feb. 13, 1980 |

This notice contains only a list of the permitted sources and interested parties are advised to review the full permit. These PSD Permits are reviewable under Section 307(b)(1) of the Clean Air Act in the appropriate circuit of the U.S. Court of Appeals. A petition for review must be filed on or before July 21, 1980.

Copies of the permits and related materials are available for public inspection upon request at: Environmental Protection Agency, Region VIII, Air Programs Branch, Room 204, 1860 Lincoln Street, Denver, CO 80295, (303) 837-3763.

Dated: May 6, 1980.

**Roger L. Williams,**

*Regional Administrator.*

[FR Doc. 80-15507 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-53013; FRL 1498-1]

## Premanufacture Notices Status Report for April 1980

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to publish a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMN's) pending before the Agency and the PMN's for which the review period has expired since publication of the last monthly summary. This is the report for April, 1980.

**DATE:** Written comments are due no later than 30 days before the applicable notice review period ends on a specific chemical substance.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic

Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–755–8050.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paige Beville, Premanufacturing Review Division (TS–794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–426–8816.

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notice of availability of the Initial Inventory was published in the **Federal Register** on May 15, 1979 (44 FR 28558). The requirement to submit PMN's for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has 90 days to review a PMN once the Agency receives it (section 5(a)(1)). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

The monthly status report required under section 5(d)(3) will identify: (a) PMN's received during the month; (b) PMN's received previously and still under review at the end of the month; (c) PMN's for which the notice review period has ended during the month; and (d) chemical substances that EPA has added to the Inventory during the month.

Therefore, under TSCA (Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)), EPA is publishing the status of PMN's for April, 1980.

Interested persons may submit written comments on the specific chemical substance no later than 30 days before the applicable notice review period ends to the Document Control Officer (TS–793), Rm. E–447, Office of Pesticides and Toxic Substances, 401 M St., SW, Washington, DC 20460. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number [OPTS–53013] and the specific PMN number. Nonconfidential portions of the PMN's written comments received, and other documents in public record may be seen in the above office between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

Dated: May 16, 1980.

**Marilyn C. Bracken,**

*Deputy Assistant Administrator for Program Integration and Information.*

I. Premanufacture notices received during the month: April, 1980

| PMN No. | Identity/generic name | FR citation | Expiration date |
|---|---|---|---|
| 80–68 | ε Caprolactone, ethyl acrylate, hydroxy-propyl-methacrylate, styrene, and acrylic polymer acid. | 45 FR 27007 (4/22/80) | June 30, 1980. |
| 80–69 | Generic name provided: Salt of hydroxy (((((((methoxy(sulfophenyl)azo)phenyl)-amino)-carbonyl)amino)phenyl)-azo)benzoic acid. | 45 FR 27006 (4/22/80) | June 30, 1980. |
| 80–70 | Generic name provided: Sulfonic acid salt of ureylenebis-(hydroxy-[(sulfonaphthyl)azo])-naphthalene. | 45 FR 27006 (4/22/80) | June 30, 1980. |
| 80–71 | Generic name provided: Sulfonic acid of a ureylenebis (hydroxy-[(sulfonaphthyl)azo])-naphthalene compound. | 45 FR 27006 (4/22/80) | June 30, 1980. |
| 80–72 | Generic name provided: Salt of (ethenediyl) bis[hydroxyphenyl)azo]-benzene-sulfonic acid. | 45 FR 27006 (4/22/80) | June 30, 1980. |
| 80–73 | Generic name provided: Salt of: Formaldehyde, 4-(phenylamino)-substituted-benzene polymer and 2-butenedioic acid, 1,4-cyclohexane-dimethanol, 2,4-diisocyanato-1-methylbenzene,1,2-ethanediol, 2-oxepanone, and 5-substituted-1,3-benzenedicarboxylic acid polymer. | In preparation | July 2, 1980. |
| 80–74 | Generic name provided: Polyester | 45 FR 27817 (4/22/80) | June 18, 1980. |
| 80–75 | Polymer of: 12-Hydroxy stearic acid and epoxy resin | In preparation | July 2, 1980. |
| 80–76 | Generic name provided: Alkyd resin TV79–0777 | In preparation | July 2, 1980. |
| 80–77 | Generic name provided: Alkyd resin X4–779 | In preparation | July 2, 1980. |
| 80–78 | Generic name provided: Bis(Substituted alkyl) 1,2-cyclohexanedicarboxylate | In preparation | July 7, 1980. |
| 80–80 | Amides from diethylene-triamine and methyl tallowate compounds with diethyl-sulfate. | In preparation | July 7, 1980. |
| 80–81 | Generic name provided: Methylphenylsubstituted-heteromonocyclic salt | In preparation | July 8, 1980. |
| 80–82 | Polymer of: Epoxy resin, diallylamine, 2-ethyl hexyl methacrylate, hydroxy ethyl acrylate, dimethylamino propyl methacrylamide, and dimethylolpropionic acid. | In preparation | July 17, 1980. |
| 80–83 | Generic name provided: Unsaturated polyester resin based on six monomers including maleic anhydride, phthalic anhydride, an alkylene glycol, and an alkylene ether glycol. | In preparation | July 28, 1980. |
| 80–84 | Generic name provided: Polyester reaction product with isophorone diisocyanate and hydroxypropyl acrylate. | In preparation | July 20, 1980. |
| 80–85 | Generic name provided: Copolymer of substituted ethenyl-heterocycle and substituted ethenyl-benzene. | In preparation | July 21, 1980. |
| 80–86 | Generic name provided: Alkene dicarboxylic acids, alkane dicarboxylic acid, resin, pentaerythritol, and diaminoalkane polyamide. | In preparation | July 21, 1980 |
| 80–87 | Generic name provided: Alkene dicarboxylic acid, alkane, dicarboxylic acid, alkane carboxylic acid, and diaminoalkanes polyamide. | In preparation | July 21, 1980. |
| 80–88 | Generic name provided: Cyanoalkyl carbomono-cyclicsulfonate | In preparation | July 22, 1980. |
| 80–89 | Copolymer of isononanoic acid, phthalic anhydride, maleic anhydride, and pentaerythritol polymer (subject of PMN 80–55) and formaldehyde; butylated and 2-ethyl-hexylated urea polymer. | In preparation | July 22, 1980. |
| 80–90 | Generic name provided: Dimethyl (substituted)-hetermonocyclic salt | In preparation | July 23, 1980. |
| 80–91 | Generic name provided: 1,3-Naphthalenedisulfonic acid, 6,6'-[1,2-ethenediylbis [(3-sulfo-4,1-phenylene)azo]]bis-[4-amino-5-hydroxy,-compounded with tris-(substituted ethyl)-ammonium hydroxide (1:6). | In preparation | July 30, 1980. |
| 80–92 | Polymer of: Tall oil fatty acid, styrene-allyl alcohol copolymer, acrylic acid, and styrene. | In preparation | July 30, 1980. |

II. Premanufacture notices received previously and still under review at the end of the month:

| PMN No. | Identity/generic name | FR citation | Expiration date |
|---|---|---|---|
| 5AHQ-0280-0143 | Polymer of: Epichlorohydrin; bisphenol A; *N*-methyl morpholine; acetic acid; and linseed fatty acid. | 45 FR 12902 (2/27/80) | May 4, 1980. |
| 5AHQ-0280-0144 | Polymer of: Epichlorohydrin-Bis A, bisphenol A; *N*-methyl morpholine; and acetic acid. | 45 FR 16006 (3/12/80) | May 4, 1980. |
| 5AHQ-0280-0150 | Generic name: Bis (substituted-6,6,6,-triacryloyloxymethi-4-oxahexyl) dimethyl-disubstituted heteromonocycle. | 45 FR 16330 (3/13/80) | May 4, 1980. |
| 5AHQ-0280-0154 | Lithium ferrite | 45 FR 15636 (3/11/80) | May 4, 1980. |
| 5AHQ-0280-0158 | *N*-(3,5-Dibromo-4-hydroxyphenyl) benzenesulfonamide | 45 FR 13530 (2/29/80) | May 4, 1980. |
| 5AHQ-0280-0129 | Polymer of butyl acrylate, methyl methacrylate, hydroxyethyl methacrylate, hydroxyl propyl acryate, and acrylic acid. | 45 FR 16332 (3/13/80) | May 4, 1980. |
| 5AHQ-0280-0159 | Generic name: Chloro-organoamino-fluoran dye | 45 FR 15644 (3/11/80) | May 10, 1980. |
| 5AHQ-0280-0168 | Generic name: Zinc salt of dialkyl dithiophosphate | 45 FR 18477 (3/2/80) | May 13, 1980. |
| 5AHQ-0280-0165 | Generic name: Vegetable oil fatty acid ester | 45 FR 18477 (3/2/80) | May 13, 1980. |
| 5AHQ-0280-0174 | Generic name: Alkyl ammonium salt of a halogen oxyacid | 45 FR 23509 (4/7/80) | May 20, 1980. |
| 5AHQ-0280-0175 | Generic name: Alkyl ammonium salt of a halogen oxyacid | 45 FR 23509 (4/7/80) | May 20, 1980. |
| 5AHQ-0280-0176 | Generic name: Substituted methyl propylamine disalt of *n*-alkane dicarboxylic acid. | 45 FR 24696 (4/10/80) | June 2, 1980. |
| 5AHQ-0280-0181 | Generic name: Alpha alkene copolymer with alpha alkene | 45 FR 23507 (4/7/80) | May 26, 1980. |
| 5AHQ-0280-0182 | Generic name: Alpha alkene copolymer with alpha alkene | 45 FR 23507 (4/7/80) | May 26, 1980. |
| 5AHQ-0280-0183 | Generic name: Alpha alkene copolymer with alpha alkene | 45 FR 23507 (4/7/80) | May 26, 1980. |
| 5AHQ-0280-0184 | Generic name: Alpha alkene copolymer with alpha alkene | 45 FR 23507 (4/7/80) | May 26, 1980. |
| 5AHQ-0280-0018A | Generic name: Aromatic ether | 45 FR 24696 (4/10/80) | May 27, 1980. |
| 80-45 | 5-Carboxyhydroxy-(4-sulfophenyl)-heteromonocylic-2,4-pentadienylidene dihydrooxo-(4-sulfophenyl) heteromonocycle carboxylic acid, tetra potassium salt. | 45 FR 21023 (3/31/80) | June 2, 1980. |
| 80-46 | Generic name: Alkyl substituted phenol (Received in February, 1980; completed in March 1980.). | 45 FR 28199 (4/28/80) | June 19, 1980. |
| 80-49 | Generic name: Alkyl salicylaldoxime | 45 FR 21701 (4/2/80) | June 4, 1980. |
| 80-50 | Polymer of: Methyl methacrylate, 2-hydroxyethyl methacrylate, 2-ethylhexyl acrylate, acrylamide. | 45 FR 21023 (3/31/80) | June 5, 1980. |
| 80-51 | Polymer formed from phehnol formaldehyde resin and diazo oxonaphthalene sulfonyl chloride. | 45 FR 21023 (3/31/80) | June 5, 1980. |
| 80-52 | Generic name: Alkyl salicylaldehyde | 45 FR 21702 (4/2/80) | June 8, 1980. |
| 80-53 | Polymer of: Ester diol 204, neopentyl glycol, isophthalic acid, tetrahydrophthalic anhydride, and trimellitic anhydride. | 45 FR 24698 (4/10/80) | June 9, 1980. |
| 80-54 | Polymer of: Supra castor fatty acid, tall oil fatty acid, isononanoic acid, phthalic anhydride, adipic acid, benzoic acid, and pentaerythritol. | 45 FR 24698 (4/10/80) | June 9, 1980. |
| 80-55 | Polymer of: Isononanoic acid, phthalic anhydride, maleic anhydride, and pentaerythritol. | 45 FR 24698 (4/10/80) | June 9, 1980. |
| 80-56 | Polymer of: Propylene glycol, neopentyl glycol, phthalic anhydride, trimethylolpropane, and empol 1022 dimeric fatty acid. | 45 FR 24698 (4/10/80) | June 9, 1980. |
| 80-57 | Generic name: Alkyl biphenyls | 45 FR 24696 (4/10/80) | June 11, 1980. |
| 80-59 | Polymer of methyl methacrylate, methyl acrylate, styrene, 2-ethylhexyl acrylate, and 2-hydroxyethyl acrylate. | 45 FR 25131 (4/14/80) | June 17, 1980. |
| 80-60 | Polymer of butyl acrylate, 2-hydroxyethyl acrylate, methyl acrylate, and methyl methacrylate. | 45 FR 25131 (4/14/80) | June 17, 1980. |
| 80-61 | Polymer of acrylonitrile, butyl acrylate, methyl acrylate, and 2-hydroxy-ethyl acrylate. | 45 FR 25131 (4/14/80) | June 17, 1980. |
| 80-62 | Generic name: Polyseter resin of aliphatic polyols, mixed aromatic diacids, and aliphatic diacid. | 45 FR 24700 (4/10/80) | June 17, 1980. |
| 80-63 | Generic name: Alkyl substituted cyclic peroxyketal | 45 FR 28199 (4/28/80) | June 24, 1980. |
| 80-64 | Generic name: Alkyl substituted cyclic peroxyketal | 45 FR 28199 (4/28/80) | June 24, 1980. |
| 80-65 | Poly(oxy(methyl-1,2-ethanediyl)), alpha-(di-3,3'-carboxy-1-oxosulfopropyl)-omega-2-propanol-1,1'-((1-methylethylidene)bis(4,1-phenoxy))bis-,disodium salt. | 45 FR 28199 (4/28/80) | June 25, 1980. |
| 80-66 | Poly(oxy(methyl-1,2-ethanediyl)), alpha-(3,3'-dicarboxy-1-oxo-sulfopropyl)-poly(oxy(methyl-1,2-ethanediyl))-hydroxy-,$C_{10}$-$C_{14}$ alkyl, disodium salt. | 45 FR 28199 (4/28/80) | June 25, 1980. |
| 80-67 | Generic name: Polymer of styrene, vinyl heteromonocycle, and vinyl (substituted) heteromonocyclic salt. | 45 FR 27007 (4/22/80) | June 26, 1980. |
| 80-74 | Generic name: Polyester | 45 FR 27817 (4/24/80) | June 18, 1980. |

III. Premanufacture notices for which the notice review period has ended during the month:
[Expiration of the notice period does not signify that the chemical has been added to the Inventory.]

| PMN No. | Identity/generic name | FR citation | Expiration date |
|---|---|---|---|
| 5AHQ-1279-0088 | Generic name: Ring haolgenated cyclic dicarboxylic salt | 45 FR 3967 (1/21/80) | April 1, 1980. |
| 5AHQ-0180-0096 | Generic name: 3-Alkoxy($C_{16}$-$C_{14}$)-2-hydroxypropyl ester of dimer/trimer acids (fatty ester). | 45 FR 3967 (1/21/80) | April 1, 1980. |
| 5AHQ-0180-0099 | Fatty acid, tall oil, epoxidized mixed $C_7$-$C_9$ alkyl ester | 45 FR 6999 (1/31/80) | April 8, 1980. |
| 5AHQ-0180-0032A | Neopentyl glycol-cyclohexane-dimethanol-trimethylpropane-*O*-phthalate-adipate. | FR 6833 (1/30/80) | April 15, 1980. |
| 5AHQ-0180-0051A | Generic name: Dialkyl ($C_{12}$-$C_{14}$) substituted polycarboxylate | 45 FR 6833 (1/30/80) | April 15, 1980. |
| 5AHQ-0180-0105 | Polyester with dipropylene glycol of byproduct from manufacture of the dimethyl ester of 1,4-benzenedicarboxylic acid. | 45 FR 6833 (1/30/80) | April 15, 1980. |
| 5AHQ-0180-0128 | Stearyl stearamide | 45 FR 11904 (2/20/80) | April 21, 1980. |
| 5AHQ-0180-0131 | Anhydro 3,10-bis(2-(4-(3-pyrodinio)-6-(2,5-disulfophenyl-amino)-1,3,5-triazin-2-ylamino) ethylamino)-6,13-dichloro-4,11-disulfotripheno-dioxazine dihydroxide, hexasodium salt. | 45 FR 11903 (2/20/80) | April 21, 1980. |
| 5AHQ-0180-0133 | 1-p-Nitrobenzoyl-1-(4' carboxypyridyl) hydrazide | 45 FR 13531 (2/29/80) | April 21, 1980. |
| 5AHQ-0180-0134 | Polymer of fumaric acid, isophthalic acid, adipic acid, neopentyl glycol, diethylene glycol, and propylene glycol. | 45 FR 13529 (2/29/80) | April 21, 1980. |
| 5AHQ-0180-0034A | Generic name: Polymer of alkyl amino methacrylic acid ester, alkyl acrylate, and alkyl methacrylate. | 45 FR 16007 (3/12/80) | April 27, 1980. |
| 5AHQ-0180-0137 | Copolymer of methacrylic acid and diacetone acrylamide | 45 FR 12897 (2/27/80) | April 28, 1980. |
| 5AHQ-0180-0111 | Polymer of dehydrated castor oil, trimethylolethane, phthalic anhydride, and benzoic acid. | 45 FR 12901 (2/27/80) | April 28, 1980. |
| 5AHQ-0180-0112 | Generic name: Substituted-*N*-alkylquinoline | 45 FR 12906 (2/27/80) | April 20, 1980. |
| 5AHQ-0180-0113 | Generic name: 1,2-Disubstituted-4,5-dimethoxybenzene | 45 FR 11902 (2/20/80) | April 20, 1980. |
| 5AHQ-0180-0114 | Generic name: Substituted ketone pyran | 45 FR 12904 (2/27/80) | April 20, 1980. |
| 5AHQ-0180-0115 | Generic name: Monosubstituted-4,5-dimethoxy phenyl ethanol | 45 FR 12900 (2/27/80) | April 20, 1980. |
| 5AHQ-0180-0116 | Generic name: Monosubstituted-4,5-dimethoxy benzyl chloride | 45 FR 11898 (2/27/80) | April 20, 1980. |
| 5AHQ-0180-0117 | Generic name: Tetrasubstituted quinoline | 45 FR 12909 (2/27/80) | April 20, 1980. |
| 5AHQ-0180-0118 | Generic name: Tetrasubstituted-*N*-alkyl quinoline | 45 FR 12907 (2/27/80) | April 20, 1980. |
| 5AHQ-0180-0119 | Generic name: Trisubstituted acetophenone | 45 FR 14925 (3/7/80) | April 20, 1980. |

IV. New chemical substances that EPA has added to the inventory during the month:

| PMN No. | Submitter | Chemical identification | FR citation |
|---|---|---|---|
| 5AHQ-1279-0077 | ABCO Industries, Inc, PO Box 335, Roebuck, SC 29376 | Magnesium acrylate | 45 FR 1674 (1/8/80). |

[FR Doc. 80-15509 Filed 5-20-80; 8:45 am]
BILLING CODE 6560-01-M

[FRL 1497-6]

## Brush Wellman, Inc., Elmore, Ohio

In the matter of the applicability of Title 1, Part A, Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR Part 61, Subpart A (38 FR 8826, April 6, 1973) for National Emission Standards for Hazardous Air Pollutants (NESHAPS), to Brush Wellman, Incorporated in Elmore, Ohio.

On January 9, 1980, Brush Wellman, Incorporated submitted an application to the United States Environmental Protection Agency (U.S. EPA), Region V office, for an approval to install a beryllium copper alloy arc furnace at their facility in Elmore, Ohio. The application was submitted pursuant to 40 CFR 61.06.

On March 25, 1980, Brush Wellman, Incorporated was notified that its application was completed and approval to install was granted.

This approval to install does not relieve Brush Wellman, Incorporated of the responsibility to comply with any applicable Federal, State, or local regulations.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

For further information contact Eric Cohen, Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 353-2090.

Dated: April 18, 1980.

John McGuire,

*Regional Administrator.*

[FR Doc. 80-15506 Filed 5-20-80; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. A-14]**

### FM Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Cut-off date: June 16, 1980.

Notice is hereby given that the applications listed in the attached appendix are hereby accepted for filing. They will be considered to be ready and available for processing after June 16, 1980. An application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on June 16, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for a filing at the offices of the Commission in Washington, D.C., not later than the close of business on June 16, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business of June 16, 1980.

Federal Communcation Commission.

William J. Tricarico,

*Secretary.*

BPH-781010AE (WINK-FM) Fort Myers, Florida, Fort Myers Broadcasting Company. Has: 96.9 MHz; Channel No. 2450, ERP: 44 kW; HAAT: 250 ft. (Lic). Req: 96.0 MHz Channel No. 2450, ERP: 96.7 kW; HAAT: 833 ft.

BPH-790625AH (New), Sullivan, Missouri Four Rivers Broadcasting Co. Req: 100.9 MHz; Channel No. 265A ERP: 3 kW; HAAT: 276 ft.

BPH-790719AJ (KPEN), Los Altos, California Los Altos Broadcasting, Inc. Has: 97.7 MHz; Channel No. 249A ERP: 3 kW; HAAT: 175 ft. (Lic) Req: 97.7 MHz; Channel No. 249A ERP: 3 kW; HAAT: 300 ft.

BPH-790809A (WFDT), Columbia City, Indiana, Indiana Broadcast Associates Has: 106.3 MHz; Channel No. 292A ERP: 3 kW; HAAT: 105 ft. (Lic) Req: 106.3 MHz; Channel No. 292A ERP: 3 kW; HAAT: 300 ft.

BPH-790815AF (New), Swainsboro, Georgia WSJ Radio, Inc. Req: 103.9 MHz; Channel No. 280A ERP: 3 kW; HAAT: 299.2 ft.

BPH-790820AI (KQPD), Ogden, Utah The Wasatch Broadcasting Partnership Has: 101.9 MHz; Channel No. 270C ERP: 96 kW; HAAT: 40 ft. (Lic) Req: 101.9 MHz; channel No. 270C ERP: 26 kW; HAAT: 3742 ft.

BPH-790827AK (New), Beloit, Kansas KRZJ Broadcasters, Inc. Req: 105.5 MHz; Channel No. 288A ERP: 2.92 kW; HAAT: 73.99 ft.

BPH-790928AL (WSLM-FM), Salem, Indiana, Don H. Martin. Has: 98.9 MHz; Channel No. 255B, ERP: 50 kW; HAAT: 130 ft. (Lic). Req: 98.9 MHz; Channel No. 255B, ERP: 50 kW; HAAT: 361 ft.

BPH-791009AK (KVWC-FM), Vernon, Texas, KVWC, Inc. Has: 102.2 MHz; Channel No. 272A, ERP: .650 kW; HAAT: 340 ft. (Lic). Req: 102.3 MHz; Channel No. 272A, ERP: .734 kW; HAAT: 138 ft.

BPH-791010AI (WTLB-FM), Utica, New York, WTLB, Inc. Has: 107.3 MHz; Channel No. 297B, ERP: 3.5 kW; HAAT: 510 ft. (Lic). Req: 107.3 MHz; Channel No. 297B, ERP: 50 kW; HAAT: 500 ft.

BPH-791011AC (New), Caldwell, Idaho, Rojac Enterprises. Req: 103.1 MHz; Channel No. 276A, ERP: 3 kW; HAAT: 290 ft.

BPH-791022AE (New), Rice Lake, Wisconsin, Red Cedar Broadcasters, Inc. Req: 97.7 MHz; Channel No. 249A, ERP: 3kW; HAAT: 300 ft.

BPH-791022AF (New), Grove, Oklahoma, McPherson Media, Inc. Req: 99.3 MHz; Channel No. 257A, ERP: 3 kW; HAAT: 300 ft.

BPH-791023AE (KRCT), Ozona, Texas, Crockett County Broadcasters. Has: 94.3 MHz; Channel No. 232A, ERP: 3kW; HAAT: −55 ft. (Lic). Req: 94.3 MHz; Channel No. 232A, ERP: 1 kW; HAAT: 300 ft.

BPH-791105AK (New), Duncan, Oklahoma, R & R Broadcasting, Inc. Req: 96.7 MHz; Channel No. 244A, ERP: 3 kW; HAAT: 300 ft.

BPH-791220AL (New), Bottineau, North Dakota, D & H Broadcasting, Inc. Req: 101.9 MHz; Channel No. 2700, ERP: 51.5 kW; HAAT: 493 ft.

BPH-791226CD (New), Hart, Michigan, Waters Broadcasting Corporation. Req: 105.3 MHz; Channel No. 287C, ERP: 100 kW; HAAT: 646 ft.

BPH-800214AH (WCOR-FM), Lebanon, Tennessee, Triplett Broadcasting of TN. Inc. Has: 107.3 MHz; Channel No. 297C, ERP: 18 kW; HAAT: 175 ft. (Lic). Req: 107.3 MHz; Channel No. 297C, ERP: 100 kW; HAAT: 732 ft.

BPED-790328AX (KAOS), Olympia, Washington, The Evergreen State College. Has: 89.3 MHz; Channel No. 207A, ERP: .40 kW; HAAT: −14 ft. (Lic). Req: 89.3 MHz; Channel No. 207A, ERP: 1.8 kW; HAAT: −18.5 ft.

BPED-790427AB (WAVM), Maynard, Massachusetts, Maynard Public Schools. Has: 91.7 MHz; Channel No. 219D, TPO: .01 kW. (Lic). Req: 91.7 MHz; Channel No. 219A, ERP: .125 kW; HAAT: −8 ft.

BPED-790521AO (KLUM-FM), Jefferson City, Missouri, Lincoln University of Missouri. Has: 88.9 MHz; Channel No. 205C, ERP: 41 kW; HAAT: 255 ft. (Lic). Req: 88.9 MHz; Channel No. 205C, ERP: 39.5 kW; HAAT: 509.7 ft.

BPED-790626AD KIEA, Ethete, Wyoming, Wind River Indian Educ. Ass'n., Inc. Req: 89.7 Mhz; Channel No. 209A, ERP: .100 kW; HAAT: 25 ft.

BPED-790801AG KSLC, McMinnville, Oregon, Linfield College. Has: 90.3 MHz; Channel No. 212D, TPO: .01 kW. (Lic). Req: 90.3 MHz; Channel No. 212A, ERP: .315 kW; HAAT: −46 ft.

BPED-790806AA WSAE, Spring Arbor, Michigan, Spring Arbor College. Has: 89.3 MHz; Channel No. 207B, ERP: 3.1 kW; HAAT: 240 ft. (Lic). Req: 89.7 MHz; Channel No. 209B, ERP: 4 kW; HAAT: 238 ft.

BPED-790814AB WRCT, Pittsburgh, Pennsylvania, Carnegie-Mellon Student Gov't Corp. Has: 88.3 MHz; Channel No. 202D, TPO: .01 kW. (Lic). Req: 88.3 MHz; Channel No. 202A, ERP: .100 kW; HAAT: 53 ft.

BPED-790918AA WDOM, Providence, Rhode Island, Providence College. Has: 91.3 MHz; Channel No. 217D, TPO: .01 kW. (Lic). Req: 91.3 MHz; Channel No. 217A, ERP: .125 kW; HAAT: 128 ft.

BPED-790926AA WMUB, Oxford, Ohio, President and Trustees, Miami Univ. Has: 88.5 MHz; Channel No. 203A, ERP: .82 kW; HAAT: 260 ft. (Lic). Req: 88.5 MHz; Channel No. 203B, ERP: 50 kW; HAAT: 475 ft.

BPED-791005AH (New), Sitka, Alaska, Raven Radio Foundation, Inc. Req: 104.7 MHz; Channel No. 284C, ERP: 11.1 kW; HAAT: −568 ft.

BPED-791009AL KANW, Albuquerque, New Mexico, Bd. of Ed., City of Albuquerque, NM. Has: 89.1 MHz; Channel No. 206C, ERP: 7.5 kW; HAAT: −19 ft. (Lic). Req: 89.1 MHz; Channel No. 206C, ERP: 14.8 kW; HAAT: 4149 ft.

BPED-791226BE KUAF, Fayetteville, Arkansas, Bd. of Trustees, Univ. of Arkansas, Has: 88.9 MHz; Channel No. 205DS, ERP: .01 kW. HAAT: ft. (Lic). Req: 88.9 MHz; Channel No. 205A, ERP: 3 kW; HAAT: 295.5 ft.

BPED-791226BQ KVNF, Paonia, Colorado, North Fork Valley Public Radio, Inc. Has: 90.9 MHz; Channel No. 215DS, ERP: .014 kW. HAAT: −990 ft. (Lic). Req: 90.9 MHz; Channel No. 215A, ERP: .511 kW; HAAT: −171 ft.

BPED-791226CK WCVF-FM, Fredonia, New York, State University of New York. Has: 88.9 MHz; Channel No. 205D, TPO: .01 kW. (Lic). Req: 88.9 MHz; Channel No. 205A, ERP: .086 kW; HAAT: −115 ft.

BPED-791227AB KSWH, Arkadelphia, Arkansas, Henderson State University. Has: 91.1 MHz; Channel No. 216DS, ERP: .01 kW; HAAT: ft. (Lic). Req: 91.1 MHz; Channel No. 216A, ERP: 6.46 kW; HAAT: −20.2 ft.

BPED-791227BA KMSU, Mankato, Minnesota, Mankato State University. Has: 90.5 MHz; Channel No. 213DS, ERP: .01 kW; HAAT: ft. (Lic). Req: 89.7 MHz; Channel No. 209A, ERP: 3 kW; HAAT: 175.7 ft.

BPED-791231AY WUSC-FM, Columbia, South Carolina, University of South Carolina. Has: 91.9 MHz; Channel No. 220DS, ERP: .01 kW; HAAT: ft. (Lic). Req: 90.5 MHz; Channel No. 213A, ERP: 3 kW; HAAT: 233 ft.

BPED-791231BH WFSS-FM, Fayetteville, North Carolina, Fayetteville State University. Has: 88.1 MHz; Channel No. 201DS, ERP: .01 kW; HAAT: ft. (Lic). Req: 89.1 MHz; Channel No. 206C, ERP: 100 kW; HAAT: 420 ft.

BPED-800102AD KUOI-FM, Moscow, Idaho, University of Idaho. Has: 89.3 MHz; Channel No. 207A, ERP: .045 kW; HAAT: −84 ft. (Lic). Req: 89.3 MHz; Channel No. 207A, ERP: 1.33 kW; HAAT: −77.6 ft.

BPED-800102AM KCMU, Seattle, Washington, University of Washington.

Has: 90.5 MHz; Channel No. 213D, TPO: .01 kW. (Lic). Req: 90.5 MHz; Channel No. 213A, ERP: .182 kW; HAAT: 172 ft.

BPED–800102BJ WHCJ, Savannah, Georgia, Savannah State College. Has: 88.5 MHz; Channel No. 203DS, ERP: .01 kW; HAAT: ft. (Lic). Req: 88.5 MHz; Channel No. 203A, ERP: 1.5 kW; HAAT: 144 ft.

BPED–800102BM WVBC, Bethany, West Virginia, Bethany College. Has: 88.1 MHz; Channel No. 201D, TPO: .01 kW. (Lic). Req: 88.1 MHz; Channel No. 201A, ERP: 1.08 kW; HAAT: 411 ft.

BPED–800103AP (new), Owensboro, Kentucky, Kentucky Wesleyan College. Req: 90.3 MHz; Channel No. 212B, ERP: 5.06 kW; HAAT: 73 ft.

BPED–800109AD (new), Covelo, California, Round Vly Inter-Tribal Radio Pjt, Inc. Req: 90.7 MHz; Channel No. 214B, ERP: .740 kW; HAAT: 3287 ft.

BPED–800109AF (new), Lima, Ohio, The Greater Toledo Ed. TV Foundation. Req: 90.7 MHz; Channel No. 214B, ERP: 50 kW; HAAT: 481.9 ft.

BPED–800114AE (new), Bismarck, North Dakota, Prairie Public Television, Inc. Req: 90.5 MHz; Channel No. 213C, ERP: 100 kW; HAAT: 1250 ft.

BPED–800115AD (new), Phoenix, Arizona, Arizona Board of Regents. Req: 88.3 MHz; Channel No. 202C, ERP: 100 kW; HAAT: 1612 ft.

BPED–800122AJ KLCC, Eugene, Oregon, Lane Community College. Has: 89.7 MHz; Channel No. 209C, ERP: 9.5 kW; HAAT: 720 FT. (Lic). Req: 89.7 MHz; Channel No. 209C, ERP: 30 kW; HAAT: 749 ft.

BPED–800201AK KPCC, Pasadena, California, Pasadena Area Community College Dist. Has: 89.3 MHz; Channel No. 207B, ERP: 3.8 kW; HAAT: −510 ft. (Lic). Req: 89.3 MHz; Channel No. 207B, ERP: 30 kW; HAAT: 669 ft.

BPED–800207AE (new), Swan Quarter, North Carolina, Hyde County Board of Education. Req: 88.5 MHz; Channel No. 203A, ERP: 1.4 kW; HAAT: 114 ft.

BPED–800208AJ (new), Aspen, Colorado, Aspen Center for Public Radio, Inc. Req: 89.9 MHz; Channel No. 210A, ERP: .245 kW; HAAT: −717 ft.

[FR Doc. 80-15478 Filed 5-21-80; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

[Docket No. 80-30]

### Petition for Declaratory Order That the Water Carrier Operation of Kugkaktlik, Limited is Exempt From the Tariff Filing Requirements of the Intercoastal Shipping Act of 1933

Notice given that a petition for declaratory order has been filed by Kugkaktlik, Limited. Petitioner seeks an order of the Commission declaring that its water carrier operations in Alaska, to be established during 1980, are exempt from the tariff filing requirements of the Intercoastal Shipping Act of 1933.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 11101 or may inspect the petition at the Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan Puerto Rico. Insterested persons may submit replies to the Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before June 16, 1980. An original and fifteen copies of such replies shall be submitted and a copy thereof served on petitioners. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 80-15550 Filed 5-20-80; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier comenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increase competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than June 16, 1980.

A. *Federal Reserve Bank of Kansas City*, (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

O & F Cattle Company, Oshkosh, Nebraska (lending activities; Nebraska): to engage in making, for its own account, loans and other extensions of credit. These activities would be conducted from the offices of applicant's subsidiary bank, Nebraska State Bank, located in Oshkosh, Nebraska, serving Garden County, Nebraska.

B. *Federal Reserve Bank of San Francisco, Harry W. Green Vice president) 400 Sansome Street, San Francisco, California 94120.*

Commercial Security Bancorporation, Ogden, Utah (lending to non-executive officer of Commercial Security Bank): to make long-term mortgage-type loans or short-term loans to non-executive officers of Commercial Security Bank moved at the request of the bank of desiring to transfer with the bank to other cities in Utah. These activities would be conducted from the offices of the applicant in Ogden, Utah, serving non-executive officers throughout the Commercial Security System.

C. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, May 15, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15487 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

### Chemical New York Corp.; Proposed Transfer of Factoring Business and Assets from Chemical Bank to Chemical Business Credit Corp., and Establishment of De Novo Office

Chemical New York Corporation, New York, New York, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to transfer the California factoring business and assests of its bank subsidiary, Chemical Bank, New York, New York, to its existing direct nonbank subsidiary, Chemical Business Credit Corporation ("CBCC"), and to establish a *de novo* office of CBCC in Los Angeles, California.

Applicant states that CBCC would principally engage in the activity of factoring of trade accounts receivables

on a notification and non-notification basis. This activity would be performed from offices of CBCC in Los Angeles, California, and the geographic area to be served is the State of California. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 13, 1980.

Board of Governors of the Federal Reserve System, May 14, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15485 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## Exchange Bancshares, Inc.; Formation of Bank Holding Company

Exchange Bancshares, Inc., Mayfield, Kentucky, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent of the voting shares of The Exchange Bank, Mayfield, Kentucky. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 16, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 15, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15486 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## First Bancshares, Inc.; Formation of a Bank Holding Company

First Bancshares, Inc., Highland, Indiana, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First Bank of Whiting, Whiting, Indiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 14, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15483 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## Keystone Investment, Inc.; Proposed retention of general insurance agency activities

Keystone Investment, Inc., Keystone, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain its general insurance agency activities.

These activities would be performed from offices of Applicant' s subsidiary in Keystone, Nebraska, and the geographic areas to be served are Keystone and surrounding counties of Keith and Arthur, Nebraska. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 16, 1980.

Board of Governors of the Federal Reserve System, May 15, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15481 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## Wausa Banshares, Inc.; Proposed Continuation of General Insurance Activities

Wausa Banshares, Inc., Wausa, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to perform general insurance agency activities in a community that has a population not exceeding 5,000.

These activities would be performed from offices of Applicant's subsidiary in Wausa, Nebraska, and the geographic areas to be served are Wausa, Nebraska, and its surrounding rural area. Such activities have been specified by the Board in § 225.4(a) of Regulation

Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 16, 1980.

Board of Governors of the Federal Reserve System, May 15, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15484 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## Western Bancshares, Inc.; Proposed Continuation of General Insurance Activities

Western Bancshares, Inc., Stockton, Kansas, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain Woodston Agency, Stockton, Kansas.

Applicant states that Woodston Agency engages in the activities of a general insurance agency in a town of less than 5,000. These activities would be performed from offices of Applicant's susidiary bank in Stockton, Kansas, and the geographic areas to be served includes the city of Woodston and the surrounding rural areas. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 13, 1980.

Board of Governors of the Federal Reserve System, May 14, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15482 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## Eustis Bancshares, Inc.; Formation of Bank Holding Company

Eustis Bancshares, Inc., Eustis, Nebraska, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent (less directors' qualifying shares) of the voting shares of Farmers State Bank, Eustis, Nebraska. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 14, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15491 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## Jefferson Bancshares, Inc.; Formation of Bank Holding Company

Jefferson Bancshares, Inc., Metaire, Louisiana, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent of the voting shares of the successor by merger to Jefferson Bank & Trust Co., Metaire, Louisiana. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 14, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc. 80-15490 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## NorthPark National Corp. and Nasher Financial Corp.; Formation of Bank Holding Company

NorthPark National Corporation, Dallas, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 per cent (less directors' qualifying shares) of the voting shares of NorthPark National Bank of Dallas, Dallas, Texas. In addition, Nasher Financial Corporation, Dallas, Texas, has applied for the Board's approval to become a bank holding company by acquiring 44.58 per cent of NorthPark National Corporation. The factors that are considered in acting on the application are set forth in

section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than June 13, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, May 14, 1980.

**Cathy L. Petryshyn,**

*Assistant Secretary of the Board.*

[FR Doc 80-15489 Filed 5-20-80; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Early Termination of the Waiting Period of the Premerger Notification Rules

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the waiting period of the premerger notification rules.

**SUMMARY:** Dorchester Gas Corp. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain stock of Coastal Plains, Inc. from Sonics International, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** May 9, 1980.

**FOR FURTHER INFORMATION CONTACT:** Joan S. Truitt, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

**Carol M. Thomas,**

*Secretary.*

[FR Doc. 80-15572 Filed 5-20-80; 8:45 am]

BILLING CODE 6750-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Health Resources Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HR (Health Resources Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (43 FR 39432, September 5, 1978, as amended most recently at 45 FR 17207, March 18, 1980), is amended to reflect the transfer to the Health Resources Administration of the program of insured student loans for health professions students (HEAL program), formerly administered by the Office of Education. The functional statements for the Bureau of Health Professions and its Division of Health Professions Training Support are amended to reflect this additional function.

*Sec. HR-B organization and functions is amended as follows:*

1. *Under the Bureau of Health Professions (HRM),* amend item (5) by changing the semicolon to a comma and adding "and administers a program of insured loans to students enrolled in health professions schools;".

2. Under the *Division of Health Professions Training Support (HRM6)* amend the first sentence by deleting "and" before the words "the Cuban Refugee" and by deleting the period at the end of the sentence, inserting a comma, and adding "and a program of insured loans to students enrolled in health professions schools."

Dated: May 2, 1980.

**Patricia Roberts Harris,**

*Secretary of Health and Human Services.*

[FR Doc. 80-15601 Filed 5-20-80; 8:45 am]

BILLING CODE 4110-85-M

### Office of the Assistant Secretary for Health

### Advisory Committees; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of June 1980:

Name: Health Care Technology Study Section.
Date and Time: June 9-10, 1980, 8:30 a.m.
Place: Center Building, Conference Room G-20, 3700 East-West Highway, Hyattsville, Maryland 20782. Open June 9, 8:30 a.m.-12:00 noon. Closed for remainder of meeting.
Purpose: The Committee is charged with the initial review of health research grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.
Agenda: The open session of June 9 will include a presentation by the Associate Deputy Director for Medical and Scientific Affairs, a business meeting covering administrative matters and a seminar dealing with grant applications for development of health care technology.

The closed portion of the meeting on June 9-10 will be devoted to review of health services reserach grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Dr. Alan E. Mayers, National Center for Health Service Research, OASH, Room 7-50A, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436-6196.

Name: Health Service Research Review Subcommittee.
Date and Time: June 19-20, 1980, 9:00 a.m.
Place: Gramercy Inn, Scott Room South, 1616 Rhode Island Avenue NW., Washington, D.C. 20006. Open June 19, 9:00 a.m.-10:00 a.m. Closed for remainder of meeting.
Purpose: The objective of the Subcommittee is to advise the Secretary and make recommendations to the Director, National Center for Health Services Research, concerning the scientific and technical merit review of health services research grant applications involving primarily the analysis and use of economic, statistical, and other theoretical approaches which examine problems associated with the delivery of health services.
Agenda: The open session of the meeting on June 19, 1980, will be devoted to a business meeting covering administrative matters and reports. During the closed session, the Subcommittee will be reviewing research grant applications relating to the delivery, organization, and financing of health

services. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Marco Montoya, Ph. D., National Center for Health Service Research, OASH, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–6918.

Name: Health Services Developmental Grants Review Subcommittee.
Date and Time: June 23–24, 1980, 9:00 a.m.
Place: Gramercy Inn, Scott Room South, 1616 Rhode Island Avenue NW., Washington, D.C. 20006. Open June 23, 9:00 a.m.–9:30 a.m. Closed for remainder of meeting.
Purpose: The Committee is charge with the initial review of grant applications for Federal assistance in the program areas administered by the National Center for Health Services Research.
Agenda: The open session of the meeting on June 23, 1980, will be devoted to a business meeting covering administrative matters and reports. During the closed session, the committee will be reviewing research grant applications relating to the delivery, organization, and financing of health services. The closing is in accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. Code, and the Determination by the Assistant Secretary for Health, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should contact Dr. David McFall, National Center for Health Service Research, OASH, Room 7–50A, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–6916.

Agenda items are subject to change as priorities dictate.

Dated: May 15, 1980.

**Wayne C. Richey, Jr.,**

*Acting Executive Secretary, Office of Health Research, Statistics, and Technology.*

[FR Doc. 80–15560 Filed 5–20–80; 8:45 am]

BILLING CODE 4110–85–M

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## Office of Human Development Services

### Reorganization Order

Under the authority of section 6 of Reorganization Plan No. 1 of 1953 and pursuant to the authorities vested in me as Secretary of Health and Human Services, I hereby order organizational changes in the Office of the Secretary and the Office of Human Development Services as follows:

### I. Organization

A. The Office of Human Development Services will remain a principal operating component within the Office of the Secretary.

B. The Office of Human Development Services will continue to be headed by the Assistant Secretary for Human Development Services who reports directly to the Secretary. The Deputy Assistant Secretary will act as the Assistant Secretary in the absence or disability of the Assistant Secretary or in the event there is a vacancy in that position.

C. The Office of Human Development Services will consist of the following principal program elements and headquarters staff units, the heads of which report directly to the Assistant Secretary for Human Development Services:

*Principal Program Elements*

Administration on Aging
Administration for Children, Youth, and Families
Administration on Developmental Disabilities
Administration for Native Americans

*Headquarters Staff Units*

Office of Management Services
Office of Policy Development
Office of Program Coordination and Review

D. The Office of Human Development Services will continue to have ten Regional Offices headed by Regional Administrators, who will report to the Director of the Office of Program Coordination and Review at headquarters. Regional heads of programs for Native Americans and Developmental Disabilities will report to the Regional Administrator, as will the heads of the Regional Offices of Program Coordination and Review and of Fiscal Operations. Reporting relationships of the regional heads of the aging and children, youth and families programs are not affected by this order. The Regional Offices will consist of the following components:

*Principal Program Elements*

Regional Office on Aging
Regional Office for Children, Youth, and Families
Regional Office on Developmental Disabilities

*Regional Staff Elements*

Regional Office of Program Coordination and Review
Regional Office of Fiscal Operations

### II. Organizational Transfers

A. To the Office of Management Services are transferred:
Office of Administration and Management
Office of Programs Systems Development, Office of Planning, Research, and Evaluation
Division of Management Analysis and Review (only the staff component which performs management analysis functions), Office of Policy and Management Control

B. To the Office of Policy Development are transferred:
The Immediate Office of the Director, Office of Planning, Research and Evaluation
Office of Planning and Evaluation, Office of Planning, Research, and Evaluation, minus the Division of Special Studies
The Immediate Office of the Director, Office of Policy and Management Control
Division of Management Analysis and Review, (the staff component performing special projects functions) Office of Policy and Management Control
Division of Policy Coordination, Office of Policy and Management Control
Division of Research, Demonstration and Evaluation, Administration for Public Services
Office of Policy Control, Administration for Public Services

C. To the Office of Program Coordination and Review are transferred:
Division of Special Studies, Office of Planning, Research, and Evaluation
Office of Regional and Intergovernmental Relations
Immediate Office of the Commissioner, Administration for Public Services
Office of Administration and Management, Administration for Public Services
Division of Program Management, Administration for Public Services, Division Director's Office, State Manpower Development and Training Branch, and the State Administration and Management Branch
Division of Financial Management, Administration for Public Services
Office of the Director, Division of Intergovernmental Planning and Coordination, Administration for Public Services
Office of the Director, Division of Program Planning and Analysis, Administration for Public Services

D. To the Immediate Office of the Assistant Secretary for Human Development Services are transferred:
Executive Secretariat, Office of Policy and Management Control
President's Committee on Mental Retardation

E. To the Administration on Developmental Disabilities are transferred:

Bureau of Developmental Disabilities, Rehabilitation Services Administration
Division of Resource Management, Office of Planning, Research and Evaluation

F. To the Administration for Native Americans are transferred:
Planning Branch, Division of Program Planning and Analysis, Administration for Public Services

G. To the Administration on Aging are transferred:
Service Delivery Systems Branch, Division of Program Management, Administration for Public Services
Program Coordination Branch, Division of Intergovernmental Planning and Coordination, Administration for Public Services
Analysis Branch, Division of Program Planning and Analysis, Administration for Public Services

H. To the Administration for Children, Youth and Families are transferred:
Executive Secretariat, Administration for Public Services
Intergovernmental Planning Branch, Division of Intergovernmental Planning and Coordination, Administration for Public Services

I. To the Regional Office of Program Coordination and Review in each Region are transferred:
Office of Management and Planning
Regional Office for Public Services, excluding the Financial Operations Division

J. To the Regional Office of Fiscal Operations in each Region are transferred:
Grants Management and Budget Office
Financial Operations Division, Regional Office for Public Services

### III. Continuation of Regulations

Except as inconsistent with this Reorganization Order, all regulations, rules, orders, statements of policy and interpretations with respect to the Office of Human Development Services and the Office of the Regional Administrators for Human Development Services heretofore issued and in effect prior to the date of this Reorganization Order, or to become effective subsequent to said date, are continued in full force and effect.

### IV. Continuation of Delegations of Authority

Pending further delegations and redelegations consistent with this Order, all delegations of authority heretofore made to the Assistant Secretary for Human Development Services and all redelegations thereunder are continued in full force and effect. Delegations and redelegations by the Commissioner, Administration for Children, Youth and Families; Commissioner, Administration for Native Americans; and Commissioner on Aging, are unaffected by this Order.

### V. Funds, Personnel, and Equipment

Transfers of organizations and functions effected by this Order shall be accompanied in each instance by direct and supporting funds, positions, personnel, records, equipment, supplies, and other resources.

*Effective Date:* This Reorganization Order shall be effective May 18, 1980.

Dated: May 15, 1980.

**Patricia Roberts Harris,**

*Secretary.*

[FR Doc. 80-15602 Filed 5-20-80; 8:45 am]
BILLING CODE 4110-92-M

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**[Program Announcement No. 13637-803]**

## Dissertation Program; Aging; Availability of Funds

**AGENCY:** Office of Human Development Services, HHS.

**SUBJECT:** Announcement of Availability of Funds for Dissertation.

**SUMMARY:** The Administration on Aging (AoA) announces that applications are being accepted for grants under Title IV, Part A, of the Older Americans Act for preparation of doctoral dissertations in the field of aging.

**DATES:** Closing date for receipt of applications is: July 22, 1980.

### Program Purpose

The purpose of the Dissertation Program is to attract professionals in training into research and other careers which serve or benefit older Americans.

### Program Goal and Objectives

Grants under this program are awarded to post-secondary educational institutions to provide support for doctoral dissertation projects in social gerontology and aging-related areas. The program's primary objective is to enable doctoral students to conduct dissertation projects on topics relevant to the development of programs and policies which would improve the circumstances of older Americans.

As a second objective, the Administration on Aging views the Dissertation Program as an opportunity for attracting minority professionals to the field of aging. Universities are strongly encouraged to submit doctoral dissertation proposals on behalf of minority students (Hispanic, Black, Asian, and American Indian) who are eligible to compete for awards under this program. The Administration on Aging hopes to meet its goal of at least one-third minority participation in Fiscal Year 1980 and, to the extent possible, to include doctoral condidates from each of these four minority groups.

### Eligible Applicants

Applications for Dissertation Programs grants may be submitted on behalf of doctoral students only by institutions of higher education with grant doctoral degrees. Doctoral candidates who have or by September 1, 1980, will have passed all doctoral degree qualifications except the dissertation are eligible to participate in the Dissertation Program. The dissertation proposal must be approved by the appropriate faculty advisor and committee before submission to AoA. Separate proposals must be submitted for each dissertation project.

### Available Funds

During Fiscal Year 1980, the Administration on Aging expects to award approximately thirty (30) Dissertation Program grants of $5,500 each, totaling $165,000. Awards will be made for a maximum on one (1) year. Projects will not be found beyond the initial twelve (12) month budget period provided for at the time of award.

In Fiscal Year 1979 eighty (80) applications for Dissertation Program grants were accepted for review and evaluation. Of these, thirty-three (33) were funded, totaling $181,500.

### Grantee Share of the Project

There is no cost sharing requirement under this program.

### Indirect Cost Limitation

No indirect cost of allowances for administrative costs to the University are provided under this program.

### The Application Process

*Availability of Forms*

Applications for grants under Dissertation Program must be submitted on standard forms provided for this purpose. Application guidelines, instructions, and standard forms are contained in application kits which may be obtained by writing to:

Dissertation Program, Division of Research & Evaluation, Administration on Aging, Room 4644, DHHS North Building, 330 Independence Ave. SW., Washington, D.C. 20201.

*Application Submission*

One (1) signed original and four (4) copies of the grant application, including all attachments, must be submitted to

the address indicated in the applicatic kit.

*A-95 Notification Process*

Not applicable.

*Application Consideration*

The Commissioner on Aging will make the final decision with respect to each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be submitted to a review panel. This panel consists of persons outside the Administration on Aging who are considered to be experts in the field of aging.

The results of outside review of applications assist the Commissioner and his staff in evaluating competing applications. Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded from the Office of Human Development Services. This notice sets forth the amount of funds granted, the terms and conditions of the grant, and the budget period for which support is given.

*Special Consideration for Funding*

In order to be considered for priority funding, the proposed dissertation project must fall within one or more of the following three research strategy areas:

- *The Older Person, Family and Society*—Research in this area includes studies related to characteristics, needs and resources of older persons: and characteristics of family, neighborhood and community support systems as they affect the older person. Studies of social, economic and political conditions and of societal values as they affect older persons are also included in this broad area.
- *Public and Private Policies*—Research in this area covers issues related to public and private policies which impact on the elderly in such areas as employment, retirement, income, housing, health care, and community services.
- *Community Operated Service Systems*—Research in this area includes issues related to the development and implementation of comprehensive and coordinated community-based service systems for older persons with particular attention to the most vulnerable, i.e., those who are very old, chronically ill, functionally impaired, and whose problems are exacerbated by social isolation or low income, or minority group status.

Research related to medicine, biological and physiological processes is not acceptable.

**Criteria for Review and Evaluation of Applications**

Competing grant applications will be reviewed and evaluated using the following criteria:

1. That the proposed project will make a significant contribution to knowledge relevant to programs and policies for the aging in one or more of the priority areas identified in this announcement under "Special Considerations for Funding"; (35 points)
2. That the proposed project clearly defines the problems to be studied and adequately reviews the relevant literature of the subject; (10 points)
3. That the methodology is sound and appropriate for use in the proposed project (formulation of specific hypotheses, operational definition of variables, data collection and analysis); (35 points)
4. That the proposed project is feasible and can be successfully completed on the basis of the plan of work submitted; (15 points)
5. That the doctoral candidate is well qualified by reason of academic training and experience, including relevant academic and work experience, to undertake the activities proposed in the application. (5 points)

To be considered for funding, an application must receive a minimum score of 60 points.

**Closing Date for Receipt of Applications**

The closing date for receipt of applications under this program announcement is July 22, 1980. Applications may be mailed or hand delivered to the address indicated in the Dissertation Program Application Kit. Applications will be considered "on time" if they are either postmarked (first class mail) or are received by the deadline, unless they arrive too late to be considered by the independent review panel. Hand delivered applications will be accepted during regular working hours of 9:00 a.m. to 5:00 p.m.

(Catalogue of Federal Domestic Assistance Program Number: 13.637, Programs for the Aging—Training Grants)

Dated: May 6, 1980.

**Robert Benedict,**

*Commissioner on Aging.*

Approved: May 15, 1980.

**Cesar A. Perales,**

*Assistant Secretary for Human Development Services.*

[FR Doc. 80-15598 Filed 5-20-80; 8:45 am]

BILLING CODE 4110-92-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection

**[Docket No. N-80-1002]**

### National Mobile Home Advisory Council; Request for Nominations

**AGENCY:** Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, HUD.

**ACTION:** National Mobile Home Advisory Council—Request for nominations.

**SUMMARY:** This Notice gives the public an opportunity to nominate persons for appointments to the National Mobile Home Advisory Council. The Council, consisting of representatives from consumer, government and industry organizations or agencies, is consulted to the extent feasible before the Department establishes, amends, or revokes mobile home construction and safety standards.

**DATE:** Persons wishing to submit nominations must do so on or before July 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Janice Ligon, Coordinator, National Mobile Home Advisory Council, Office or Mobile Home Standards, Office of the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development, 451 7th Street, S.W., Room 3248, Washington, D.C. 20410, Telephone: (202) 755-6920.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that members of the public wishing to nominate persons for appointment to the National Mobile Home Advisory Council should submit such nominations in writing to the Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection (Attention: Office of Mobile Home Standards), Department of Housing and Urban Development, 451 7th Street, S.W., Room 3248, Washington, D.C. 20410.

Twenty-four member Council was created under the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 *et seq.* (The Act) to provide the Department with an opportunity to obtain balanced views on mobile home standards issues. The Act stipulates that one-third of the membership of the Council must be chosen from each of the following categories: (a) consumer organizations and recognized consumer leaders; (b) the mobile home industry and related groups including at least one representative of small business; and (c) government agencies including Federal, State and local governments.

Section 6(a) of the National Mobile Home Advisory Council Charter stipulates that the Council members shall be appointed by the Secretary to serve two-year terms. In accordance with the Charter, one-half of these terms will expire on August 21, 1980, and the other half will expire on August 21, 1981.

Nominations are hereby solicited to fill the positions which will become open when one-half of the terms expire on August 21, 1980; the terms to which nominees will be appointed will expire on August 21, 1982. The Secretary will appoint a total of twelve new members to the Council, selecting four members from each of the three groups which make up the Council. Nominations may be made for representatives of consumer, industry and government organizations or agencies. Interested persons may nominate themselves.

In submitting nominations, include the following information:

1. Name of nominee.
2. Home address and telephone number of nominee.
3. Business address and telephone number of nominee.
4. Section (i.e., consumer, industry or government) the nominee represents.
5. Pertinent experience and/or background of nominee that is beliieved will qualify the nominee as an appropriate member of the Council.
6. Name of group or person(s) making nomination.
7. The following data should be furnished for those nominated as official representatives of organized consumer or industrial groups or associations:

(a) Name and address of organizations.

(b) Number of official members in organization.

(c) Nominee's position in organization.

8. The name of the government agency, its location, and the nominee's position or title should be provided for those nominated to represent government agencies.

9. Any other pertinent comments or remarks.

The nominees selected by the Secretary are expected to be announced by publication in the **Federal Register.**

Issued at Washington, D.C. May 15, 1980.

**Geno C. Baroni,**

*Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.*

[FR Doc. 80-15558 Filed 5-20-80; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[Colorado 30078]**

### Invitation To Participate in Coal Exploration License; Application of Material Service Corp.-Freeman United Coal Mining Co. Division

May 12, 1980.

Members of the public are hereby invited to participate with Material Service Corporation in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Routt County, Colorado:

T. 5 N., R. 89 W., 6th P.M.
Sec. 13: Lots 6, 10 thru 17.
Sec. 14: Lots 1 thru 17 and all of Tract 52 lying within Section 14, whether or not contained in such lots (All).
Sec. 15: Lots 1 thru 16.
Sec. 22: N½, E½SW¼, SE¼.
Sec. 24: All.
Sec. 25: N½.
Containing 3191.36 Acres, more or less.

Any party electing to participate in this proposed program must send written notice of that election to the Bureau of Land Management and Material Service Corporation directed to the following persons at the addresses indicated:

Leader, Craig Team, Branch of Adjudication, Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, CO 80202

and

Mr. M. V. Harrell, Senior Vice-President, Freeman United Coal Mining Company (A Division of Material Service Corporation), 123 South 10th Street, P.O. Box 1587, Mt. Vernon, IL 62864.

Such written notice must be received by the above indicated persons at the addresses shown on or before June 20, 1980.

A copy of the exploration plan, as submitted by Material Service Corporation, is available for public review during normal business hours in the following office, under Serial No. C-30078: Colorado State Office, Bureau of Land Management, Room 701, Colorado State Bank Building, 1600 Broadway, Denver, Colorado.

The exploration plan and lands to be included in the exploration license, if issued, are subject to the approval of the U.S. Geological Survey and the Bureau of Land Management, both agencies of the Department of the Interior.

The foregoing notice is published in the **Federal Register** pursuant to 43 CFR 3410.2-1(d)(1), 43 FR 42584 at 42614 (No. 140, July 19, 1979).

**Andrew W. Heard, Jr.,**

*Leader, Craig Team, Branch of Adjudication.*

[FR Doc. 80-15533 Filed 5-20-80; 8:45 am]

BILLING CODE 4310-84-M

**[Colorado 30055]**

### Invitation To Participate in Coal Exploration License; Application of Sunoco Energy Development Co.

May 12, 1980.

Members of the public are hereby invited to participate with Sunoco Energy Development Co., in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Moffat County, Colorado:

T. 8 N., R. 92 W., 6th P.M.
Sec. 19: Lot 8 SE¼SW¼, S½SE¼.
Sec. 30: Lots 5 thru 8, E½, E½W½ (All).
Sec. 31: Lot 5, N½NE¼, NE¼NW¼.
T. 8 N., R. 93 W., 6th P.M.
Sec. 20: Lots 1, 2, S½SE¼.
Sec. 21: Lots 5 thru 8, S½SW¼.
Sec. 22: SW¼SW¼.
Sec. 24: SE¼SW¼, S½SE¼.
Sec. 25: All.
Sec. 26: S½N½, S½.
Sec. 27: NW¼NW¼, S½N½, S½.
Sec. 28: Lots 1 thru 4, N½NW¼, N½S½, S½ (All).
Sec. 29: Lots 1, 3 thru 10, 12, NE¼, N½SE¼, SE¼SE¼.
Sec. 30: Lots 3, 4, E½SW¼, SE¼.
Sec. 31: Lots 1 thru 4, E½, E½W½ (All).
Sec. 32: Lots 1, 2, 4 thru 10, 12, 13, 15, NW¼NW¼, NE¼SE¼, S½SE¼.
T. 7 N., R. 94 W., 6th P.M.
Sec. 1: Lots 6, 7, 8, S½N½, S½.
Sec. 2: Lots 5 thru 8, S½N½, S½ (All).
Sec. 3: Lots 5 thru 8, S½N½, S½ (All).
Sec. 4: Lot 5, S½N½, S½.
T. 8 N., R. 94 W., 6th P.M.
Sec. 25: S½.
Sec. 26: S½.
Sec. 27: SE¼.
Sec. 33: All.
Sec. 34: All.
Sec. 35: All.
Containing 10,650.45 acres, more or less.

Any party electing to participate in this proposed program must send written notice of that election to the Bureau of Land Management and Sunoco Energy Development Co. directed to the following persons at the addresses indicated:

Leader, Craig Team, Branch of Adjudication, Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, CO 80202

and

Linda K. Wackwitz, Sunoco Energy Development Co., 12700 Park Central Place, Box 9, Dallas, TX 75251.

Such written notice must be recieved by the above indicated persons at the addresses shown on or before June 20, 1980.

A copy of the exploration plan, as submitted by Sunoco Energy Development Co., is available for public review during normal business hours in the following office, under Serial No. C–30055: Colorado State Office, Bureau of Land Management, Room 701, Colorado State Bank Building, 1600 Broadway, Denver, Colorado.

The exploration plan and lands to be included in the exploration license, if issued, are subject to the approval of the U.S. Geological Survey and the Bureau of Land Management, both agencies of the Department of the Interior.

The foregoing notice is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(d)(1), 43 FR 42584 at 42614 (No. 140, July 19, 1979).

**Andrew W. Heard, Jr.,**

*Leader, Craig Team, Branch of Adjudiction.*

[FR Doc. 80–15531 Filed 5–20–80; 8:45 am]

BILLING CODE 4310–84–M

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**[Colorado 30077]**

## Invitation To Participate in Coal Exploration License; Application of W. R. Grace & Co.

May 12, 1980.

Members of the public are hereby invited to participate with W. R. Grace & Co., a Connecticut Corporation, in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Routt County, Colorado:

T. 5 N., R. 89 W., 6th P.M.
Sec. 13: Lots 6, 12 thru 15.
Sec. 14: Lots 3 thru 17 and all of Tract 52 lying within Section 14, whether or not contained in such lots.
Sec. 15: Lots 1 thru 16.
Sec. 22: N½, NE¼NE¼SW¼, SE¼.
Sec. 23: All.
Sec. 24: W½.
Sec. 25: NW¼.
Sec. 26: N½.
Sec. 27: NE¼, SE¼NW¼.
Containing 3594.83 Acres, more or less.

Any party electing to participate in this proposed program must send written notice of that election to the Bureau of Land Management and W. R. Grace & Co. directed to the following persons at the addresses shown:

Leader, Craig Team, Branch of Adjudication, Colorado State Office, Bureau Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, CO 80202

and

Manager of Exploration, W. R. Grace & Co., Stapleton Plaza, 3333 Quebec Street, Suite 8800, Denver, CO 80207.

Such written notice must be received by the above indicated persons at the addresses shown on or before June 20, 1980.

A copy of the exploration plan, as submitted by W. R. Grace & Co., is available for public review during normal business hours in the following office under Serial No. C–30077: Colorado State Office, Bureau of Land Management, Room 701, Colorado State Bank Building, 1600 Broadway, Denver, CO.

The exploration plan and lands to be included in the exploration license, if issued, are subject to the approval of the U.S. Geological Survey and the Bureau of Land Management, both agencies of the Department of the Interior.

The foregoing notice is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(d)(1), 43 FR 42584 at 42614 (No. 140, July 19, 1979).

**Andrew W. Heard, Jr.,**

*Leader, Craig Team, Branch of Adjudication.*

[FR Doc. 80–15532 Filed 5–20–80; 8:45 am]

BILLING CODE 4310–84–M

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**[Colorado 30096]**

## Invitation To Participate in Coal Exploration License; Application of W. R. Grace & Co.

May 12, 1980.

Members of the public are hereby invited to participate with W. R. Grace & Co., a Connecticut corporation, in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Moffat County, Colorado:

T. 8 N., R. 89 W., 6th P.M.
Sec 22: Lot 3.
Sec 28: Lots 2 thru 6.
Sec 29: Lots 1 thru 8, 11 thru 14.
Sec 30: Lots 5 thru 20 (All).
Sec 31: Lots 6 thru 11.
T. 8 N., R. 90 W., 6th P.M.
Sec 25: Lots 1, 2, 7 thru 16.
Containing 2065.00 Acres, more or less.

Any party electing to participate in this proposed program must send written notice of that election to the Bureau of Land Management and W. R. Grace & Co. directed to the following persons at the addresses indicated:

Leader, Craig Team, Bureau of Adjudication, Colorado State Office, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Co 80202

and

Manager of Exploration, W. R. Grace & Co., Stapleton Plaza, 3333 Quebec Street, Suite 8800, Denver, CO 80207.

Such written notice must be received by the above indicated persons at the addresses shown on or before June 20, 1980.

A copy of the exploration plan, as submitted by W. R. Grace & Co., is available for public review during normal business hours in the following office, under Serial No. C–30096: Colorado State Office, Bureau of Land Management, Room 701, Colorado State Bank Building, 1600 Broadway, Denver, Colorado.

The exploration plan and lands to be included in the exploration license, if issued, are subject to the approval of the U. S. Geological Survey and the Bureau of Land Management, both agencies of the Department of the Interior.

The foregoing notice is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(d)(1), 43 FR 42584 at 42614 (No. 140, July 19, 1979).

**Andrew W. Heard, Jr.,**

*Leader, Craig Team, Branch of Adjudication.*

[FR Doc. 80–15534 Filed 5–20–80; 8:45 am]

BILLING CODE 4310–84–M

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## Montana and North Dakota; Fort Union Regional Coal Team Meeting

May 14, 1980.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the responsibilities set forth at 43 CFR 3400.4(b), the Regional Coal Team will meet on June 24 and 25, 1980.

The Regional Coal Team will meet to address specific issues relating to coal development (including a general approach to insuring that social and economic concerns are adequately covered in activity planning and EIS phases of the federal coal management program, overall public involvement, scheduling, approach to end uses, scoping, tract delineation, site specific analysis, and other related matters). Briefings on these matters by project personnel will serve as the basis for the initial guidance that the Regional Coal Team may, at this meeting, provide for the tract delineation and site specific analysis teams, and the conduct of the overall planning/assessment project. In addition, the team may appoint additional ex officio members to the Regional Coal Team.

Public attendance at the Regional Coal Team meeting is welcome, and public comment periods will be provided for during the meeting.

**DATES:** The Regional Coal Team will meet at 10:00 a.m. on June 24 and continue at 8:30 a.m. on June 25, 1980, in the 6th Floor Conference Room of the Bureau of Land Management, Montana State Office, 222 North 32nd Street, Billings, Montana.

**FOR FURTHER INFORMATION CONTACT:** Clair Witlock, Regional Coal Team Chairperson, (602) 261–3873. A detailed agenda will be available two weeks in advance of the meeting on request from the Bureau of Land Management, Montana State Office, P.O. Box 30157, Billings, Montana 59107, (406) 657–6632.

**Kannon Richards,**

*Acting State Director.*

May 14, 1980.

[FR Doc. 80–15535 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–84–M**

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**[Bureau Order No. 601, Amdt. 12]**

## Oregon; Declaration of Annual Productive Capacity of the Jackson and Klamath Master Units

**AGENCY:** Bureau of Land Management.

**ACTION:** Notice.

**SUMMARY:** The annual productive capacity for the Jackson and Klamath Master Units composed of Revested Oregon and California Railroad Grant Lands and the intermingled and adjacent public domain areas in Oregon, declared in Bureau Order No. 601, Amendment No. 10, dated April 7, 1971, as amended as follows:

Jackson Master Unit—14,000,000 cubic feet (82,000,000 board feet, Scribner equivalent).
Klamath Master Unit—5,690,000 cubic feet (33,000,000 board feet, Scribner equivalent).

The declaration of the new annual productive capacities is a result of a reinventory and revision of the land use and the timber management plans. The annual productive capacity represents the annual level of harvest which can be sustained in perpetuity without any planned decrease in the future. In addition to the annual productive capacities, the timber management plan for the combined Jackson-Klamath Master Units specifies: (1) The annual harvest of 2,640,000 cubic feet (16,000,000 board feet, Scribner equivalent) of surplus overmature timber for the next 20 years on the land base included in the determination of the annual productive capacity, and; (2) The annual harvest of approximately 860,000 cubic feet (5,000,000 board feet, Scribner equivalent) for the next 10 years as part of the cooperative Forestry Intensified Research (FIR) project to determine the number of years needed to re-establish commercial tree species on selected areas not included in the annual productive capacity land base.

The revised timber management plan is described in the Final Jackson-Klamath Timber Management Environmental Statement issued November 28, 1979. This Environmental Statement, together with the record of decision, is available for inspection at the Medford District Office of the Bureau, located at 310 W 6th St., in Medford, Oregon, and at the Oregon State Office of the Bureau located at 729 NE Oregon St., Portland, Oregon.

This declaration shall be effective October 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Ron Sadler, BLM Oregon State Office, 729 NE Oregon St., Portland, Oregon 97232, 503–231–6851.

Dated: May 8, 1980.

**Frank A. Edwards,**

*Acting State Director.*

[FR Doc. 80–15536 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–84–M**

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**[W–71161–C Through W–71161–H]**

## Wyoming; Application

May 12, 1980.

Notice is hereby given that pursuant to Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Chevron U.S.A., Inc., of Denver, Colorado filed an application for a right-of-way to construct access roads, a water pipeline and a powerline for the purpose of providing access, water and power to pump that water to their proposed gas processing plant across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 17 N., R. 119 W.,
Secs. 4 and 20.
T. 18 N., R. 119 W.,
Secs. 6, 8, 16, 20, and 28.
T. 17 N., R. 120 W.,
Secs. 4, 6, 26, and 28.
T. 18 N., R. 120 W.,
Secs. 1, 2, 12, 14, 24, 26, 28, and 32.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, P.O. Box 1869, Highway 187 North, Rock Springs, Wyoming 82901.

**Harold G. Stinchcomb,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 80–15537 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–84–M**

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## National Park Service

## Bushkill Entrance Road Comprehensive Design, Delaware Water Gap National Recreation Area, Pennsylvania/New Jersey; Availability of Environmental Assessment and Finding of No Significant Impact.

Pursuant to the National Environmental Policy Act of 1969, the National Park Service has prepared an Environmental Assessment for a new entrance road into the Bushkill headquarters area, which delineates three alternatives that were considered for implementation at Delaware Water Gap National Recreation Area, Monroe County, Pennsylvania.

The Environmental Assessment outlines design proposals which would provide for improved safety and better traffic and maintenance control over existing and proposed roadways within the authorized boundary near Bushkill.

Accompanying this document is a Finding of No Significant Impact (FONSI), which selects the alternative to be implemented.

Copies of the Assessment/FONSI are available from: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania 18324.

Anyone wishing to express an opinion on the Assessment/FONSI should send written comments to the Superintendent at Delaware Water Gap National Recreation Area address on or before June 10, 1980.

Dated: May 9, 1980.

**James W. Coleman, Jr.,**

*Acting Regional Director, Mid-Atlantic Region.*

[FR Doc. 80–15586 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–70–M**

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## Curecanti National Recreation Area; Draft General Management Plan

The Draft General Management Plan for Curecanti National Recreation Area has been completed and is available for public distribution.

The document proposes a plan for public use, development, and protection of the area's natural and cultural resources. It identifies proposed boundary changes, facility development at 16 primary development sites, and

visitor use activities including fishing, boating, camping, hiking, picnicking, hunting and sightseeing, and winter activities.

Copies of the plan are available from the following sources: Superintendent, Curecanti National Recreation Area, P.O. Box 1040, Gunnison, Colorado 81230 and Regional Director, Rocky Mountain Region, National Park Service, 655 Parfet, P.O. Box 25287, Denver, Colorado 80225.

Dated: May 13, 1980.

**James B. Thompson,**

*Acting Regional Director, Rocky Mountain Region.*

[FR Doc. 80-15587 Filed 5-20-80; 8:45 am]

BILLING CODE 4310-70-M

## Bureau of Land Management

### Oregon Intensive Wilderness Inventory, Final Decisions on 30 Selected Units in Southeast Oregon, Decisions in Effect and Decisions Protested

Final Decisions on the accelerated intensive wilderness inventory of 30 units in southeast Oregon were announced in the **Federal Register** of March 27, 1980, pages 20166–20167. This notice identifies those units or parts of units for which the decisions become effective on April 29, 1980 and those units or parts of units for which the decisions have been formally protested to the Oregon State Director.

A. The following areas have been identified wilderness study areas (WSAs). The Interim Management Policy, issued on December 12, 1979, will continue to apply to these lands until such time as Congress acts to either designate or not designate these lands as part of the National Wilderness Preservation System.

| Unit No.: | Acreage |
|---|---|
| 1 to 78 | 22,800 |
| 2 to 14 | 5,560 |
| 2 to 23L | 21,000 |
| 2 to 23M | 8,090 |
| 2 to 74F | 160,890 |
| 3 to 156A | 48,500 |
| Total acreage | 266,840 |

B. The following inventory units or parts of inventory units have been eliminated from further wilderness review. The Interim Management Policy no longer applies to these areas.

| Unit No.: | Acreage |
|---|---|
| 1 to 78 (portion) | 5,400 |
| 1 to 111 | 17,260 |
| 2 to 2 | 48,950 |
| 2 to 12 | 32,940 |
| 2 to 13 | 8,850 |
| 2 to 14 (portion) | 120 |
| 2 to 15 | 40,470 |
| 2 to 16 | 7,670 |
| 2 to 17 | 12,700 |
| 2 to 21 | 9,400 |
| 2 to 23 (All except 2-23L, 2-23E', and the WSA portion of 2-23M) | 126,625 |
| 2 to 24 | 18,290 |
| 2 to 74 (All except 2-74E, 2-74N, and the WSA portion of 2-74F) | 101,600 |
| 2 to 79 | 22,755 |
| 2 to 81 (All except WSA portion of 2-81L) | 16,060 |
| 2 to 82 (All except WSA portion of 2-82H) | 51,335 |
| 3 to 36 | 13,020 |
| 3 to 151 | 9,120 |
| 3 to 156 (portion) | 12,340 |
| 3 to 199 | 5,890 |
| 5 to 57 | 10,966 |
| 5 to 58 | 6,157 |
| Total acreage | 577,858 |

C. The State Director's final decisions to identify the following inventory subunits as wilderness study areas are being protested.

| Unit No: | Acreage |
|---|---|
| 2 to 81L | 67,430 |
| 2 to 82H | 97,395 |
| Total acreage | 164,825 |

D. The State Director's final decisions to elimate the following inventory units or parts of inventory units from further wilderness review are being protested. The Interim Management Policy will continue to apply to these areas until the protests are resolved.

| Unit No.: | Acreage |
|---|---|
| 1 to 76 | 20,040 |
| 1 to 77 | 9,920 |
| 1 to 105 | 30,000 |
| 2 to 1 | 62,885 |
| 2 to 11 | 11,300 |
| 2 to 23E | 5,910 |
| 2 to 26 | 15,045 |
| 2 to 74E | 23,140 |
| 2 to 74N | 10,470 |
| 3 to 154 | 6,680 |
| 5 to 14 | 3,240 |
| Total acreage | 198,630 |

The Oregon State Director will issue a written response to all protests. The decisions on the protests will be announced in the **Federal Register.**

**Frank A. Edwards,**

*Acting State Director.*

[FR Doc. 80-15501 Filed 5-20-80; 8:45 am]

BILLING CODE 4310-84-M

[INT DES 80-35]

### Nearshore Beaufort Sea; Availability of the Draft Supplement to the Final Environmental Statement Regarding the Joint Federal-State Oil and Gas Lease Sale

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a Draft Supplement to the Final Environmental Statement relating to the December 11, 1979, joint Federal/State oil and gas lease sale in the nearshore Beaufort Sea. The purpose of this Draft Supplement is to address comments and holdings on the Final Environmental Statement by the U.S. District Court for the District of Columbia in prior proceedings concerning the aforementioned joint Federal-State lease sale.

Single copies of the Draft Supplement can be obtained from the Office of the Manager, Bureau of Land Management, Alaska Outer Continental Shelf Office, P.O. Box 1159, Anchorage, Alaska 99510, and from the Office of Public Affairs, Bureau of Land Management (130), Washington, D.C. 20240.

Copies of the Draft Supplement will be made available for inspection and review at the following locations in Alaska: Juneau Memorial Library, 114 West 4th Street, Juneau; Kodiak Public Library, Kodiak; Kenai Community Library, Cook and Main Streets, Kenai; Alaska Federation of Natives, 670 W. Fireweed Lane, Anchorage, Alaska; Z. J. Loussac Public Library, 427 F Street, Anchorage; Fairbanks North Star Borough Library, 901 First Avenue, Fairbanks; North Slope Borough Office, Barrow; Village Council Office, Nuiqsut; and Village Council Office, Kaktovik.

The Public is encouraged to provide comments and suggestions relating to this Draft Supplement. Comments and suggestions will be accepted until 4:00 p.m., June 23, 1980 and should be sent to the Manager, Bureau of Land Management, Alaska Outer Continental Shelf Office, P.O. Box 1159, Anchorage, Alaska 99510. All comments received on or before the June 23 deadline will be considered during the preparation of the Final Supplement.

**Ed Hastey,**

*Associate Director, Bureau of Land Management.*

Approved: May 16, 1980.

**James H. Rathlesberger,**

*Special Assistant to Assistant Secretary of the Interior.*

[FR Doc. 80-15501 Filed 5-20-80; 8:45 am]

BILLING CODE 4310-84-M

### New Prairie, and Jordan-North Rosebud Management Framework Plans; Inivitation To Comment

The Bureau of Land Management, Miles City District, is continuing with land use planning on federal lands and minerals in eastern Montana. BLM administered resources in the New Prairie and Jordan-North Rosebud planning areas, including Fallon and Prairie counties, and portions of Custer, Rosebud, and Garfield counties, are within the present project.

The first phase of the project is an intensive inventory of the resources in the area. The inventory data will be used in the evaluation of the capabilities and limitations of the land for resource use and development. The results of the evaluation will then be used to develop managmeent recommendations for Federal lands and minerals. Federal

ownership in these planning areas involves approximately 967,400 surface acres and a federal subsurface (mineral) area of 2,530,000 acres. Management recommendations concerning federal minerals could therefore affect substantial acreage of patented lands. Recent interest in coal development in the Powder River and Williston Basin areas has prompted the BLM to place high priority on development of Land Use Plans on coal bearing areas such as portions of the current project area in order to provide for protection of resources as well as potential development.

BLM resource specialists in range management, minerals, wildlife, recreation, hydrology, soil conservation, and cultural resources, together with specialists in ecology, and socio-economics, will compromise an interdisciplinary team developing these plans.

General types of issues anticipated include identification of potential land exchanges, rights-of-way on public lands, resolution of unauthorized uses of various public resources, potential coal development, oil and gas exploration and development, allocation of vegetation for use by livestock, wildlife and for watershed protection, wildlife habitat protection and development, predator management, identification and protection of rare and endangered species, recreation potential and development, intensity of livestock managment, protection of cultural resources, and access to public lands.

It is important that the public participates in developing long range plans in this area as increased private and public pressures for the development and use of the resources is anticipated. Pubic involvement will therefore be a continuing and key part of the Bureau's planning process. The BLM strongly urges the public to offer information and assistance to this planning program. Notices of meetings and opportunities for public participation will be announced at a later date. In the meantime, those desiring to informally discuss BLM planning and environmental assessment efforts and availability of information may do so by contacting the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, MT 59301 or by a phone call to (406) 232–4331.

**Bruce G. Witmarsh,**

*Chief Division of Resources.*

[FR Doc. 80-15476 Filed 5-20-80; 8:45 am]

BILLING CODE 4310-84-M

**[Tentative Sale No. 75]**

## Northern Aleutian Shelf, Outer Continental Shelf; Call for Nominations of and Comments on Areas for Oil and Gas Leasing

*Purpose of Call*

Section 102 of the Outer Continental Shelf Lands Act Amendments of 1978 describes the purposes of that Act. One of the purposes is to establish policies and procedures intended to expedite exploration and development of the Outer Continental Shelf (OCS) in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade. Equally important purposes include balancing energy resources development with the protection of the human, marine, and coastal environments, as well as assuring State and local governments the opportunity to review and comment on decisions relating to OCS activities. To assist the Secretary of the Interior in carrying out these purposes, and pursuant to 43 CFR 3313.1, nominations are hereby requested for areas on the Northern Aleutian Shelf for possible oil and gas leasing under the Outer Continental Shelf Lands Act, as amended (43 U.S.C. 1331–1343). Pursuant to 43 CFR 3314.1, the Secretary is also requesting comments on the possible environmental impacts and potential use conflicts in specified areas.

These comments will be part of an information gathering process to assemble current information on local environmental conditions within the call area.

*Description of the Area*

The area of the Call for Nominations and Comments for the Northern Aleutian Shelf extends seaward from the 3 geographical mile line off the north coast of the Aleutian Chain and extends northward in the Bering Sea to approximately 56°30′ N. latitude, eastward to about the 160°W. longitude meridian, and west to the 165°W. longitude meridian. The blocks are depicted on the following outer continental shelf official protraction diagrams.

**OCS Official Protraction Diagrams**

1. NN 3–2: Cold Bay.
2. NN 3–4: False Pass.
3. NN 4–1: Stepovak Bay.
4. NO 3–8: —
5. NO 4–7: Chignik.

Official Protraction Diagrams may be purchased for $2.00 each from the Manager, Alaska OCS Office, Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510. The street address is 620 East 10th Avenue, Anchorage, Alaska. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic area they represent.

Nominations will be considered for any or all of that part of the following blocks located in the OCS mapped areas listed below.

1. NO 3–8: Beginning at the northwest corner of block 485, thence eastward to the northeast corner of block 523, thence southward to the southeast corner of block 1008, thence westward to the southwest corner of block 969, thence northward to the northwest corner of block 485.

2. NO 4–7, Chignik: Beginning at the northwest corner of block 490, thence eastward to the northeast corner of block 516, thence southward along the 3 geographical mile line to the southeast corner of block 947, thence westward along the 3 geographical mile line to its intersection with the southern boundary of block 978, thence westward from that point to the southwest corner of block 973, thence northward to the northwest corner of block 490.

3. NN 3–2, Cold Bay: All blocks seaward of the the 3 geographical mile line.

4. NN 4–1, Stepovak Bay: All of blocks 1–6, 45–47, 89 and 90.

5. NN 3–4, False Pass: Beginning at the northwest corner of block 1, thence eastward to the northest corner of block 11, thence southwestward along the 3 geographical mile line to the southwest corner of block 353, thence northward to the northwest corner of block 1.

*Instructions on Call*

Nominations must be described by referring to the Outer Continental Shelf Official Protraction Diagrams prepared by the Bureau of Land Management (BLM), Department of the Interior, and referred to above. Only whole blocks or properly described subdivisions thereof, not less than one-quarter of a block, may be nominated. Although individual company nominations are considered to be privileged and confidential information, the names of persons or entities submitting nominations or comments will be of public record.

Those nominating twelve blocks or more are requested to arrange their nominations into three groups according to the priority of their interest.

In addition to nominations, we are seeking comments about particular geological, environmental, biological, archaeological, socioeconomic

conditions or problems, or other information which might bear upon potential leasing and development of particular blocks where available.

Comments should be as specific as possible in identifying specific blocks or areas which should receive special concern and analysis in any leasing decision.

Nominations and comments must be submitted not later than August 15, 1980, in envelopes labeled "Nominations of Tracts for Leasing in the Outer Continental Shelf—Northern Aleutian Shelf" or "Comments on Leasing in the Outer Continental Shelf—Northern Aleutian Shelf" as appropriate. They must be submitted to the Manager, Alaska Outer Continental Shelf Office, Bureau of Land Management, at the address cited above. Copies must be sent to the Director, Attention 540, Bureau of Land Management, Department of the Interior, Washington, D.C. 20240 and to the Conservation Manager, Alsaka Region, U.S. Geological Survey, P.O. Box 259, Anchorage, Alaska 99510.

*Use of Information From Call*

Nominations of single blocks will be evaluated and used along with other biological and geophysical information to determine what, if any, blocks should be tentatively selected for further environmental analysis pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4320–4347) and the OCS Lands Act, as amended. Generally, because of limits on the geographical scope of areas which can be successfully planned for a single sale, only on portion of the blocks nominated are selected for further environmental analysis and possible leasing.

Comments will be considered along with other relevant information available to the Secretary to determine what blocks should be designated for further environmental analysis and study. As a general rule, blocks which are believed to have potential for the production of hydrocarbons are not excluded from further environmental study unless the Secretary has sufficient information to conclude that it is not possible for those blocks to be developed in an environmentally safe manner.

In any event, selection of blocks for further environmental analysis does not insure that the blocks will be subsequently offered for lease or that they will be deleted for environmental or use conflicts. It simply insures that more information will be available when the decision is made. In performing additional environmental analyses leading to a sale decision, the Department will take into account comments received as it determines particular areas and issues for attention.

Final selection of blocks for competitive bidding will be made only at a later date after compliance with established Departmental procedures and all requirements of the National Environmental Policy Act of 1969. Notice of any blocks finally selected for competitive bidding will be published in the **Federal Register** stating the conditions and terms for leasing and the place, date, and hour at which bids will be received and opened.

**Arnold E. Petty,**

*Acting Associate Director, Bureau of Land Management.*

Approved Date: May 15, 1980.

**Heather L. Ross,**

*Acting Assistant Secretary of the Interior.*

[FR Doc. 80–15500 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–84–M**

## Geological Survey

### Oil and Gas and Sulphur; Operations in the Outer Continental Shelf

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of the receipt of a proposed supplemental development and production plan.

**SUMMARY:** Notice is hereby given that Amoco Production Company, has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS 0829, Block 219, Ship Shoal Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** U.S. Geological Survey, Public Records, Room 147, open weekdays 9 am.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 13, 1980.

**Lowell G. Hammons,**

*Conservation Manager, Gulf of Mexico OCS Region.*

[FR Doc. 80–15538 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–31–M**

### Oil and Gas and Sulphur; Operations in the Outer Continental Shelf

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of the receipt of a proposed supplemental development and production plan.

**SUMMARY:** Notice is hereby given that Gulf Oil Exploration and Production Company, has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3277, Block 333, West Cameron Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geologicay Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 13, 1980.

**Lowell G. Hammons,**

*Conservation Manager Gulf of Mexico OCS Region.*

[FR Doc. 80–15539 Filed 5–20–80; 8:45 am]

**BILLING CODE 4310–31–M**

## Oil and Gas and Sulphur; Operations in the Outer Continental Shelf

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of the receipt of a proposed development and production plan.

**SUMMARY:** Notice is hereby given that Phillips Petroleum Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 2357 and OCS–G 3115, Blocks 154 and 155, High Island Area, offshore Texas.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone 837–4720, Ext. 226.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: May 13, 1980.

**Lowell G. Hammons,**

*Conservation Manager, Gulf of Mexico OCS Region.*

[FR Doc. 80–15540 Filed 5–20–80; 8:45 am]

BILLING CODE 4310–31–M

## Oil and Gas and Sulphur; Operations in the Outer Continental Shelf

**AGENCY:** U.S. Geological Survey, Department of the Interior.

**ACTION:** Notice of the receipt of a proposed supplemental development and production plan.

**SUMMARY:** Notice is hereby given that Transco Exploration Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 3414, Block 34, West Delta Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

**FOR FURTHER INFORMATION CONTACT:** U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m, 3301 North Causeway Blvd., Metairie, Louisiana 7002, Phone 837–4720, Ext. 226.

**SUPPLEMENTARY INFORMATION:** Revised rules governing practices and procedures under which the U.S. Geological survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set our in a revised § 250.34 of title 30 of the Code of Federal Regulations.

Dated: May 13, 1980.

**Lowell G. Hammons,**

*Conservation Manager Gulf of Mexico OCS Region.*

[FR Doc 80–15541 Filed 5–20–80; 8:45 am]

BILLING CODE 4310–31–M

## Office of Surface Mining Reclamation and Enforcement

## Handbook on Selected Permit Application Information

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of Interior.

**ACTION:** Notice of availability.

**SUMMARY:** OSM is making available to the public a handbook that describes the *determination* of probable hydrologic consequences and the *statement* of results of test borings or core samplings.

**ADDRESSES:** Copies of the handbook may be obtained at the following OSM Offices:

Office of Surface Mining, Administrative Record, Room 152, Interior South Building, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, DC 20240.

Office of Surface Mining—Region I, U.S. Department of the Interior, 1st Floor, Thomas Hill Building, 950 Kanawha Boulevard East, Charleston, West Virginia 25301.

Office of Surface Mining—Region II, U.S. Department of the Interior, 530 Gay Street, Suite 500, Knoxville, Tennessee 37902.

Office of Surface Mining—Region III, U.S. Department of the Interior, Federal Building and Court House, Room 520, 45 East Ohio Street, Indianapolis, Indiana 46204.

Office of Surface Mining—Region IV, U.S. Department of the Interior, 818 Grand Avenue, Kansas City, Missouri 64106.

Office of Surface Mining—Region V, U.S. Department of the Interior, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

**FOR FUTHER INFORMATION CONTACT:** Donald Willen, Chief, Division of Small Operator Assistance, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW, Washington, DC 20240 (telephone 202–343–9104).

**SUPPLEMENTARY INFORMATION:** Under the Surface Mining Control and Reclamation Act of 1977, operators must submit a *determination* of probable hydrologic consequences of mining and reclamation operations and a *statement* of the results of test borings or core samplings. These provisions are required in the mining permit application by Sections 507(b) (11) and (b)(15) of the Act. For small operators, funds are available under the Small Operators Assistance Program (SOAP) to pay for the preparation of this permit information. The handbook is a general description of an acceptable approach and procedures for preparing the *determination* of probable hydrologic consequences and for preparing the *statement*. Other approaches and procedures may be equally valid for use. The contents of the handbook do not have the force of law and do not modify the Act of the regulations promulgated by the Secretary of the Interior under the Act.

The handbook was prepared by OSM in response to the provisions of 30 CFR 795.4(c)(1). OSM solicited comments on an earlier draft handbook. Comments received were considered in preparing the final handbook. OSM anticipates updating the final handbook as more knowledge becomes available through experience in meeting the requirements of the Act and regulations.

Dated: May 9, 1980.

**Walter N. Heine,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 15467 Filed 5–20–80; 8:45 am]

BILLING CODE 4310–05–M

## INTERSTATE COMMERCE COMMISSION

### Permanent Authority Decisions; Decision-Notice

*Correction*

In FR Doc. 80-10083 appearing at page 22209, in the issue of Thursday, April 3, 1980, on page 22236, the second column, 16th line in the paragraph that starts MC 112750 (Sub-355F), Applicant: PUROLATOR COURIER CORP., "Chreistian" should be corrected to read "Christian".

BILLING CODE 1505-01-M

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[Decision N. 37404; Ex Parte 368A]

### Arkansas Intrastate Freight Rates and Charges—1980.

May 2, 1980

By joint petition filed March 24, 1980, Chicago, Rock Island and Pacific Railroad Company; Missouri Pacific Railroad Company; St. Louis-San Francisco Railway Company; The Kansas City Southern Railway Company; Louisiana & Arkansas Railway Company, and St. Louis Southwestern Railway Company, railroads operatiang in intrastate commerce in Arkansas, request that this Commission institute an investigation of Arkansas Intrastate freight rates and charges, under 49 U.S.C. 11501 and 11502. Petitioners seek an order authorizing them to increase such rates and charges in the same amounts approved for interstate application by this Commission in Ex Parte No. 368A. Petitioners have stated grounds sufficient to warrant instituting an investigation.

Petitioners filed an application on October 18, 1979, with the Arkansas Transportation Commission to apply the rate increases authorized in Ex Parte No. 368A to the Arkansas intrastate rates. The Arkansas Commission denied all increases by report and order dated March 10, 1980.

*It is ordered:*

The petition for investigation is granted. An investigation is granted. An investigation, under 49 U.S.C. 11501 and 11502, and is instituted to determine whether the Arkansas intrastate rail freight rates and charges in any respect cause any unjust discrimination against or an undue burden on their interstate or foreign commerce operations, or cause undue or unreasonable advantage, preference, or prejudice as between persons or localities in interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commission in Ex Parte No. 368A. In the investigation we shall also determine if any rates or charges, or maximum or minimum charges, or both, maintained by petitioners should be prescribed to remove any unlawful advantages, preference, discrimination, undue burden, or other violation of law, found to exist.

All persons who which to participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before 15 days from the **Federal Register** publication date. Although individual participation is not precluded, to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. This Commission will serve a list of names and addresses on all persons upon whom service of all pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or handling under modified procedure.

A copy of this decision shall be served upon petitioners, and copies shall be sent by certified mail to the Arkansas Transportation Commission, and the Governor of Arkansas. Further notice of this proceeding shall be given to the public by depositing a copy of this decision in the Office of the Secretary of the Interstate Commerce Commission at Washington, D.C., and by filing a copy with the Director Office of the Federal Register, for publication in the **Federal Register.**

This decision not significantly affect either the quality of the human environment or conservation of energy resources.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-15496 Filed 5-20-80; 8:45 am]

BILLING CODE 7035-01-M

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[Third Rev. Exemption No. 156]

### Atlanta & Saint Andrews Bay Railway Co.; Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in ex Parte No. 241

*It appearing,* That the railroads named below own numerous sixty-foot plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the car owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owner; and that compliance with Car Series Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

*It is ordered,* That, pursuant to the authority vested in me by Car Service Rule 19, sixty-foot plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No 410, issued by W. J. Trezise, or successive issues thereof, as having mechancial designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Company
Reporting Marks: ASAB
East Camden & Highland Railroad Company
Reporting Marks: EACH
*Missouri Pacific Railroad Company
Reporting Marks: MP-CEI-TP-MI
Providence And Worcester Company
Reporting Marks: PW

*Effective May 5, 1980,* and continuing in effect until further order of this Commission.

Issued at Washington, D.C., May 1, 1980.

Interstate Commerce Commission.

**Joel E. Burns,**

*Agent.*

[FR Doc. 80-15498 Filed 5-20-80; 8:45 am]

BILLING CODE 7035-01-M

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[Decision No. 37360; Ex Parte No. 368]

### Colorado Intrastate Freight Rates and Charges—1980

April 24, 1980.

In a petition filed on January 1, 1980, 10 railroads [1] request that this Commission institute an investigation into their Colorado intrastate freight rates and charges, under 49 U.S.C. §§ 11501 and 11502. Petitioners seek an order authorizing them to increase their intrastate rates in amounts equal to the interstate rate increases approved in Ex Parte No. 368. Petitioners have stated grounds sufficient to warrant instituting an investigation.

Petitioners filed an application on August 29, 1979, with the Colorado

*Addition

[1] The Atchison, Topeka and Santa Fe Railway Company; Burlington Northern, Inc.; Chicago, Rock Island and Pacific Railroad Company; The Colorado and Southern Railway Company; The Colorado and Wyoming Railway Company; The Denver and Rio Grande Western Railroad Company; Missouri Pacific Railroad Company; San Luis Central Railroad Company; Southern San Luis Valley Railroad Company; and Union Pacific Railroad Company.

Public Utilities Commission to apply the rate increase authorized in Ex Parte No. 368 to the Colorado intrastate rates. The Colorado Commission did not finally act within 120 days of the filing of the application. Therefore, in accordance with section 11501(b)(1), the Commission has exclusive authority to prescribe the level of intrastate rates.

*It is ordered:* The petition is granted. An investigation under 49 U.S.C. 11501 is instituted to determine whether the Colorado intrastate rail freight rates and charges in any respect cause any unjust discrimination against or an undue burden on petitioners' interstate or foreign commerce operations, or cause undue or unreasonable advantage, preference, or prejudice between persons or localities in interstate or foreign commerce, or are otherwise unlawful, by reason of the failure of such rates and charges to include the full increases authorized for interstate application by this Commission in Ex Parte No. 368. In the investigation we shall also determine if any rates or charges, or maximum or minimum charges, or both, maintained by petitioners should be prescribed to remove any unlawful advantage, preference, discrimination, undue burden, or other violations of law, found to exist.

All persons who wish to participate in this proceeding and to file and receive copies of pleadings shall make known that fact by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C. 20423, on or before June 5, 1980. Although individual participation is not precluded; to conserve time and to avoid unnecessary expense, persons having common interests should endeavor to consolidate their presentations to the greatest extent possible. This Commission desires participation only of those who intent to take an active part in this proceeding.

As soon as practicable after the last day for indicating a desire to participate in the proceeding, this Commission will serve a list of names and addresses on all persons upon whom service of all pleadings must be made. Thereafter, this proceeding will be assigned for oral hearing or handling under modified procedure.

A copy of this decision shall be served upon petitioners, and copies shall be sent by certified mail to the Public Utilities Commission of the State of Colorado and the Governor of Colorado. Further notice of this proceeding shall be given to the public by depositing a copy of this decision in the Office of the Secretary of the Interstate Commerce Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication in the **Federal Register.**

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

By the Commission, Gary J. Edles, Director, Office of Proceedings.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-15495 Filed 5-20-80; 8:45 am]

**BILLING CODE 7035-01-M**

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**[Ex Parte No. 311]**

## Expedited Procedures for Recovery of Fuel Costs

May 13, 1980.

In our decisions of April 8, 15, 22, 29, and May 6, 1980, a 13.5-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 3.0 percent. Accordingly, we are authorizing a 13.0-percent surcharge for this traffic.

It should be noted that this is the first instance in which the owner-operator/truckload surcharge has been reduced under the surcharge procedures of Special Permission No. 70-2800. The price of diesel fuel has stabilized since late March and, according to our fuel survey upon which the surcharge levels are set, has gradually moved downward over the last few weeks. The price reduction appears to reflect the fact that diesel fuel is vailable in increasing quantity. In any event, the price has been reduced to the extent that a reduction in the truckload surcharge is warranted. In our previous decisions, we have represented to owner-operators and motor carriers using the one-day notice procedures of Special Permission No. 79-2800 that the surcharge will reflect current fuel price levels. While to this point the surcharge has reflected increased prices, it should be noted that the maximum surcharge level under this special permission must be reduced where, as here, current fuel price reductions warrant such action.

The surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators shall also be reduced from 2.3 to 2.2-percent. No change will be made in the existng authorization of the 4.9-percent surcharge for the bus carriers, nor the 1.3-percent surcharge for United Parcel Service.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

*It is ordered:* This decision shall become effective Friday 12:01 a.m.,

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantum, Alexis and Gilliam.

**Agatha L. Mergenovich,**

*Secretary.*

### Appendix—Fuel Surcharge

*Base Date and Price Per Gallon (Including Tax)*

January 1, 1979 ..... 63.5¢

*Date of Current Price Measurement and Price Per Gallon (Including Tax)*

May 12, 1980 ..... 112.5¢

| | Transportation performed by— | | | |
|---|---|---|---|---|
| | Owner-operator [1] | Other [2] | Bus carrier | UPS |
| | (1) | (2) | (3) | (4) |
| Average percent: Fuel expenses (including taxes) of total revenue.. | 16.9 | 2.9 | 6.3 | 3.3 |
| Percent surcharge developed..... | 13.0 | 2.2 | 4.9 | [3] 2.1 |
| Percent surcharge allowed ..... | 13.0 | 2.2 | 4.9 | [4] 1.3 |

[1] Apply to all truckload traffic.

[2] Including less-than-truckload traffic.

[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to the UPS average percent of fuel experise to revenue figure as of January 1, 1979 (3.3 percent).

[4] The developed surcharge figure is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-15493 Filed 5-20-80; 8:45 am]

**BILLING CODE 7035-01-M**

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**[I.C.C. Order No. 67; S.O. No. 1344]**

## Great Western Railway Co.; Rerouting Traffic

In the opinion of Joel E. Burns, Agent, The Great Western Railway Company is unable to transport promptly all traffic offered for movement over its line between Hardman, Colorado and Johnstown, Colorado, due to a bridge damaged in a washout at MP 20.1.

*It is ordered,* (1) *Rerouting traffic.* The Great Western Railway Company, being unable to transport promptly all traffic offered for movement over its lines between Hardman, Colorado, and Johnstown, Colorado, because of a bridge damaged in a washout at MP 20.1, that line and its connections are authorized to divert or reroute such

traffic via any available route to expedite the movement. The Great Western Railway Company will continue to handle local traffic between Hardman, Colorado, and Eaton, Colorado; and between Johnstown, Colorado, and Milliken, Colorado, and will also handle traffic which interchanges with other carriers between Hardman and Eaton; and between Johnstown and Milliken. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible that participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(c) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided under this order.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date.* This order shall become effective at 2:00 p.m., May 6, 1980.

(g) *Expiration date.* This order shall expire at 11:59 p.m., August 4, 1980, unless otherwise modified, amended or vacated.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., May 6, 1980.

Interstate Commerce Commission.

**Joel E. Burns,**

*Agent.*

[FR Doc. 80-15499 Filed 5-20-80; 8:45 am]

BILLING CODE 7035-01-M

## Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

### Motor Carriers of Property

### Notice No. F-28

The following protests were filed in Region 5. Send protests to: Consumer Assistance Center, Interstate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 33298 (Sub-5-1TA), filed May 5, 1980. Applicant: SCHOCK TRANSFER & WAREHOUSE CO., INC., 45 Osage Avenue, Kansas City, KS 66105. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. (1) *Paper and paper products,* from the facilities of Packaging Corporation of America located in Kansas City, KS to points in AR; IA; IL; MO; NE and OK. (2) *Materials, supplies and equipment,* used and useful in the manufacture and distribution of Paper and Paper Products, from points in AR; IA; IL; MO; NE and OK to the facilities of Packaging Corporation of America in Kansas City, KS. Supporting shipper: Packaging Coporation of America, 1603 Orrington Ave., Evanston, IL 60204.

MC 41116 (Sub-5-10TA), filed May 5, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. Contract, Irregular. *Pulpboard, Noibn* from Pineville, LA to Natchez, MS. Supporting shipper: Pineville Kraft Corporation, P.O. Box 870, Pineville LA 71360.

MC 48603 (Sub-R-5-TA), filed May 5, 1980. Applicant: JERRY SIMPSON d.b.a. THORNTON TRANSFER, Route 2, Griswold, IA 51535. Representative: Homer E. Bradshaw, 1100 Des Moines Building, Des Moines, IA 50307. *FAK general commodities* between points in IA, NE, and MO. Restricted to trailers having a prior or subsequent movement by rail. Supporting shippers: Piggyback Consolidators, Inc., Rueshell Laboratories, Long Beach, CA.

MC 50866 (Sub-5-1TA), filed May 5, 1980. Applicant: BURLINGAME TRUCK LINE, INC., Rural Route #2, Scranton, Kansas 66537. Representative: Frederick W. Godderz, Ramskill & Godderz, First State Bank Bldg., Burlingame, Kansas 66413. *Cottonseed meal,* from Clinton, Altus and Oklahoma City, OK to points and places in KS and NE. Supporting shipper: Commodity Traders, Inc., P.O. Box 8141, Shawnee Mission, KS.

MC 61231 (Sub-5-1TA), filed May 5, 1980. Applicant: EASTER ENTERPRISES, INC., d.b.a., ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Steel pipe and tubing* from the facilities of Central Steel Tube Company at Clinton, IA, to Electra, Houston, and Crowley, TX and LaJunta, CO. Supporting shipper: Central Steel Tube Company, Central Steel Road, Box 551, Clinton, IA 52723.

MC 88368 (Sub-5-3TA), filed May 5, 1980. Applicant: CARTWRIGHT VAN

LINES, INC., 11901 Cartwright Avenue, Grandview, MO 64030. Representative: C. Max Stewart (same as applicant). *Recreational park, restaurant, playground and show furniture, fixtures, and equipment, materials and supplies used with the foregoing commodities,* from the facilities of Miracle Recreation Equipment Company at or near Grinnell (Poweshiek County), Iowa to points in Maine, and between points in Alaska. Supporting shipper: Miracle Recreation Equipment Company, Hwy. 6 W, P.O. Box 275, Grinnell, IA 50112.

MC 95084 (Sub-5–2TA), filed May 5, 1980. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Grain wagons,* from Shell Rock, IA to points in IN, IL, KS, KY, MI, MN, MO, NE, ND, OH, OK, TN, TX and WI. Supporting shipper: Brent Industries, Inc.; R.R. 1; Shell Rock, IA 50670.

MC 95084 (Sub-5–3TA), filed May 5, 1980. Applicant: HOVE TRUCK LINE, Stanhope, Iowa 50246. Representative: Kenneth F. Dudley, 302 East Pennsylvania, P.O. Box 279, Ottumwa, Iowa 52501. (1) *Agricultural Machinery and Equipment, Industrial Machinery and Equipment and Parts, Attachments and Accessories for Agricultural Machinery and Equipment and Industrial Machinery and Equipment,* from Long Lake, MN; Fargo, ND and Lennos, IA to points in ID, OR, UT and WA and all points in and East of ND, SD, NE, KS, OK, and LA, and, (2) *Materials, Equipment and Supplies used in the manufacture, sale or distribution of the commodities in (1) above* to the destination points in (1) above. Supporting Shipper: Van Dale Corp., Long Lake, MN, 55343.

MC 106398 (Sub-5–23TA), filed May 5, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Irvin Tull National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Boats on shipper's trailers.* From: Tomahawk, Wisconsin to points in IA, IL, IN, KY, MI, MN, MO and OH. Supporting shipper: Hy-Ryder, Inc., 408 Somo Ave, Tomahawk, WI, Mr. Melvin Klingenberg, Secretary.

MC 106398 (Sub-5–24TA), filed May 7, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. *Metal articles* between the facilities of Acme Iron and Metal Corporation located at Albuquerque, NM, on the one hand, and on the other, points in the U.S. (except AK and HI). Supporting shipper: Acme Iron and Metal Corporation, P.O. Box 6605, Albuquerque, NM, 87187.

MC 105413 (Sub-5–1TA), filed May 7, 1980. Applicant: PETROLEUM TRANSPORT SERVICE, INC., 3908 Richland Drive, Council Bluffs, IA 51501. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Liquid fertilizer, in bulk, in tank vehicles,* from Nebraska City, NE, to points in IA, KS, and MO. Supporting shipper: Allied Chemical Corp., P.O. Box 21220, Houston, TX 77001.

MC 107678 (Sub-5–1TA), filed May 7, 1980. Applicant: HILL & HILL TRUCK LINE, INC., 14942 Talcott Ave., Houston, TX 77049. Representative: Edward D. Brown, 14942 Talcott Ave., Houston, TX 77049. *Fabricated Steel,* from the facilities of Duck Industries, Inc., at or near New Iberia, LA to Belpre, OH, Columbus, OH, and Waverly, WV. Supporting shipper: Duck Industries, Inc., P.O. Box 1256, New Iberia, LA 70560.

MC 108207 (Sub-5–10TA), filed May 5, 1980. Applicant: FROZEN FOOD EXPRESS, INC., P.O. Box 225888, Dallas, TX 75265. Representative: M. W. Smith (same address as applicant). *Cloth mesh tape, glass fibre, not woven, with or without binder or paperbacking, in boxes or wrapped rolls,* in mechanically refrigerated equipment, from St. Paul, MN to Ft. Worth, TX. Supporting shipper: Minnesota Mining and Manufacturing Company, 3M Center, St. Paul, MN 55144.

MC 111231 (Sub-5–8TA), filed May 5, 1980. Applicant: JONES TRUCK LINES, INC., 610 E. Emma Avenue, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. *Irrigation equipment and supplies, plastic pipe, aluminum pipe, fittings, and equipment and materials used in the manufacture and distribution of irrigation equipment,* from Garden City, KS and York County, NE, to all points and places in the United States for 180 days. Supporting shipper: Kroy Industries, Inc., Box 309, York, NE 68467.

MC 111710 (Sub-5–2TA), filed May 5, 1980. Applicant: ARKANSAS TRANSIT CO., INC., 1200 Crutcher Street, P.O. Box 287, Springdale, AR 72764. Representative: Michael H. Mashburn, Blair, Cypert, Waters & Roy, P.O. Box 869, Springdale, AR 72764. *Plastic containers, plastic container closures and materials; equipment and supplies used in the manufacture, sale and distribution of plastic containers and plastic container closures,* from Memphis, TN and its commercial zone to Springdale, Paragould and Fayetteville, AR; Corinth, MS; Monroe, LA; Springfield, MO; Ada, Bartlesville, Vinita, Muskogee, Oklahoma City and Tulsa, OK; and from Springdale, AR to Springfield, MO; Ada, Bartlesville, Vinita, Muskogee, Oklahoma City and Tulsa, OK. Supporting shipper: Heekin Can Division, Diamond International Corporation, 429 New Street, Cincinnati, OH 45202.

MC 113362 (Sub-5–5TA), filed May 5, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. *Feed and feed ingredients, equipment, materials, and supplies used in the manufacture of feed (except in bulk),* between Eagle Grove, IA on the one hand, and, on the other, points in AR, OK, TX, LA, MS, TN, AL, GA, NC, SC, and FL. Supporting shipper: Promico, Inc., 305 North Montgomery, Eagle Grove, IA 50533.

MC 113908 (Sub-5–7TA), filed May 2, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Road, P.O. Box 10068; G.S., Springfield, MO 65804. Representative: Jim G. Erickson (same address as applicant). *Animal and poultry feed ingredients; animal, poultry, and vegetable fats, oils, and blends thereof; minerals, and proteins, in bulk,* between points in the United States, on the one hand, and, on the other, facilities utilized by Southwest By-Products, Inc., located in the United States. Supporting shipper: Southwest By-Products, Inc., 3401 North Grant, Springfield, MO 65803.

MC 114045 (Sub-5–5TA), filed May 5, 1980. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, Dallas, TX 75261. Representative: J. B. Stuart, (same address as above). *Foodstuffs, canned or preserved and dry cereal from* Canajoharie, NY to points in TX. Supporting shipper: Beech-Nut Foods Corporation, 2 Church Street, Canajoharie, NY 13317.

MC 114211 (Sub-5–11TA), filed May 5, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr., P.O. Box 420, Waterloo, IA 50704. *Lumber, lumber mill products, and forest and wood products,* from McCurtain County, OK, to points in CO, IL, IN, IA, KS, MN, MO, NE, NM, ND, OK, SD, TX, and WI. Supporting shipper: Woodland Products, Inc., Box 237, Valliant, OK 74764.

MC 114725 (Sub-5–2TA), filed May 5, 1980. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th Street, Omaha, NE 68110. Representative: Donald F. Swerczek, 2222 North 11th Street, Omaha, NE 68110. *Dinitro Phenol*

*Solution, in bulk, in tank vehicles,* from Tunica, MS, to points in CA and AZ. Supporting shipper: Mid America Chemical, 402 South 5th Street, Leavenworth, KS 66048.

MC 118159 (Sub-5–1TA), filed May 5, 1980. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., 3181 Bankhead Hwy., Atlanta, GA 30318. Representative: Matthew J. Reid, Jr., P.O. Box 2298, Green Bay, WI 54306. *General commodities, when moving on bills of lading of freight forwarders* from Buffalo and Tonawanda, NY and points in MI, OH, IL, and IN to Atlanta and Doraville, GA. Supporting shipper: Universal Carloading and Distributing Company, Inc., 345 Hudson Street, New York, NY 10014.

MC 119274 (Sub-5–1TA), filed May 5, 1980. Applicant: LEWIS & THOMPSON TRUCKING, INC., Montgomery City, MO 63361. Representative: Thomas P. Rose, Attorney at Law, P.O. Box 205, Jefferson City, MO 65102. (1) *Feed,* from Montgomery City, MO to points in Calhoun, Green, Jersey, Madison and Pike Counties, IL, and (2) *Feed Ingredients,* from points in IL to Montgomery City, MO. Supporting shipper: Ralston Purina Company, P.O. Box 46, Montgomery City, MO 63361.

MC 119399 (Sub-5–11TA), filed May 5, 1980. Applicant: CONTRACT FREIGHTERS, INC., 2900 Davis Boulevard, Joplin, MO 64801. Representative: Thomas P. O'Hara (address same as applicant). *Beverages,* from Lenexa, KS to points in IA, IL, MN, ND, SD, and WI. Supporting shipper: Shasta Beverage Division of Consolidated Foods, 9901 Widmer Road, Lenexa, KS 66215.

MC 119493 (Sub-5–18TA), filed May 5, 1980. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative Thomas D. Boone, Traffic Manager, Monkem Company, Inc., P.O. Box 1196, Joplin, MO 64801. *General commodities (except those of unsual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, those requiring special equipment or injurious or contaminating to other lading* between points in the U.S. (except in AK and HI) restricted to traffic from or to facilities of Eagle Picher Industries, Inc. Supporting shipper: W. Rand Gilmore, Vice President of Traffic and Aministration, Eagle Picher Ind., Inc., C and Porter Streets, Joplin, MO 64801.

MC 119493 (Sub-5–19TA), filed May 5, 1980. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone, Traffic Manager, Monkem Company, Inc., P.O. Box 1196, Joplin, MO 64801. *Flour, grain milled products, and materials and supplies used in the manufacture and distribution thereof (except commodities in bulk)* between: points in the U.S. (except AK and HI) and except, from KS to AL, AR, FL, GA, LA, MS, MO, OK, TN, and TX; and except from IL and IN to AL, AR, FL, GA, LA, MS, NC, SC, and TX restricted to traffic from or to facilities owned or used by the Gilbert Jackson, Company Inc. Supporting shipper: H. H. Linton, President, Gilbert Jackson Company, Inc., P.O. Box 4667, Overland Park, KS 66204.

MC 121450 (Sub-5–TA), filed May 5, 1980. Applicant: McCOMAS TRUCK LINES, INC., 604 N. Second Street, Chickasha, OK 73018. Representative: G. Timothy Armstrong, 200 N. Choctaw, P.O. Box 1124, El Reno, OK 73036. Common; Regular. *General Commodities, (except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment);* (1) Between Wichita Falls, TX and Graham, TX, serving all intermediate points and the off-route points of Jean, Jermyn, Loving and Markley, TX: from Wichita Falls via U.S. Hwy 281, to junction with U.S. Hwy 380, then via U.S. Hwy 380 to Graham, and return via the same route; and, (2) between Wichita Falls, TX and Electra, TX, serving all intermediate points: from Wichita Falls via U.S. Hwy 82 to junction with TX Hwy 25, via TX Hwy 25 toElectra and return via the same route. Applicant intends to tack with existing authority and intends to interline with other motor carriers. Supporting shippers: There are 14 supporting shippers.

MC 123993 (Sub-5–9TA), filed May 5, 1980. Applicant: FOGLEMAN TRUCK LINE, INC., P.O. Box 1504, Crowley, LA 70526. Representative: Byron Fogleman, P.O. Box 1504, Crowley, LA 70526. (1) *Non Alcoholic beverages (except in bulk);* (2) *materials, equipment and supplies used in manufacture, distribution or sale of (1) (except in bulk),* between Reserve, LA on the one hand and on the other points in AL, AR, FL, LA, MS, TN and TX. Supporting shipper: Coastal Canning Enterprises, Inc., P.O. Drawer E, Reserve, LA 70884.

MC 124236 (Sub-5–6TA), filed May 5, 1980. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Rodney D. Cokendolpher (same as applicant). *Gasoline,* from Tyler, TX to Texarkana, AR, Bossier City, West Monroe, and Lake Charles, LA. Supporting shipper: Racetrac Petroleum, Inc., P.O. Box 105035, Atlanta, GA 30348.

MC 127042 (Sub-5–1TA), filed May 5, 1980. Applicant: HAGEN, INC., P.O. Box 98, Leeds Station, Sioux City, IA 51108. Representative: Joseph B. Davis (same as applicant). *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and except commodities in bulk),* from Hospers, IA to points in the States of CO and NE. Supporting shipper: Banner Beef Company, P.O. Box 66, Hospers, IA 51238.

MC 129827 (Sub-5–1TA), filed May 5, 1980. Applicant: BLAIR MOTOR SERVICE, INCORPORATED, 1531 East 14th Street, St. Louis, MO 63106. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727–0777. *Shoes, Shoes Findings, and Shoe Factory Supplies,* (1) Between the facility of Brown Shoe Co. at Fredericktown, MO, and Trenton, TN, Memphis, TN, and St. Louis, MO (for interchange); (2) Between the facility of Brown Shoe Co. at Trenton, TN and Memphis, TN (for interchange). Supporting shipper: Brown Shoe Co., 8300 Maryland Avenue, St. Louis, MO 63105.

MC 133194 (Sub-5–1TA), filed May 5, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Road, P.O. Box 1047, Russellville, AR 72801. Representative: Scotty D. Douthit, Sr., (same as applicant). Common; Regular. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment),* between Harrison, AR and Springdale, AR: From Harrison, AR over U.S. Hwy 65 to the junction of U.S. Hwy 62, over Hwy 62 to the junction of Hwy 68, over Hwy 68 to Springdale, AR, and return over the same route serving all intermediate points. From Huntsville, AR to Cass, AR: From Huntsville, AR over U.S. Hwy 23 to Cass, AR, and return over the same route serving all intermediate points, and the off route points of Kingston, AR. From Harrison, AR to Springdale, AR: From Harrison, AR over U.S. Hwy 65 to the junction of U.S. Hwy 62, over Hwy 62 to the junction of Hwy 68, over Hwy 68 to Springdale, AR, and return over the same route serving all intermediate points. From Huntsville, AR to Cass, AR: From Huntsville, AR over U.S. Hwy 23 to Cass, AR, and return over the same route serving all intermediate points,

and the off route point of Kingston, AR. Applicant intends to tack this authority with presently held authority. Supporting shipppers: There are 11 supporting shippers.

MC 133614 (Sub-5–1TA), filed May 7, 1980. Applicant: PAPPAS TRUCKING, INC., P.O. Box 8, Gering, NE 69341. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Contract, irregular. *Trash containers,* from the facilities of Lockwood Corporation at or near Gering, NE, to Detroit, MI, and its commercial zone, under a continuing contract with Lockwood Corporation, for 180 days. Supporting shipper: Lockwood Corporation, Highway 92, Gering, NE 69341.

MC 134319 (Sub-5–1TA), May 5, 1980. Applicant: BRAAFLADT TRANSPORT CO., P.O. Box 1065, Dimmitt, TX 79027. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Dry Urea and urea liquor,* from the facilities of Cominco American, Inc., at or near Borger, TX to points in CO, KS, OK, NE and NM. Supporting shipper: Cominco American Inc., Route 3, Beatrice, NE 68310.

MC 134501 (Sub-5–6TA), filed May 5, 1980. Applicant: INCORPORATED CARRIERS, LTD., P.O. Box 3128, Irving, Texas 75061. Representative: T. M. Brown, P.O. Box 1540, Edmond, OK 73034. *New furniture,* from Huntsville, AL, to Philadelphia, and Totowa, NJ. Supporting shipper: Harris Pine Mills, P.O. Drawer 1168, Pendleton, OR 97801.

MC 135070 (Sub-5–13TA), filed May 5, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Such commodities as are dealt in or used by health and beauty aide distributors and wholesalers,* from Detroit, MI, to points in CT, DE, MD, MA, NJ, NY, PA, and RI. Supporting shipper: Supreme Distributors, Inc., 6501 East McNichols, Detroit, MI 48212.

MC 135070 (Sub-5–16TA), filed May 5, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Cleaning, scouring and washing compounds, and soap products,* from the facilities utilized by the Proctor & Gamble Distributing Company, at or near Alexandria, LA, to points in CO, IA, IL, KS, MO, MT, ND, NE, SD, and WY. Supporting shipper: The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201.

MC 135070 (Sub-5–17TA), filed May 7, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *Filter parts,* from Holbrook, MA, to Albion and West Salem, IL. Supporting shipper: Champion Laboratories, Inc., Fourth and Walnut Streets, Albion, IL 62806.

MC 135070 (Sub-5–18TA), filed May 7, 1980. Applicant: JAY LINES, INC., P.O. Box 30180, Amarillo, TX 79120. Representative: Gailyn L. Larsen, P.O. Box 82816, Lincoln, NE 68501. *(1) Blank sound recording tapes, blank computer recording discettes, silver oxide batteries, alkaline and non-alkaline batteries; and (2) materials, equipment and supplies utilized in the sale and distribution of the commodities named in (1), above,* from Moonachie, NJ, to points in IL and TX. Supporting shipper: Maxell Corporation of America, 60 Oxford Drive, Moonachie, NJ 07074.

MC 136008 (Sub-5–1TA), filed May 5, 1980. Applicant: JOE BROWN COMPANY, INC., Box 1669, 20 Third St. N.E., Ardmore, Oklahoma 73401. Representative: John Tipsword, Box 6210, Moore, Oklahoma 73153. Common; irregular *petroleum coke fines, in bulk, in pneumatic vehicles,* from Chicago, IL. and Kremlin, OK to St. Louis, MO. Supporting shipper: Great Lakes Carbon Corporation, 299 Park Avenue, New York, N.Y. 10017.

MC 136553 (Sub-5–2TA), filed May 5, 1980. Applicant: ART PAPE TRANSFER, INC., 1080 East 12th Street, Dubuque, IA 52001. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Non-alcoholic beverages,* in containers, from Lenexa, KS, to Dubuque and Decorah, IA. Supporting shipper: Coca-Cola Bottling company, 2435 Kerper Blvd., Dubuque, IA 52001.

MC 136711 (Sub-5–1TA), filed May 5, 1980. Applicant: McCORKLE TRUCK LINE, INC., P.O. Box 94968, Oklahoma City, OK 73143. Representative: G. Timothy Armstrong, 200 N. Choctaw, P.O. Box 1124, El Reno, OK 73036. *Animal and poultry feed and feed ingredients, in bulk,* from points in Johnson, Moore, Parmer, Potter, Gray, Dallas and Lubbock Counties, TX to points in AR and OK. Supporting shipper: Broadway Exchange, P.O. Box 555, Henryetta, OK 74437.

MC 136786 (Sub-5–19–TA), filed May 5, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, Iowa 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Frozen foodstuffs* from Buffalo, NY to points in AR, CO, IL, IA, KS, LA, MI, MN, MS, MO, NE, ND, OK, SD, TN, TX, and WI, restricted to traffic originating at the facilities of Freezer Queen Foods, Inc., at or near Buffalo, NY. Supporting shipper: Freezer Queen Foods, Inc., 975 Fuhrman Boulevard, Buffalo, NY 14203.

MC 136786 (Sub-5–20–TA), filed May 5, 1980. Applicant: ROBCO TRANSPORTATION, INC., 4475 N.E. 3rd Street, Des Moines, Iowa 50313. Representative: Stanley C. Olsen, Jr., Gustafson & Adams, P.A., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Chocolate confectionery* from points on the International Boundary Line between the United States and Canada located at Port Huron and Detroit, MI and Buffalo, NY to Jersey City, NJ; Chicago, IL; Salt Lake City, UT; Oakland and Los Angeles, CA; and Houston, TX. Supporting shipper: Ault Foods, Inc., 1500 Birchmount Road, Scarborough, Ontario, Canada.

MC 139299 (Sub-5–2TA), filed May 5, 1980. Applicant: UNRUH GRAIN, INC., P.O. Box 95, Copeland, KS 67837. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Dry urea,* From the facilities of Cominco American Inc. at or near Borger, TX to points in CO; KS; OK; NE and NM. Supporting shipper: Cominco American Inc., Route 3, Beatrice, NE 68310.

MC 141597 (Sub- 5–1TA), filed, May 5, 1980, 1980. Applicant: RIVERSIDE TRUCK LINE, INC. 919 4th Avenue South, Denison, IA 51441. Representative: James M. Hodge, 1980 Financial Center Des Moines, IA 50309. Contract: Irregular. *Printed religious matter, and materials and supplies used in the production, sale and distribution thereof (except in bulk)* between points in the United States (except AK and HI), under continuing contract(s) with World Bible Publishers, Inc., a subsidiary of Riverside Book and Bible House. Supporting shipper(s): World Bible Publishers, Inc. a subsidiary of Riverside Book and Bible House, 1500 Riverside Drive, Iowa Falls, IA 50126.

MC 141865 (Sub-5–2TA), filed May 5, 1980. Applicant: ACTION DELIVERY SERVICE, INC., 2401 West Marshall Drive, Grand Prairie, Texas 75051. Representative: A. William Brackett, 1108 Continental Life Building, Fort Worth, Texas 76102. Contract: Irregular. *Starch, fabric softeners and cleaning compounds,* from the facilities of A. E. Staley Mfg. Co., Arlington, TX to Memphis, TN and New Orleans, LA. Supporting shipper: A. E. Staley Mfg. Co., 924 111th St., Arlington, TX 76011.

MC 142508 (Sub-5–21TA), filed May 5, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th Street, P.O. Box 37465, Omaha,

Nebraska 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, Nebraska 68137. *Flour, Corn Meal, and Edible Flaked Potatoes* from the facilities of Con Agra (a) Decatur, AL to points in FL, GA, KY, MS, NC, SC, and TN and (2) Sherman, TX to points in AZ, CA, and MN. Supporting shipper: Con Agra, Inc., Kiewit Plaza, Omaha, Nebraska 68131.

MC 142508 (Sub-5–22TA), filed May 5, 1980. Applicant: NATIONAL TRANSPORTATION, INC., 10810 South 144th Street, P.O. Box 37465, Omaha, Nebraska 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, Nebraska 68137. *Cleaning Compounds, Lubricants, Anti-Static Fabric Softeners, Coffee Filters, Chemical Dispensing Systems, and Spray and Agitation Cleaners* from Joliet, IL to points in SD and CO. Supporting shipper: Economics Laboratory, Inc., Osborn Building, St. Paul, MN 55102.

MC 142757 (Sub-5–2TA), filed May 5, 1980. Applicant: ROBERTSON TRUCKING, INC., P.O. Box 100, Elkhart, KS 67950. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Dry Urea,* from the facilities of Cominco American, Inc. at or near Borger, TX to points in CO, KS, OK, NE and NM. Supporting shipper: Cominco American Inc., Route 3, Beatrice, NE 68310.

MC 143179 (Sub-5–1TA), filed May 5, 1980. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant). Contract; Irregular. (1) *Bonded polyester fiber and mattress insulator pads,* from Chicago, IL to Minneapolis, MN; and (2) *Plastic foam products and fiberboard laminated to plastic foam,* from Minneapolis, MN to Chicago, IL. Supporting shippers: American Converters, Inc., 2705 University Ave., Minneapolis, MN 55418. Lydall, Inc./Federal Package Div., 3401 Nevada Ave. North, Minneapolis, MN 55427.

MC 143389 (Sub-5–1TA), filed May 5, 1980. Applicant: MERCHANTS DUTCH EXPRESS, INC., P.O. Box 2525, 700 Pine Street, Monroe, LA 71207. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers S., 3390 Peachtree Road, N.E., Atlanta, GA 30326. *Paper and Plastic Articles* from the facilities of American Can Company at or near Dallas, TX to points in LA, under continuing contract(s) with American Can Company. Supporting shipper: American Can Company, 4207 Simonton, Dallas, TX 75240.

MC 143701 (Sub-5–2TA), filed May 7, 1980. Applicant: HODGES FREIGHT LINES, INC., P.O. Box 73–I, Metairie, LA 70033. Representative: Lester C. Arvin, 814 Century Plaza Building, Wichita, KS 67202. *Foodstuffs (except commodities in bulk) in vehicles equipped with mechanical refrigeration,* from the facilities of Midsouth Refrigerated Warehouse Company, Memphis, TN to points in AL, AR, FL, LA, MS, NC, SC and TX. Supporting shipper(s): Consolidated Marketing, Inc., 340 Interstate North, Suite 430, Atlanta, GA 30339.

MC 144592 (Sub-5–1TA), filed May 5, 1980. Applicant: WAYDENS HEAVY HAULERS, INC., 251, Fifth Avenue, Hiawatha, IA 52233. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Contract irregular: Construction equipment,* (1) From Galion, OH to Little Falls, MN and (2) from Little Falls and Minneapolis, MN; Oklahoma City and Fairview, OK; Chicago, IL; and Galion, OH to Sioux City, Cedar Rapids, Des Moines, IA and Milan, IL under continuing contract(s) with Herman M. Brown Company, for 180 days of authority. Supporting shipper(s): Herman M. Brown Company, 2525 16th Avenue, S.W., Cedar Rapids, IA 52406.

MC 144609 (Sub-5–1TA), filed May 5, 1980. Applicant: ADAN J. DOMINGUEZ, d.b.a. DOMINGUEZ BROS. PRODUCE CO., 1500 South Zarzamora Street, San Antonio, Texas 78207. Representative: Kenneth R. Hoffman, P.O. Box 2165, Austin, Texas 78768. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* between San Antonio, TX, and points in its commercial zone on the one hand, and, on the other, Laredo, TX and points in its commercial zone. Restricted to traffic having a prior or subsequent movement by rail in trailer on flat car service. Applicant intends to interline with rail carriers at San Antonio and Laredo, TX for intermodal TOFC service. Supporting shipper(s): 10.

MC 144622 (Sub-5–21TA), filed May 5, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Phillip G. Glenn (same address as applicant). *Meats, meat products and articles distributed by meat packing houses as described in Section A of Appendix I of the report in the Description Case 61 MCC 209 & 766 (except hides and commodities in bulk)* from Palestine, TX to all points in the U.S. (except AK and HI). Supporting shipper: Calhoun Packing Co., P.O. Box 709, Palestine, TX 75801.

MC 144622 (Sub-5–22TA), filed May 5, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Glassware, glass containers, caps, covers, stoppers and tops and affiliated equipment, machines, and machine parts used in previously mentioned commodities* between the plantsite and storage facilities of Libbey Glass, a Division of Owens-Illinois, located at or near Toledo, OH, Shreveport, LA, City of Industry, CA or Mira Loma, CA on the one hand and on the other hand, points in the United States (except AK and HI). Supporting shipper: Libbey Glass, Division of Owens- Illinois, Inc., P.O. Box 919 Toledo, OH 43693.

MC 144821 (Sub-5–2TA), filed May 5, 1980. Applicant: FREEDOM FREIGHTWAYS INC., P.O. Box 5850, St. Louis, MO 63134. Representative: Raymond W. Ellsworth, P.O. Box 5850, St. Louis, MO 63134. *Candy and confectionery, advertising materials, supplies and equipment used in the manufacture, sale and distribution of the commodities named above* from Chicago, IL to points in AL, GA, IN, LA, MD, MA, MI, MS, MO, NJ, NY, OH, PA and TN, restricted to traffic originating at the facilities utilized by Tootsie Roll Industries, Inc. Supporting shipper: Tootsie Roll Industries, Inc., 7401 S. Cicero Ave., Chicago, IL 60629.Q02

MC 144939 (Sub-5–1TA), filed May 7, 1980. Applicant: LARRY A. HOUSEHOLDER, d.b.a. HOUSEHOLDER TRUCKING, R.R. #1, Fenton, Iowa 50539. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Hides, green or green salted,* from the facilities of John Morrell & Co. at Estherville, Iowa, to Kansas City, Missouri. Supporting shipper: John Morrell & Co., 208 South LaSalle Street, Chicago, Illinois 60604.

MC 145048 (Sub-5–1TA), filed April 30, 1980. Applicant: R & E TRUCKING, Rt. 2 Box 77, Plain Dealing, Louisiana 71064. Representative: Ronald D. Rodgers, Rt. 2 Box 77, Plain Dealing, Louisiana 71064. *Contract:* Irregular. *Concrete forms and specialty concrete products* between Hosston, Caddo Parrish, Louisiana, to points in Linn, Polk and Scott Counties in IA to Rock Island and Effingham Counties in IL to Douglas County in Nebraska; to St. Louis, Boone, Green and Kansas City Counties in MO; to Kansas City, Shawnee and Riley Counties in KS and to Tulsa County in OK and their commercial zones. Supporting shipper: Gary Alexander d.b.a. Alexander Concrete Products, P.O. Box 336, Hosston, Louisiana 71043.

MC 145150 (Sub-5–5TA), filed May 5, 1980. Applicant: HAYNES TRANSPORT CO., INC., P.O. Box 9, R.R. 2, Salina, KS 67401. Representative: Clyde N. Christey, Ks Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. *Dry Urea and Urea Liquor,* from the facilities of Cominco American Inc. at or near Borger, TX, to points in CO, KS, OK, NE and NM. Supporting shipper: Cominco American Inc., Route 3, Beatrice, NE 68310.

MC 145441 (Sub-5–17TA), filed May 5, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *General commodities, (except in bulk, in tank vehicles),* between points in the United States, restricted to traffic originating at or destined to the facilities of Bealls Department Stores. Supporting shipper: Bealls Department Stores, P.O. Drawer 511, Jacksonville, TX 75766.

MC 14590 (Sub-5–6TA), filed May 7, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Drive, Waco, TX 76706. Representative: E. Stephen Heisley, 666 Eleventh Street, Washington, DC 20001. *Plastic and cardboard packaging material* from the facilities of Continental Group Inc., Forest Industries Division at or near New Orleans, LA to Houston, TX. Supporting shipper: Container Research, Inc., 409 Wallisville Road, Highlands Texas 77562.

MC 146360 (Sub-5–4TA), filed May 5, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., 4415 Highland Blvd., Suite 107, Oklahoma City, OK 73148. Representative: Timothy R. Stivers, Registered Practitioner, P.O. Box 162, Boise, ID 83701. *Such commodities as are dealt in by grocery and food business houses and equipment, materials, and supplies used in the conduct of such business,* from Clearfield, UT and points in its commercial zone to points in the U.S. (except AK and HI). Restricted to shipments destined to the facilities of Sysco Corporation and its subsidiary and affiliated companies. Supporting shipper: Sysco Corporation, 1177 West Loop South, Houston, TX 77027.

MC 146360 (Sub-5–5TA), filed May 5, 1980. Applicant: FLOYD SMITH, JR. TRUCKING, INC., 4415 Highland Blvd., Suite 107, Oklahoma City, OK 73148. Representative: Timothy R. Stivers, Registered Practitioner, P.O. Box 162, Boise, ID 83701. *Frozen Potato and Vegetable Products and Frozen Fruits,* from the facilities of Idaho Frozen Foods at or near Nampa and Twin Falls, ID and Clearfield, UT to points in AL, AR, CT, DE, DC, FL, GA, IL, IN, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, TX, VT, VA, and WV. Supporting shipper: Idaho Frozen Foods, P.O. Box 128, Twin Falls, ID 83301.

MC 148919 (Sub-5–2TA), filed May 5, 1980. Applicant: HEARTLAND EXPRESS, INC., P.O. Box 129, St. Clair, MO 63077. Representative: Richard Howard, President, P.O. Box 129, St. Clair, MO 63077. *Lump Charcoal, Charcoal Briquettes NOI or Charcoal Pellets, in paper bags, or in Cloth Bags or in barrels or boxes and Materials Equipment and Supplies used in the manufacture, sale and distribution of the foregoing Commodities* between the Plant Site of Cupples Company at Howes, MO and FL. Supporting shipper: Cupples Company, Harold E. Boswell, Vice President, 1034 S. Brentwood, Richmond Heights, MO.

MC 150565 (Sub-5–5TA), filed May 5, 1980. Applicant: SUNBELT EXPRESS, INC., 909 S. Powell Street, Springdale, AR 72764. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. *Foodstuffs,* from Carthage and Monett, MO, to all points and places in the United States in and east of MT, WY, CO, and NM. Supporting shipper: L. D. Schreiber Cheese Co., P.O. Box 610, Green Bay, WI 54305.

MC 150685 (Sub-5–1TA), filed April 28, 1980. Applicant: JOE SOUTH TRUCKING COMPANY, 501 Oak, Clyde, TX 79510. Representative: Nelson M. "Mike" Davidson, Jr., P.O. Box 1148, Austin, TX 78767. *Tallow, in bulk, in tank vehicles,* between all points in TX to Houston, TX, restricted to traffic having a subsequent interstate movement by water or rail. Supporting shipper: Jacob Stern & Sons, Inc., 2104 75th St., Houston, TX 77011.

MC 150581 (Sub-5–1TA), filed May 5, 1980. Applicant: ESTHERVILLE SAND & GRAVEL, INC., 1201 Third Avenue South, Estherville, IA 51334. Representative: Eric L. Anderson, Estherville, IA 51334. *Clay, sand and gravel, in bulk, in dump vehicles* between Upton, WY on the one hand, and, on the other, Sibley, IA and their commercial zones. Supporting shipper: Patten Ponds, Inc., 16321 Jaspar Street N.W., Anoka, MN 55303.

MC 106398 (Sub-5–26TA), filed May 8, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gaylf Gibson, National Trailer Convoy, Inc., 705 South Elgin, Tulsa, OK 74120. (1) *Building and construction materials and accessories* and (2) *insulating materials and supplies and accessories including foil and aluminum plate or sheets* from Buffalo, NY; Piscataway, NJ; Minneapolis, MN; St. Louis, MO; and Portland, OR to all points in the U.S. (except AK and HI). Supporting shipper: Clecon, Incorporated, 35300 Lakeland Blvd., Eastlake, OH 44094.

MC 109397 (Sub-5–3TA), filed May 9, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, Joplin, MO 64801. Representative: Max G. Morgan, P.O. Box 1540, Edmond, OK 73034. *Rebonded polyurethane carpet padding* from Walk-On Products, Inc., Statesville, NC to points in and east of MN, IA, MO, AR, and LA, for 180 days. Supporting shipper: Sponge-Cushion, Inc.; 908 Armstrong Street; Morris, IL 60450.

MC 111967 (Sub-5–1TA), filed May 8, 1980. Applicant: CADDELL TRANSIT CORPORATION, P.O. Box 146, Lawton, OK 73502. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. *Carbonated beverages, in cans, in shipper owned trailers,* from Abilene, TX to Ada, Lawton and Shawnee, OK. Supporting shipper: Ellsworth Bottling Co., Inc., 101 East B, P.O. Box 2277, Lawton, OK 37502.

MC 113651 (Sub-5–13TA), filed May 9, 1980. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Road, Omaha, NE 68154. Representative: James F. Crosby, James F. Crosby & Associates, 7363 Pacific Street, Suite 210–B, Omaha, NE 68114. *Chemicals (except in bulk, in tank vehicles),* from the facilities of Allied Chemical Co., Syracuse, NY to points in WI, MN, IA, and NE. Supporting shipper: Overton Chemical Sales, Inc., Sumner, IA 50674.

MC 114211 (Sub-5–12TA), filed May 8, 1980. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Kurt E. Vragel, Jr., P.O. Box 420, Waterloo, IA 50704. *Contractors' equipment, materials and supplies,* from Webb, Hidalgo and Cameron Counties, TX, to points in IL, WI, and OH. Supporting shipper: Marble Supply International, 400 East Randolph, Chicago, IL 60601.

MC 115001 (Sub-5–1TA), filed May 9, 1980. Applicant: WESTERN OIL TRANSPORTATION COMPANY, INC., P.O. Box 1183, Houston, Texas 77001. Representative: Mike Cotten, P.O. Box 1148, Austin, Texas 78767. *Crude oil, condensate and water, in bulk, in tank vehicles,* (1) between points in AR and (2) between points in AR on the one hand, and, on the other, points in Louisiana. Supporting shipper: The

Permian Corporation, P.O. Box 1183, Houston, TX 77001.

MC 115331 (Sub-5–7TA), filed May 7, 1980. Applicant: TRUCK TRANSPORT, INCORPORATED, 11040 Manchester Road, St. Louis, Missouri 63122. Representative: J. R. Ferris, (same as applicant). *Alcoholic liquors in glass and/or in bulk in barrels and materials used in the manufacture and distribution thereof (except in bulk and in tanks)* between Bardstown, KY on the one hand, and points in IL, IN, IA, KY, MI, MO, OH, PA, LA, and WI on the other. Supporting shipper(s): Hiram Walker and Sons, Inc., P.O. Box 479, Peoria, IL 61651; Barton Brands, LTD., Barton Road, P.O. Box 220, Bardstown, KY 40004.

MC 126118 (Sub-5–16TA), filed May 8, 1980. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: David R. Parker, P.O. Box 81228, Lincoln, NE 68501. *Such commodities as are dealt in by manufacturers and distributors of cotton and cotton products (except in bulk, in tank vehicles),* between Jamestown, NC, on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: Oakdale Cotton Mills, Maylan L. Andrews, Director of Shipping, P.O. Box 787, Jamestown, NC 27282.

MC 126822 (Sub-5–13TA), filed May 9, 1980. Applicant: WESTPORT TRUCKING COMPANY, 15580 South 169 Highway, Olathe, Kansas 66061. Representative: John T. Pruitt (same as address applicant). *Canned goods* from Terminal Island, CA to points in the United States (except AK and HI). Supporting shipper: Pan Pacific Fisheries, Inc., 338 Cannery Street, Terminal Island, California 90731.

MC 129908 (Sub-5–17TA), filed May 8, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 S.W. 15th Street, Oklahoma City, Oklahoma 73107. Representative: John S. Odell, P.O. Box 75410, Oklahoma City, Oklahoma 73147. *Foodstuffs (except in bulk) and materials, equipment and supplies used in the manufacture thereof from and to the points and places listed under (1) below; and foodstuffs (except in bulk) and materials, equipment and supplies used in the manufacture or packaging thereof from and to the points and places listed under (2) below;* (1) from the facilities of Saticoy Food Corporation, Saticoy, CA to all points in the continental United States and; (2) from all points in the continental United States to the facilities of Saticoy Foods Corporation, Saticoy, CA. Supporting shipper: Saticoy Food Corporation, P.O. Box 4547, Saticoy, CA 93003.

MC 129908 (Sub-5–18TA), filed May 9, 1980. Applicant: AMERICAN FARM LINES, INC., 8125 S.W. 15th Street, Oklahoma City, Oklahoma 73107. Representative: John S. Odell, P.O. Box 75410, Oklahoma City, Oklahoma 73147. *Canned, bottled and packaged food products (except items in bulk) and items used in their production and distribution* between the facilities of La Victoria Foods, Inc., in Rosemead, CA and points in UT, CO, TX, OK, and IL. Supporting shipper: La Victoria Foods, Inc., P.O. Box 309, Rosemead, CA 91770.

MC 133155 (Sub-5–1TA), filed May 8, 1980. Applicant: CULP TRUCK LINE, Inc., 511 South Coy, Kansas City, Kansas 66105. Representative: Jeremiah D. Finnegan, Vold, Sullivan, Finnegan & Williams, P. C., Crown Center, Suite 672, 2400 Pershing Road, Kansas City, Missouri 64108. Common; regular. *General commodities, except those of unusal value, dangerous explosives, HHG as defined by the Commission, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading,* from east on U.S. Hwy 40 from the junction of MO Hwy 127 and U.S. Hwy 40 to the junction of U.S. Hwy 65 and U.S. Hwy 40 thence north on U.S. Hwy 65 to the junction of MO Hwy 41 and U.S. Hwy 65, thence east on MO Hwy 41 to the junction of MO Hwy 240 and MO Hwy 41, thence northeasterly on MO Hwy 240 to Glasgow, MO and return over the same route. Service is authorized between all intermediate points on the above route. The authority may be tacked to existing authority held by the applicant and applicant may interline with other carriers in the Kansas City Commerical Zone. Supporting shipper: Standard Havens, Inc., 8800 East 63rd Street, Kansas City, MO 64133.

MC 133194 (Sub-5–2TA), filed May 7, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., P.O. Box 1047, Russellville, Arkansas 72801. Representative: Scotty D. Douthit, Sr., P.O. Box 1047, Russellville, Arkansas 72801. Common regular *general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)* from Dardanelle, AR to Paris, AR. From Dardanelle, AR over U.S. Highway 22 to Paris, AR and return over the same route, serving all intermediate points.

MC 133194 (Sub-5–3TA), filed May 8, 1980. Applicant: WOODLINE MOTOR FREIGHT, INC., Airport Road, P.O. Box 1047, Russellville, Arkansas 72801. Representative: Scotty D. Douthit, Sr., Airport Road, P.O. Box 1047, Russellville, Arkansas 72801 (same address as applicant). Common; Regular. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the commission, commodities in bulk, and those requiring special equipment),* between Harrison, AR and Rogers, AR: From Harrison, AR over U.S. Hwy 65 to junction Hwy 62, then over Hwy 62 to Rogers, AR and return over the same route, serving all intermediate points. Supporting shipper(s): Seven.

MC 133805 (Sub-5–8TA), filed May 8, 1980. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76112. *Foodstuffs, and the equipment, materials, and supplies used in the manufacture and distribution of these commodities, (except in bulk),* between the facilities utilized by J. Hungerford Smith located at or near Humboldt, TN, on the one hand, and, on the other, points in the US (except AK and HI). Supporting shipper: J. Hungerford Smith, 1500 North Central Avenue, Humboldt, TN 38343.

MC 133805 (Sub-5–9TA), filed May 8, 1980. Applicant: LONE STAR CARRIERS, INC., Rt. 1, Box 48, Tolar, TX 76476. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76112. *Chemicals, esters, fatty alcohol, coconut oil, textile softeners, cleaning and washing compounds, lubricating oils, wax, and fireproofing compounds, (except in bulk in tank vehicles), and materials and supplies used in the manufacture and sale of the above commodities,* between Mauldin, SC, Lockhaven, PA, Linden, NJ and Santa Fe Springs, CA, and their respective commercial zones, on the one hand, and, on the other, points in the US (except AK and HI), for 180 days. Supporting shipper: Emery Industries, Inc., P.O. Box 628, Mauldin, SC 29662.

MC 135078 (Sub-5–5TA), filed May 9, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 F Street, Omaha, Nebraska 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251. Kansas City, Missouri 64141. *Floor coverings, floor tiles and materials, equipment and supplies used in the installation and maintenance thereof* from Canton and Middlefield, OH, and Whitehall, PA, to points in IA. Supporting shipper: Central Distributing, Inc., 117 Avenue, Des Moines, IA 50314.

MC 135678 (Sub-5–7TA), filed May 8, 1980. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, OK 73125. Representative: C. L. Phillips, Room 248, Classen Terrace Bldg., 1411 Classen Blvd., Oklahoma City, OK 73106. (1) *Quilted fabric N.O.I. woven cloth or synthetic fibre combined or separate; bedspreads; mattress pads; curtains; drapes; comforters; sheets; pillow cases; cotton fabric* (2) *Equipment, materials and supplies used in the manfacturing of commodities set out in Par. (1)* between points in OK and TX. Supporting shipper: Kellwood Company, 200 Sears Road, Perry, Ga. 31069.

MC 135797 (Sub-5–31TA), filed May 8, 1980. Applicant: J. B. HUNT TRANSPORT, INC., Post Office Box 130, Lowell, AR 72745. Representative: Paul R. Bergant, Esq. (address same as applicants. *Textile products and supplies,* from points in KY to points in CA. Supporting shipper: Union Underwear, P.O. Box 780, Bowling Green, KY 42101.

MC 138469 (Sub-5–10TA), filed May 9, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73147. Representative: Jack H. Blanshan, 205 W. Touhy, Ave., Suite 200, Park Ridge, IL 60068. *Books and office furnishings,* (1) from Los Angeles, CA to Portland, OR and Seattle, WA, and (2) from Seattle, WA to Los Angeles, CA, restricted to the transportation of traffic originating at or destined to the facilities of Ingram Book Company at Los Angeles, CA. Supporting shipper: Ingram Book Company, 347 Reedwood Dr., Nashville, TN 37217.

MC 138469 (Sub-5–11TA), filed May 9, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73147. Representative: Jack H. Blanshan, 205 W. Touhy, Ave., Suite 200, Park Ridge, IL 60068. *New household furniture, pillows, sheets, pillow cases and bedspreads,* from the facilities of Oklahoma Furniture Manufacturing Company located at or near Guthrie, OK, to points in AR, DE, FL, ID, LA, MS, MT, SC, TN, TX and WY, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. Supporting shipper: Oklahoma Furniture Manufacturing Company, P.O. Box 700, Guthrie, OK 73044.

MC 138469 (Sub-5–12TA), filed May 9, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73147. Representative: Jack H. Blanshan, 205 W. Touhy, Ave., Suite 200, Park Ridge, IL 60068. (A) *Yarn, and materials, equipment and supplies used in the production of yarn (except commodities in bulk, in tank vehicles),* from points in AL, FL, GA, NC, SC, and TN to the facilities of Mid-America Yarn Mills, Inc., at or near Pryor, OK and Yuma, AZ, and (B) *Yarn and fiber* (1) from Mid-America Yarn Mills, Inc. facility at Pryor, OK to Yuma, AZ and points in CA, CT and PA, and (2) from the facilities of Mid-America Yarn MIlls, Inc. at or near Yuma, AZ to points in CA. Restriction: restricted to the transportation of traffic originating at or destined to the facilities of Mid-America Yarn Mills, Inc. Supporting shipper: Mid-America Yarn Mills, Inc., Box 1028, Pryor, OK 74361.

MC 140635 (Sub-5–4TA), filed May 9, 1980. Applicant: ADAMS LINES, INC., 2619 N Street, P.O. Box 7343, Omaha, NE 68107. Representative: John L. Hornung, President, 2619 N Street, P.O. Box 7343, Omaha, NE 68107. *Glass and glass products* (1) From the facilities of General Glass International Corp., at or near Jeannette, PA, S. Kearny, NJ, and Clarksburg, WV, to Kingsport, TN and points in and west of WI, IL, MO, AR, LA and points in IN in the Chicago Commercial Zone; and (2) From Kingsport, TN to IL, WI and points in IN in the Chicago Commercial Zone. Supporting shipper: General Glass International Corp., 270 North Avenue, New Rochelle, NY 10800.

MC 140665 (Sub-5–12TA), filed May 8, 1980. Applicant: PRIME, INC., Route 1, Box 115–B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 786, Ravenna, OH 44266. *Iron or steel cleaning compounds; rust preventing compounds; proprietary electroplating additives; paint; paint products; metal and metal products; petroleum products; nickel; chemicals and materials and supplies used in the manufacturing, marketing and distribution of the above commodities, except commodities in bulk and those requiring special equipment,* between Cleveland, OH, CN, SC, FL, MI, MN, IL, MO, TX, LA, CO, AZ, CA and WA on the one hand, and, on the other, points in the United States (except AK and HI). Supporting shipper: R. O. Hull & Company, Inc. (Rohco), 23000 St. Clair Avenue, Cleveland, OH 44117.

MC 140829 (Sub-5–18TA), filed May 8, 1980. Applicant: CARGO, INC., P.O. Box 206, U.S. Hwy. 20, Sioux City, IA 51102. Representative: David L. King, P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. *Chemicals, in vehicles equipped with mechanical refrigeration (except in bulk in tank vehicles),* from the facilities of Nalco Chemical Company, at Chicago, IL, to points in CO, MA, NJ and NY. Supporting shipper: Nalco Chemical Company, 2901 Butterfield Road, Oak Brook, IL 60521.

MC 142672 (Sub-5–6TA), field May 8, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., Post Office Drawer F, Mulberry, AR 72947. Representative: Don Garrison, Esq., Post Office Box 1065, Fayetteville, AR 72701. *Meats, meat products and meat by-products and articles distributed by meat packinghouses as described in sections A and C of Appendix I to the report in descriptions in motor carrier certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk),* between the facilities of D. P. M. of Arkansas, Inc., at or near Booneville, AR, on the one hand, and, on the other, points in AL, CT, DE, FL, GA, IL, IN, KY, MA, MD, ME, MI, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI, WV and the District of Columbia. Supporting shipper: D. P. M. of Arkansas, Inc., Post Office Box 200, Booneville, AR 72927.

MC 143386 (Sub-5–1TA), filed May 8, 1980. Applicant: RC COLA-7 UP BOTTLING CO. OF HGN, INC., 601 North 77 Sunshine Strip, Harlingen, TX 78550. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Road, Fort Worth, TX 76112. *Contract carrier,* irregular routes, *Canned citrus juices,* from Weslaco, TX to points in AR, KS, MS, under continuing contract(s) with TEXSUN Corporation. Supporting shipper: TEXSUN Corporation, P.O. Box 327, Weslaco, TX 78596.

MC 144622 (Sub-5–23TA), filed May 8, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Chemical products, refractories, foundry supplies (except in bulk in tank vehicles)* Between Conneaut, OH and Marshall, TX, on the one hand, and, points in KS, OK, MO and TX on the other hand; (representative points: St. Louis and Joplin, MO; Wichita and Atchison, KS; Oklahoma City and Tulsa, OK; Houston and Dallas, TX. Supporting shipper: Exomet, Inc., P.O. Box 647, Conneaut, OH 44030.

MC 144622 (Sub-5–25TA), filed May 9, 1980. Applicant: GLENN BROTHERS TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: J. B. Stuart, P.O. Box 179, Bedford, TX 76021. *Candy and confectionery* from the facilities of Peter Paul Cadbury at or near Hazelton, PA to points in the state of Washington. Supporting shipper: Peter Paul Cadbury, Inc., New Haven Road, Naugatuck, CT 06770.

MC 144901 (Sub-5–2TA), filed May 9, 1980. Applicant: INTERMODAL SYSTEMS, INC., 4740 Roanoke Parkway, Kansas City, MO 64111.

Representative: Arthur J. Cerra, P.O. Box 19251, Kansas City, MO 64141. *General commodities moving in rail intermodal service (except commodities in bulk, in tank vehicles, Class A and B explosives, household goods as defined by the Commission, and commodities which, because of size or weight, require the use of special equipment)* between points in CA on the one hand, and, on the other, points in CO, restricted to traffic which involves the substitution of T.O.F.C. or C.O.F.C. service for a portion of the through movement. Supporting shipper: There are 14 statements of support.

MC 145152 (Sub-5–5TA), filed May 9, 1980. Applicant: BIG THREE TRANSPORTATION, INC., P.O. Drawer O, Springdale, AR 72764. Representative: Joe Bailey, Director of Commerce, P.O. Drawer O, Springdale, AR 72764. *Products used or dealt in by foodstuff producers and distributors* between Humboldt and Memphis, TN on the one hand, and, on the other, points in the U.S. (except AK and HI) restricted to the transportation of traffic originating at or destined to the facilities of Hunt-Wesson Foods, Inc. Supporting shipper: Hunt-Wesson Foods, Inc., Fullerton, CA.

MC 145441 (Sub-5–18TA), filed May 8, 1980. Applicant: A.C.B. TRUCKING, INC., P.O. Box 5130, North Little Rock, AR 72119. Representative: Ralph E. Bradbury, P.O. Box 5130, North Little Rock, AR 72119. *Stoves and parts and supplies used in the manufacture, sale and distribution thereof,* between points in AR, NC, OH, TN, and TX, restricted to traffic originating at or destined to facilities utilized by Jordan Enterprises, Inc. Supporting shipper: Jordon Enterprises, Inc., 4801 North Hills Blvd., North Little Rock, Arkansas 72116.

MC 145950 (Sub-5–7TA), filed May 8, 1980. Applicant: BAYWOOD TRANSPORT, INC., Route 6, Box 2611, Waco, TX 76706. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh St., NW., Washington, DC 20001. *Clothing and piecegoods, and materials, equipment and supplies used in the manufacture, distribution, and sale of clothing and piecegoods (except commodities in bulk),* between Griffin, GA, and Sequin, TX. Supporting shipper: United Cotton Goods Co., Inc., P.O. Drawer 149, Griffin, GA 30224.

MC 147196 (Sub-5–3–TA), filed May 9, 1980. Applicant: ECONOMY TRANSPORT, INC., P.O. Box 59262, New Orleans, LA 70150. Representative: Donald A. LaRousse (same as above). Contract irregular. *Iron and steel pipe, casings, fittings and accessories* from the plant site of Readd Supply Co., Houston, TX to all points in the States of CO, KS, LA, NM, OK and WY. Supporting shipper: Readd Supply Co., 123 North Point, Houston, TX 77060.

MC 150583 (Sub-5–4TA), filed May 8, 1980. Applicant: ROSENBERGER ENTERPRISES, INC., P.O. Box 577, Carlisle, IA 50047. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Machinery and machine parts, chemicals in containers, and bicycle chains,* from the facilities of D & D Warehousing & Truck Service at Carson, CA to points in the United States (except AK and HI). Supporting shipper: D & D Warehousing & Truck Service, 16801 Central Avenue, Carson, CA 90749.

MC 150583 (Sub-5–5TA), filed May 9, 1980. Applicant: ROSENBERGER ENTERPRISES, INC., P.O. Box 577, Carlisle, IA 50047. Representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. *Iron and steel articles,* from the facilities of Whittaker Steel Strip, Division of Whittaker Corporation, at Detroit, MI to points in CA. Supporting shipper(s): Whittaker Steel Strip, Division of Whittaker Corporation, 20001 Sherwood Avenue, Detroit, MI 48234.

MC 150781 (Sub-5–1TA), filed May 8, 1980. Applicant: JAMES LOYD GRIGGS, 229 Dorris St., Grand Prairie, TX 75051. Representative: William M. Spruce, P.O. Box 2819, Dallas, TX 75221. Contract: Irregular. *Automotive vehicles, specially prepared in any condition* between Arco Oil and Gas Company locations in the States of AR, CO, KS, LA, NM, OK, TX, WY. Supporting shipper: Arco Oil & Gas Company, P.O. Box 2819, Dallas, TX 75221.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-15494 Filed 5-20-80; 8:45 am]

BILLING CODE 7035-01-M

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**[Rel. Rates Application No. MC-1513]**

### National Motor Freight Traffic Association, Inc; Application

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice, Released Rates Application No. MC-1513.

**SUMMARY:** National Motor Freight Traffic Association, Inc., Agent, seeks, on behalf of common carriers participating in National Motor Freight Classification, ICC NMF 100-F, to amend Released Rates Order No. MC-719 for the purpose of extending this authority to provide for the application of classes and/or exceptions ratings in tariffs which publish exceptions to such classification, and specific and/or general commodity rates, including commodity column rates in tariffs which publish commodity rates on electric semi-conductor parts, that take precedence over classification ratings.

**ADDRESSES:** Anyone seeking copies of this application should contact: Mr. William Pugh, Counsel, National Motor Freight Traffic Association, Inc., Agent, 1616 "P" Street, N.W., Washington, DC 20036, Tel. (202) 797-5310.

**FOR FURTHER INFORMATION CONTACT:** Mr. Howard J. Rooney, Unit Supervisor, Bureau of Traffic, Interstate Commerce Commission, Washington, DC 20423, Tel. (202) 275-7390.

**SUPPLEMENTARY INFORMATION:** Relief is sought from 49 U.S.C. 10730, and 11707 of the Interstate Commerce Act.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-15497 Filed 5-20-80; 8:45 am]

BILLING CODE 7035-01-M

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## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### Panama, Housing Guaranty Program; Information for Lenders

In FR Doc. 80—14764 in the issue of Wednesday, May 14, 1980, appearing on page 31812, in the first column, the first paragraph, in the fourth line, make the following correction:

The line beginning "exceed $10,000. . ." should read "exceed $10,000,000. . ."

BILLING CODE 1505-01-M

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337-TA-70]**

### Certain Coat Hanger Rings; Termination of Investigation

Upon consideration of the presiding officer's recommendation and the record in this proceeding, the Commission is ordering the termination of investigation No. 337-TA-70, Certain Coat Hanger Rings.

The order is effective as of May 14, 1980.

Any party wishing to petition for reconsideration of the Commission's action must do so within fourteen (14) days of service of the Commission order. Such petitions must be in accord with Commission rule 210.56 (19 CFR 210.56).

Copies of the Commission's action and order, the Commissioners' opinion(s), and any other public

documents in this investigation are available to the public during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, telephone (202) 523–0161.

Notice of the institution of this investigation was published in the **Federal Register** of July 18, 1979 (44 FR 41971).

By order of the Commission.

Issued: May 14, 1980.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80–15596 Filed 5–20–80; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–77]**

## Certain Computer Forms Feeding Tractors and Components Thereof; Commission Determination Amending Complaint

*Background*

On March 3, 1980, respondents Shinshu Seiki Co. and Epson America, Inc., filed a motion (Motion No. 77–1) to dismiss the complaint of Precision Handling Devices, Inc. and to terminate the investigation. Respondents argued that the assignment dated April 4, 1973, which was attached to the complaint, did not assign to the complainant U.S. Letters Patent No. 3,825,162, since under the wording of the assignment, only the rights to a "design letters patent" were assigned and the '162 patent is not a design patent.

On March 17, 1980, complainant filed an affidavit by Leo Hubbard confirming that Hubbard intended to assign the '162 patent to complainant Precision Handling Devices, Inc. On March 19, 1980, respondent filed a reply to the affidavit, stating that the assignment by its terms was not an assignment of the '162 patent, and failed to act as an assignment of the "utility patent".

On March 27, 1980, complainant moved (Motion No. 77–4) to amend the complaint by adding the inventor Leo Hubbard as a party, and by attaching to the complaint a new assignment in which the inventor assigned all the rights in the '162 patent to complainant Precision Handling Devices, Inc., and confirmed that the old assignment had assigned rights under the '162 patent to Precision.

Respondents answered complainant's motion (Motion No. 77–4) to amend complaint on April 1, 1980, contending that the new assignment, by conveying *all* rights in the '162 patent to Precision Handling Devices, Inc., put the inventor Leo Hubbard in a position where he now has no standing to sue. Although the respondent did not oppose complainant's motion to amend the complaint, they reserve the right to two defenses: (1) that the investigation was improperly initiated by reason of complainant's lack of title to the patent in question, and (2) that the inventor, if added now as a complainant, would have no standing to sue because of the unconditional assignment of the patent to complainant Precision Handling Devices, Inc.

On April 9, 1980, Administrative Law Judge Saxon recommended first that Motion 77–4 be granted to amend the complaint by adding a "confirmatory assignment," thereby curing complainant Precision Handling Devices, Inc., initial lack of standing, and second to add as complainant Leo James Hubbard, the inventor named in U.S. Letters Patent No. 3,825,162. It was further recommended that no action on the respondent's Motion 77–1 was required.

*Commission Determination*

Having considered the recommendation of the presiding officer and the submissions of the parties, the Commission DETERMINES that complainant's motion (Motion No. 77–4) is granted in part. The complaint is amended to include a "confirmatory assignment" as an attachment thereto, so as to be part of the attachments listed in paragraph 25 of the complaint, thereby curing any problem which existed as to complainant Precision's initial lack of standing in this investigation. The Commission further determines that that part of complainant's Motion 77–4 seeking to amend the complaint to add Leo J. Hubbard, the inventor of the '162 patent, as a co-complainant is denied.

The Commission determines to deny respondents' Motion 77–1 to dismiss the complaint and terminate the investigation.

A copy of the Commission's memorandum opinion is available in the Office of the Secretary of the Commission.

By order of the Commission.

Issued: May 12, 1980

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80–15595 Filed 5–20–80; 8:45 am]

BILLING CODE 7020–02–M

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**[Investigation No. 337–TA–76]**

## Certain Food Slicers and Components Thereof; Remand of Order No. 7

On April 28, 1980, the presiding officer in the above-captioned case issued Order No. 7, certifying a motion and a consent order agreement to the Commission. The Commission is remanding that order to the presiding officer in order to obtain a recommendation regarding whether the consent order agreement should be accepted.

Proposed section 337 consent order rules provide, in proposed section 210.51(a)(2) that: "The licensing or other agreement and any agreements supplemental thereto, and affidavit shall be certified by the presiding officer to the Commission with his recommendation." Although the proposed consent order rules are not in effect, the Commission believes that having the benefit of a recommendation by the presiding officer is beneficial and in conformance with sound administrative practice. Although rule 210.14 of the Commission's Rules of Practice and Procedure reserves certain public interest factors to the Commission for initial consideration, these factors are not exhaustive of all public interest and equitable considerations that the Commission takes into account when deciding whether to accept an agreement. The practice of obtaining a recommendation from the presiding officer has been followed with regard to settlement agreements. *See Certain Resistor Chips*, Inv. No. 337–TA–63/65 (Recommended Determination of February 22, 1980).

The Commission therefore requests that the presiding officer make recommendations regarding the consent order here in issue.

By order of the Commission.

Issued: May 15, 1980

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80–15597 Filed 5–20–80; 8:45 am]

BILLING CODE 7020–02–M

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## LEGAL SERVICES CORPORATION

### Grants and Contracts.

May 16, 1980.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93–355a, 88 Stat. 378, 42 U.S.C. 2996–2996*l*, as amended, Pub. L. 95–222 (December 28, 1977). Section 1007(f) provides: "At least thirty days prior to

the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly * * * such grant, contract, or project * * *."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

Southeast Tennessee Legal Services in Chattanooga, Tennessee to serve Monroe County.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Atlanta Regional Office, 615 Peachtree Street, N.E., Room 911, Atlanta, Ga. 30308.

**Clinton Lyons,**

*Director, Office of Field Services.*

[FR Doc. 80-15593 Filed 5-20-80; 8:45 am]

BILLING CODE 6820-35-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-41)]

### NASA Advisory Council (NAC); Meeting

The NASA Advisory Council's Informal *Ad Hoc* Advisory Subcommittee for the New Directions Symposium will meet on June 9 thru 14, 1980, at the Woods Hole Study Center of the National Academy of Sciences, Woods Hole, Massachusetts 02543. All sessions will be open to the public up to the seating capacity of the rooms employed. The main meeting room to be used seats about 50 persons, including subcommittee members and invited meeting participants. Other smaller rooms will be used by ad hoc working groups. Visitors will be requested to sign a visitor's register.

The Informal *Ad Hoc* Advisory Subcommittee for the New Directions Symposium was established under the NASA Advisory Council to organize and conduct a one-week symposium aimed at exploring promising new directions for future space activities. The specific areas to be studied are Human Role in Space, Life Sciences, Applications, and Solar Physics and Solar-Terrestrial Interactions. Other promising opportunities will also be examined, and the subcommittee will report its findings to the Council and to NASA. The chairperson of the subcommittee is Dr. John E. Naugle, and the subcommittee is composed of eight other members of the Council, who will meet with about 40 other invited participants and certain NASA personnel in this symposium. The agenda for this meeting is given below. For further information, contact the Administrative Assistant, Mrs. Jane E. Scott, Area Code 202 755-8383, NASA Headquarters, Washington, D.C. 20546.

*Agenda—June 9-14, 1980*

Working sessions are scheduled for each day of the meeting, nominally from 8:30 a.m. to 5:30 p.m. Prior to the first session, the study participants will be divided into several working groups of approximately 7-10 people each. The working groups will meet separately each morning and afternoon and will provide status reports to the full group each day at about 4:00 p.m.

**Russell Ritchie,**

*Deputy Associate Administrator for External Relations.*

May 15, 1980.

[FR Doc. 80-15479 Filed 5-20-80; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Literature Panel; Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Panel to the National Council on the Arts will be held June 13, 1980 from 9:00 a.m.-5:45 p.m. and June 14, 1980 from 9:00 a.m.-5:00 p.m. at Duke University, Durham, North Carolina.

A portion of this meeting will be open to the public on June 14, 1980 from 2:30 p.m.-5:00 p.m. for Questions and Answers with the public.

The remaining sessions of this meeting on June 13, 1980 from 9:00 a.m.-5:45 p.m. and June 14, 1980 from 9:00 a.m.-2:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 14, 1980.

[FR Doc. 80-15542 Filed 5-20-80; 8:45 am]

BILLING CODE 7537-01-M

### Theatre Panel (Small Companies); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theatre Panel (Small Companies) to the National Council on the Arts will be held June 10, 1980 from 9:00 a.m.-5:30 p.m.; June 11, 1980 from 9:00 a.m.-5:30 p.m.; and June 12, 1980 from 9:00 a.m.-5:30 p.m., in Room 1422, Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 14, 1980.

[FR Doc. 80-15543 Filed 5-20-80; 8:45 am]

BILLING CODE 7537-01-M

### Special Projects Panel (Folk Arts); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Special Projects Panel (Folk Arts) to the National Council on the Arts will be held June 12, 1980 from 8:30 a.m.-7:30 p.m.; June 13, 1980 from 8:30 a.m.-5:30 p.m.; and June 14, 1980 from 8:30 a.m.-5:30 p.m., in Room 1426, Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5 United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

**John H. Clark,**

*Director, Office of Council and Panel Operations, National Endowment for the Arts.*

May 14, 1980.

[FR Doc. 80–15544 Filed 5–20–80; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on June 4, 1980 in Room 1046, 1717 H St., NW, Washington, DC 20555. Notice of this meeting was published May 15, 1980.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1979, (44 FR 56408), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

**Wednesday, June 4, 1980**

*8:30 a.m. Until the Conclusion of Business.* The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting.

At the concluson of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding recommendations and implementations resulting from Task Action Plan A–40, "Seismic Design Criteria—Short-Term Program" (TAP–A–400). Other issues to be discussed will be criteria for seismic design of safe shutdown and heat removal systems, seismic scram, and the NRC research budget in areas pertaining to extreme external phenomena.

The ACRS is required by Section 5 of the 1978 NRC Authorization Act to review the NRC research program and budget and to report the results of the review to Congress. In order to perform this review, the ACRS must be able to engage in frank discussions with members of the NRC Staff and such discussions would not be possible if held in public sessions. In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, therefore, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), that, should such sessions be required, it is necessary to close portions of this meeting to prevent frustration of the above stated aspect of the ACRS' statutory responsibilities and to protect proprietary information. See 5 U.S.C. 552b(c)(9)(B) and 552b(c)(4).

Further information regarding topics to be discussed, 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 Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: May 16, 1980.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 80–15589 Filed 5–20–80; 8:45 am]

BILLING CODE 7590–01–M

### Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold an open meeting on June 4, 1980, in Room 1167, 1717 H St., N.W., Washington, DC 20555.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1979 (44 FR 56408) oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

**Wednesday, June 4, 1980**

*The meeting will commence at 8:45 a.m.* The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Proposed Regulatory Guide 1.23, Revision 1, "Meteorological Programs in Support of Nuclear Power Plants (Pre Comment)

(2) Proposed revisions to A) 10 CFR Part 55, "Operators' Licenses" and B) 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities" (Pre Comment)

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Further information regarding topics to be discussed, 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 Designated Federal Employee for this meeting, Mr. Sam Duraiswamy, (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Notice of this meeting was published May 15, 1980.

Dated: May 16, 1980.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 80–15588 Filed 5–20–80; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF MANAGEMENT AND BUDGET

### Mandatory Information Requirements for Federal Assistance Program Announcements

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Information Requirements for Program Announcements.

**SUMMARY:** This notice contains information relating to the requirements for Federal assistance program announcements pursuant to Pub. L. 95-220, The Federal Program Information Act.

**EFFECTIVE DATE:** July 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Robert Brown, Branch Chief Federal Program Information Branch, Office of Management and Budget, 726 Jackson Place NW., Room 6001, Washington, DC 20503, (202) 395-6182 concerning the Catalog of Federal Domestic Assistance (CFDA) and Tom Synder, Senior Management Analyst, Intergovernmental Affairs, Federal Assistance Information Branch, (202) 395-6911 for OMB Circular No. A-95 coordination.

**SUPPLEMENTARY INFORMATION:** To enable the Director of the Office of Management and Budget (OMB) to carry out the responsibilities mandated by the Federal Program Information Act and to assist A-95 clearinghouses in the review process, notice is hereby given that all Federal assistance program announcements are required to contain the following information:

(1) The official program number and title as outlined by OMB Circular No. A-89.

(2) A statement as to the applicability of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally-assisted programs and projects.

Federal assistance program announcements include, but are not limited to, entries published as Final Regulations and Amendments under the Rules and Regulations section and as notices of any kind pertaining to ongoing programs under the Notices section.

Federal program offices are advised to coordinate the required program number and title with their internal agency representative for the CFDA as prescribed by OMB Circular No. A-89 and, for A-95 applicability, with their agency A-95 representative.

Documents placed on public inspection at the Office of the Federal Register the day before publication will be subject to monitoring by the OMB in coordination with the Office of the Federal Register. If a Federal assistance program announcement does not contain this essential information OMB will request that the document be withdrawn from the publication process until the required information is included.

**David R. Leuthold,**

*Budget and Management Officer.*

[FR Doc. 80-15387 Filed 5-20-80; 8:45 am]

BILLING CODE 3110-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Adjustment in Restraint Levels Under the Orderly Marketing Agreement With Taiwan Concerning Footwear

Below is a letter to the Commission of Customs requesting that the restraint levels for the third year restraint period be increased in accordance with the provisions of Presidential Proclamation 4510 of June 22, 1977.

**Robert D. Hormats,**

*Deputy United States Trade Representative.*

May 13, 1980.

Honorable Robert Chasen
*Commissioner, U.S. Customs Service, Department of the Treasury, Washington, D.C. 20229.*

Dear Commissioner Chasen: A request has been received from Taiwan concerning the carry forward provision in paragraph 4(c) of the orderly marketing agreement on non-rubber footwear.

Accordingly, pursuant to operative paragraph (6) of Proclamation 4510 of June 22, 1977, you are hereby requested to increase the third year restraint levels applicable to non-rubber footwear imports entering under TSUS Item Nos. 923.90, 923.91, and 923.92, as follows:

| Item No. | Amount of increase (pairs) | Adjusted total (pairs) |
|---|---|---|
| 923.90 | 614,400 | 11,878,400 |
| 923.91 | 6,589,200 | 114,490,057 |
| 923.92 | 476,400 | 9,607,400 |

Amounts by which each category level is exceeded in the third restraint year by using the carry forward provision are to be deducted from the levels of the forth restraint year (July 1980-June 1981).

This letter will be published in the **Federal Register.**

Sincerely,

Robert D. Hormats,

*Deputy United States Trade Representative.*

[FR Doc. 80-15562 Filed 5-20-80; 8:45 am]

BILLING CODE 3190-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. 34-16809; Files Nos. SR-CBOE-80-5, SR-Amex-80-8, SR-MSE-80-4, SR-PSE-80-5, and SR-Phlx-80-9]**

### Chicago Board Options Exchange, Inc., et al.; Self Regulatory Organizations; Proposed Rule Changes

In the matter of Chicago Board Options Exchange, Inc., American Stock Exchange, Inc., Midwest Stock Exchange, Inc., Pacific Stock Exchange, Inc., Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that the above-mentioned self-regulatory organizations ("SROs") have filed with the Securities and Exchange Commission proposed rule changes [1] to delete their respective "restricted options" rules.[2]

### SROs' Statement of Basis and Purpose

The basis and purpose of the proposed rule changes is as follows:

The proposed rule changes would eliminate restrictions on opening transactions in out-of-the-money options by public customers and non-Market-Maker members consistent with the recommendation of the Special Study of the Options Markets. As noted in the Options Study, the restricted options rules inhibit pursuit of relatively conservative investment strategies by public customers and options professionals and can cause pricing inefficiencies and loss of liquidity. Since the restricted options rules exempt Market-Makers from their prohibitions, other options professionals and public investors, in formulating investment strategies, do not have available to them all of the option series which are available to Market-Makers. Further, the regulatory concern that underlies the rules—that unsophisticated investors might be lured into out-of-the-money options because of the low premiums involved—have been effectively addressed through the implementation of tightened rules and procedures respecting customer account approval

[1] The proposed rule changes were filed with the Commission on the following dates: (1) Chicago Board Options Exchange, Incorporated ("CBOE"), filed April 4, 1980; (2) American Stock Exchange, Inc., ("Amex"), filed April 23, 1980; (3) Midwest Stock Exchange, Incorporated ("MSE"), filed April 30, 1980, amended May 13, 1980; (4) Pacific Stock Exchange, Incorporated ("PSE"), filed May 13, 1980; (5) Philadelphia Stock Exchange, Inc. ("Phlx"), filed April 23, 1980.

[2] CBOE Rule 4.17; Amex Rule 910; MSE Article XI, Rule 7; PSE Rule VI, Section 11; Phlx Rule 1046.

and supervision. Finally, the operation of the restricted option rules has become so complicated in respect of multiply traded options that it is almost impossible to devise an intelligible rule which provides for all contingencies.

Repeal of the restricted options rules will eliminate restrictions which seem unnecessary in light of the regulatory purposes of the Act.

No comments were solicited or received on the proposed rule changes.

The SROs do not believe that the proposed rule changes will impose any burden on competition.

On or before June 25, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organizations consent, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filings with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal offices of the above-mentioned self-regulatory organizations. All submissions should refer to the file numbers referenced in the caption above and should be submitted on or before June 11, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

May 15, 1980.

[FR Doc. 80-15545 Filed 5-20-80; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 21573; 70-6311]

## General Public Utilities Corp. et al.; Proposed Increase in Short-Term Notes to Banks

May 14, 1980.

In the Matter of General Public Utilities Corp., 100 Interpace Parkway, Parsippany, New Jersey 07054, Jersey Central Power & Light Co., Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, Metropolitan Edison Co., 2800 Pottsville Pike, Muhlenberg Township, Berks County, Pennsylvania 19605, Pennsylvania Electric Co., 1001 Broad Street, Johnstown, Pennsylvania 15907.

Notice is hereby given that General Public Utilities Corporation ("GPU"), a registered holding company, and its electric utility subsidiaries, Jersey Central Power & Light Company ("JCP&L"), Metropolitan Edison Company ("Met-Ed"), and Pennsylvania Electric Company ("Penelec"), have filed with this Commission a post-effective amendment to their application-declaration in this proceeding pursuant to Section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order dated June 19, 1979, (HCAR No. 21107), this Commission authorized GPU, JCP&L, Met-Ed, and Penelec to issue, sell, and renew from time to time through October 1, 1981, their respective promissory notes (the "Notes") having a maturity of not more than six months from the date of issue, pursuant to a revolving credit agreement with a syndicate of commercial banks (the "loan agreement"). Aggregate borrowings under the loan agreement are limited to $500,000,000, and JCP&L's borrowings thereunder are limited to $139,000,000. At the date of filing, JCP&L had $110,000,000 in borrowings outstanding under the loan agreement. The indebtedness under the loan agreement is secured by an unconditional guarantee given by GPU, as well as the pledge by GPU to the banks of the common stock of JCP&L, Met-Ed, Penelec, and GPU Service Corporation, and, in the cases of JCP&L and Met-Ed, certain other collateral.

The order further provided, among other things, that the aggregate principal amount of Notes representing indebtedness under the loan agreement which JCP&L could have outstanding at any one time could not exceed the lesser of (a) $139,000,000 or (b) the limit imposed by JCP&L's charter. JCP&L now requests that the maximum amount of such indebtedness be increased to the lesser of (a) $160,000,000 or (b) the amount permitted by JCP&L's charter. In all other respects the transactions as heretofore authorized by the Commission would remain unchanged. The proceeds of such loans will be used to finance JCP&L's business as a public utility.

The fees and expenses to be incurred in connection with the proposed increase are to be filed by amendment. It is stated that the New Jersey Board of Public Utilities has jurisdiction over JCP&L's proposed issuance and sales of Notes. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than June 9, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application-declaration, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80-15546 Filed 5-20-80; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. 11167; 812-4607]

## Hartford Variable Annuity Life Insurance Co. et al.; Filing of Application

May 13, 1980.

In the Matter of Hartford Variable Annuity Life Insurance Company; Hartford Equity Sales Company, Inc;

Hartford Variable Annuity Life Insurance Company QP Variable Account; Hartford Variable Annuity Life Insurance Company DC Variable Account–I; Hartford Variable Annuity Life Insurance Company DC Variable Account–II; Hartford Fund, Inc., Hartford Plaza, Hartford, CT 06115.

Notice is Hereby Given that Hartford Variable Annuity Life Insurance Company ("HVA"), a stock life insurance company organized under the laws of the state of Connecticut; Hartford Variable Annuity Life Insurance QP Variable Account ("HVA–QP–VA") and Hartford Variable Annuity Life Insurance Company DC Variable Account–I ("DC–I") and Account–II ("DC–II"), each of which is a unit investment trust registered under the Investment Company Act of 1940 ("Act"); Hartford Equity Sales Company, Inc. ("HESCO"), a broker-dealer registered under the Securities Exchange Act of 1934; and Hartford Fund, Inc. ("Hartford Fund") a diversified open-end management investment company registered under the Act (collectively "Applicants") filed an Application on February 4, 1980, and amendments thereto on April 11, 1980 and May 1, 1980, pursuant to Section 6(c) of the Act for an Order exempting Applicants from the provisions of Sections 2(a)(32), 2(a)(35), 22(d), 26(a)(2), 27(a)(3) and 27(c)(2) of the Act to the extent requested and for aproval of an offer of exchange pursuant to Section 11 of the Act. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

**Background**

DC–I, DC–II and HVA–QP–VA are separate accounts within HVA which are registered as unit investment trusts with the Securities and Exchange Commission ("Commission"). The underlying investment media of each of the trusts are shares of Hartford Fund, a series fund which offers three classes or series of stock; a Bond Series, a Stock Series and a proposed Money Market Series. Accounts to hold investments in the Shares of the Bond Series, the Stock Series and the Money Market Series have been created within DC–I and HVA–QP–VA. These Accounts are designated Bond Account, Stock Account and Money Market Account, respectively.

HESCO serves as the principal underwriter of the Variable Annuity Contracts issued by HVA–QP–VA and DC–I.

A Contract Owner under HVA–QP–VA or DC–I Contract and a Contract Participant under an HVA–QP–VA Contract has the right to direct that purchase payments made pursuant to the terms of the contract shall be allocated entirely to the appropriate unit trust Stock Account, Bond Account or Money Market Account or any combination thereof provided that the amount thus invested in any one Account shall be at least $10 and shall be amounts equal to at least 10% of each purchase payment.

Purchase payments or the parts thereof that are invested at the direction of the Contract Owners or Contract Participants in the Bond Account or Stock Account are subject to a sales charge deduction of a maximum of 4.25% declining with the amount(s) invested, whereas purchase payments or the parts thereof that are invested in the Money Market Account are not subject to a sales charge deduction.

In addition to having the right to distribute purchase payments among the three Accounts in varying amounts, the Contract Owner or Contract Participant, where appropriate, shall also have the right to transfer or exchange part or all of his interest in one Account to either or both of the other Accounts. However, a Contract Owner or Contract Participant whose purchase payments had been invested entirely in the Money Market Account and who wished to transfer the value of his interest in the Money Market Account to the Stock Account or Bond Account could by this means acquire an interest in the Bond Account or Stock Account without ever having paid a sales charge. In order to avoid discriminating against those Contract Owners and Contract Participants whose purchase payments had been subjected to sales charges because they were invested originally in the Stock and/or Bond Accounts, a sales charge will be made on the portion of the value of the amount transferred from the Money Market Account to either or both of the other Accounts up to an amount equal to the amount(s) initially invested in the Money Market Account and not subject to a sales charge.

**Sections 22(d) and 27(a)(3)**

In pertinent part, Section 22(d) of the Act provides that no registered investment company or principal underwriter thereof shall sell any redeemable security issued by such company to any person, except at a current offering price described in the prospectus.

Section 27(a)(3) provides, in substance, that it shall be unlawful for any registered investment company issuing periodic payment plan certificates or for any depositor of or underwriter for such company to sell any such certificates if the amount of sales load deducted from any one of the first payments exceeds proportionately the amount deducted from any other such payment or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment.

Because the Hartford Fund is a series fund, with the Contract Owner or Contract Participant, as appropriate, having the right to vary the allocation of the purchase payments, from time to time, among the Bond Account, Stock Account, and the Money Market Account, the purchase payments may be subject to varying amounts of sales charges depending on the amounts that may be invested, from time to time, in the Money Market Account. This may result in a violation of Sections 22(d) and 27(a)(3) of the Act. Section 27(a)(3) of the Act may also be deemed to be violated because of the possibility of variations in sales charges that could occur as a result of the above described exchanges.

Applicants allege that Sections 22(d) and 27(a)(3) were designed to protect against discrimination and confusion in the minds of investors about the amounts of sales charges, and tht such difficulties will not be present under the present contract arrangement.

Nevertheless, applicants have requested the Commission to issue an order exempting them and each of them from the provisions of Sections 22(d) and 27(a)(3) in order that they might offer and sell group variable annuity contracts issued with respect to HVA–QP–VA and DC–I which authorize the purchaser to direct that the contract purchase payments made (subject to the 10% minimum) be allocated among and invested in the Bond Account, Stock Account and Money Market Account subject or not to a deduction for sales charge depending upon the Account(s) to which allocated and in order that a sales charge may be deducted from amounts initially invested in the Money Market Account without a deduction for sales charge being made and then transferred from the Money Market Account to the Stock and/or Bond Account.

**Section 11**

Section 11(a) of the Act provides, as pertinent, that no registerd, open-end company or any principal underwriter for such a company shall make an offer to the holder of a security of such company to exchange his security for a security in the same or another such company on any basis other than relative net asset values unless the

terms of the offer have been approved by the Commission.

Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities or registered unit investment trusts for the securities of any other investment company.

As hereinabove described, a transfer by a Contract Owner or Contract Participant of part or all of the value of his interest in the Money Market Account to the Bond and/or Stock Account in HVA–QP–VA or DC–I will result in a payment of a sales charge on the amount that has not theretofore been subject to a sales charge. Such exchange will therefore be made at other than net asset value. Applicants have requested an Order of the Commission pursuant to Section 11 in order that the Contract Purchaser or Contract Participant may make transfers of interests from one Account to another under the circumstances described.

**Sections 2(a)(32) and 2(a)(35)**

Section 2(a)(32), as pertient, defines "Redeemable Security" as any security under the terms of which the holder, upon its presentation to the issuer is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

Because a transfer of a Contract Owner's or Contract Participant's initial investment in the Money Market Account (which has not theretofore been subject to a sales charge deduction) to the Stock Account and/or Bond Account will be subject to a sales charge deduction upon any such transfer, it maybe said that the securities issued with respect to HVA–QP–VA and DC–I are not in fact redeemable securities. If the withdrawal and reinvestment are considered as a single transaction, the Contract Owner or Contract Participant did not receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof because the redemption value has been reduced by a sales charge. Accordingly, HVA–QP–VA and DC–I as unit investment trusts may be said to be not issuing redeemable securities.

Section 2(a)(35) defines "Sales Load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities.

The definition of sales load presumes that any such deduction will be made from the public offering price to the investor; that is, it will be deducted when the investment is initially made and not some time later. Because a sales charge deduction will be made upon a transfer of monies, which represent amounts initially invested in the Money Market Account to the Bond and/or Stock Account, such deduction would not fall within the definition of sales load.

Applicants do not believe that any exemption from Section 2(a)(32) or Section 2(a)(35) is necessary or appropriate under the circumstances. However, to the extent that an exemption or exemptions may be deemed necessary, Applicants have requested exemptions from Section 2(a)(32) and Section 2(a)(35) of the Act in order that exchanges may be made from the Money Market Account to the Bond and Stock Accounts as hereinabove described.

**Section 26(a)(2) and Section 27(c)(2)**

Section 26(a)(2) of the Act requires that the trustee or custodian segregate and hold in trust all securities, cash, and other trust property; places restrictions on charges which may be made against the trust income and corpus and excludes from expenses which the trustee or custodian may charge against the trust any payments to the depositor or principal underwriter or any affiliated person thereof, other than a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative services, delegated by the trustee or custodian.

Section 27(c)(2) of the Act provides in pertinent part that the proceeds, after deduction of sales load of all payments on a periodic payment plan certificate issued by a registered investment company are to be held by a bank as trustee or custodian under an indenture or agreement containing in substance, the provisions required by paragraphs (2) and (3) of Section 26(a) for trust indentures of unit investment trusts.

As noted above, purchasers of group contracts issued with respect to HVA–QP–Va and DC–I that allocate part or all of their purchase payments to the Money Market Account will be able to do so without any sales charge deduction being made from the amount thus allocated. Purchasers of the group contracts will have the right to transfer monies invested and held in the Money market Account to the Bond Account and/or Stock Account and vice versa. However, again as noted above, a contract purchaser who desires to tranfer monies held in the Money Market Account to the Bond Account or Stock Account must pay a sales charge on that portion of the amount transferred equal to the amount initially invested which was not subject to a sales charge deduction. However, the payment of such a sales charge will not qualify as an allowable expense within the meaning of Section 26(a)(2).

Applicants have requested an Order of the Commission exempting them and each of them from the provisions of Sections 26(a)(2) and 27(c) in order that a sales charge might be deducted and paid from the amounts transferred from the Money Market Account based on the amounts initially invested therein and not theretofore subject to a sales charge.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) that the deductions under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of HVA–QP–VA or DC–I shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

**Section 6(c)**

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 5, 1980 at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the matter accompanied by a

statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request.

As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application will be issued as of course following June 5, 1980, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80–15547 Filed 5–20–80; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 11169; 812–4617]**

## National Westminster Bank Limited; Application

May 13, 1980.

Notice is hereby given that National Westminster Bank Limited ("Applicant") c/o Bruce W. Nichols, Esq., Davis, Polk & Wardwell, One Chase Manhattan Plaza, New York, N.Y. 10005, filed an application on February 20, 1980, and an amendment thereto on April 16, 1980, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that Applicant and its subsidiaries are one of the largest international banking groups in the United Kingdom and among the largest banking groups of the world in terms of deposits, assets and profits. According to the application, Applicant and its subsidiaries on a consolidated basis had assets of approximately 26.9 billion pounds sterling, deposits of approximately 26.5 billion pounds sterling and ordinary shareholders' funds and preference share capital of approximately 1.6 billion pounds sterling at December 31, 1979. The application indicates that the principal business of Applicant and it subsidiaries consists of receiving deposits and making loans. In addition, Applicant states that it engages in merchant banking, retail installment financing, leasing and factoring through subsidiaries and affiliated companies. The application states that the operating revenue of applicant and its subsidiaries is derived principally from interest on loans and overdrafts, which constituted 83% of total gross income of Applicant and its subsidiaries for the fiscal year ended December 31, 1979. Applicant represents that it is an English company limited by shares with its registered and principal office located at 41 Lothbury, London EC2P 2BP, England.

Applicant represents that it is subject to the regulation of the Bank of England, the central bank of the United Kingdom. Applicant also states that it files regular detailed reports, and periodic statistical returns with the Bank of England, which are designed to analyze liquidity and exposure to asset-related and other risks. According to the application, Applicant is registered as a bank holding company pursuant to the Bank Holding Company Act of 1956, under which the Board of Governors of the Federal Reserve System regulates the types of activities in which a foreign bank holding company may engage and requires the filing of annual reports.

According to the application, Applicant proposes to issue and sell prime quality commercial paper notes in minimum denominations of $100,000 in the United States. Applicant represents that the notes will be sold through major United States commercial paper dealers to institutional investors, other entities and individuals who normally purchase commercial paper, and will not be offered for sale to the general public. Applicant states that it seeks to broaden its sources of finance by selling commercial paper in the United States, which would provide the Applicant with an additional source of United States dollars. Applicant states that it presently expects that the average amount of its commercial paper outstanding to be approximately $500,000,000 during the year after it begins selling its notes, and $750,000,000 in succeeding year. The application states that the notes will be direct liabilities of the Applicant and will rank *pari passu* among themselves and with all other unsecured unsubordinated indebtedness, including deposit liabilities of the Applicant, and superior to the rights of shareholders. Applicant plans to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance upon an opinion of its special counsel in the United States that the notes will qualify for the exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicant states that it will not issue or sell any of its notes until it has received such opinion letter. The Commission expresses no opinion as to the availability of any such exemption. Applicant further represents that the presently proposed issue of securities and any future issue of its debt securities in the United States shall have received prior to issuance one of the three highest investment grade ratings from at least one of the nationally recognized investment rating organizations and that its special counsel in the United States shall have certified that such rating has been received.

Applicant undertakes to insure that the commercial paper dealer will provide each offeree of its notes with a memorandum describing the business of Applicant and its subsidiaries and containing the most recently published financial statements of Applicant and its subsidiaries, which will be audited in accordance with United Kingdom auditing practices. Applicant also states that the memorandum will include a brief paragraph highlighting the material differences between United Kingdom accounting principles applicable to United Kingdom clearing banks, as used by Applicant, and generally accepted accounting principles employed by United States banks. Applicant represents that such memorandum will be at least as comprehensive as those customarily used by United States issuers in offering commercial paper in the United States and will be updated periodically to reflect material changes in the financial status or business of Applicant and its subsidiaries.

Applicant further represents that any future offering of its debt securities will be done on the basis of disclosure documents which are at least as comprehensive as those used by United States issuers of such securities in the United States and will contain the financial statements of Applicant and its subsidiaries. Applicant consents to having any order granting the relief requested under Section 6(c) expressly

conditioned upon its compliance with the foregoing undertakings regarding disclosure documents.

Applicant represents that it will appoint a bank or trust company having an office in New York City, the Commission, or a corporation with an office in New York City engaged in providing corporate services, as agent to accept service of process in any action based on the notes or with respect to the offer and sale of the notes through the offering memorandum, and instituted in any State or Federal court by the holder of any of its notes. Applicant further represents that it will expressly submit to the jurisdiction of any State or Federal court in the City and State of New York in any such action and that both its appointment of an authorized agent for service of process and its consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes shall have been paid. Applicant states that in the future it may offer debt securities other than short-term notes in the United States, but it will not offer or sell, except to employees, its equity securities in the United States. Applicant represents that no such securities shall be offered or sold unless such securities are registered under the 1933 Act or in the opinion of Applicant's United States counsel an exemption from registration under the 1933 Act is available with respect to the offer and sale of such securities, or the staff of the Commission states that they would not recommend that the Commission take any action under the 1933 Act if such securities are not registered. Applicant represents that it will similarly consent to jurisdiction and appoint an agent for service of process in any action arising from any other offering of debt securities that it may make in the United States in the future.

Section 3(a)(3) of the Act defines investment company to mean "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." Applicant states that there is uncertainty as to whether it would be considered an investment company as defined under the Act.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from any provision under the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an order pursuant to Section 6(c) of the Act exempting it from all provisions of the Act. Applicant submits that as a commercial bank whose operations are controlled and overseen by United Kingdom banking authorities, it is different from the type of institution Congress intended the Act to regulate. Applicant also submits that an exemption pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors in the United States because without such an exemption Applicant would be precluded from publicly offering its securities in the United States. Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than June 9, 1980, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80–15548 Filed 5–20–80; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 11168; 811–1538]**

## Trust Fund Sponsored by the Episcopal School Foundation College Award Program, Inc.; Proposal To Terminate Registration

May 13, 1980.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that the Trust Fund Sponsored By The Episcopal School Foundation College Award Program, Inc. ("Fund"), 3100 East Oakland Park Boulevard, Fort Lauderdale, Florida 33308, registered under the Act as a closed-end management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that on September 26, 1967, the Fund registered as an investment company under the Act. It did not file a registration statement under the Securities Act of 1933. Prior to registering under the Act, the Fund offered scholarship plans for sale to the public from October, 1965, until September, 1967. Due to certain problems which developed in the management and administration of the Fund, the Department of Insurance of the State of Florida took action to have the Fund liquidated. A proceeding entitled *State of Florida, ex rel. The Department of Insurance (Realtor)* v. *Episcopal School Foundation College Award Program, Inc. (Respondent),* was filed in the Circuit Court, Second Judicial Circuit for Leon County, Florida, Civil Action No. 71–1574. That Court issued an order on December 6, 1971, appointing the Florida Department of Insurance as Receiver of the Fund's property and affairs for the purpose of supervising the liquidation of the Fund. On February 14, 1973, the Court issued an Order of Final Distribution causing the Fund to be liquidated and its assets to be distributed. The Division of Rehabilitation and Liquidation of the State of Florida, by a letter dated March 4, 1980, has advised the Commission that the Order of Final Distribution was implemented on March 19, 1973, and therefore the Fund ceased to exist on that date. On June 16, 1976, the Court issued an Order of Final Discharge and

Approval of Final Accounting. Specifically, the staff of the Commission has been advised that the Fund had no assets or liabilities on the date of final discharge.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested persons may, not later than June 9, 1980, at 5:30 p.m., submit to the Commission in writing, a request for a hearing on this matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Fund at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of this matter will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80–15549 Filed 5–20–80; 8:45 am]

BILLING CODE 8101–01–M

## SMALL BUSINESS ADMINISTRATION

### Region VI Advisory Council; Public Meeting

The Small Business Administration Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m., Thursday, June 5, 1980, at the Federal Building, 727 East Durango, Room A–206, San Antonio, Texas, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Julio Perez, District Director, U.S. Small Business Administration, 727 E. Durango, Room A–513, San Antonio, Texas 78206, (512) 229–6105.

Dated: May 15, 1980.

**Michael B. Kraft,**

*Deputy Advocate for Advisory Councils.*

[FR Doc. 80–15615 Filed 5–20–80; 8:45 am]

BILLING CODE 8025–01–M

**[Declaration of Disaster Loan Area No. 1836]**

### Washington; Declaration of Disaster Loan Area

Grant County and adjacent counties within the State of Washington constitutes a disaster area as a result of damage caused by excess flood water being discharged into Crab Creek from the O'Sullivan Reservoir beginning on or about March 5, 1980. Eligible persons, firms and organizations may file applications for physical damage until the close of business on November 13, 1980, and for economic injury until the close of business on February 13, 1981, at:

Small Business Administration, District Office, P.O. Box 2167, 651 U.S. Courthouse, Spokane, Washington 99210.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 13, 1980.

**A. Vernon Weaver,**

*Administrator.*

[FR Doc. 80–15614 Filed 5–20–80; 8:45 am]

BILLING CODE 8025–01–M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

**[Dept. Circ 570, 1979 Rev., Supp. No. 18]**

### National Farmers Union Property and Casualty Co.; Surety Companies Acceptable on Federal Bonds; Correction

At 45 FR 24960 (April 11, 1980), there was published supplement No. 15 to Treasury Circular 570; 1979 revision. In that supplement the State of incorporation of the National Farmers Union Property and Casualty Company was omitted. The State of incorporation is Utah.

Federal bond approving officers should annotate their reference copies of Treasury Circular 570, 1979 Revision, at page 38095 to reflect this information.

Questions concerning this notice may be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–5010.

Dated: May 12, 1980.

**Gerald Murphy,**

*Acting Commissioner, Bureau of Government Financial Operations.*

[FR Doc. 80–15594 Filed 5–20–80; 8:45 am]

BILLING CODE 4810–35–M

# Sunshine Act Meetings

Federal Register
Vol. 45, No. 100
Wednesday, May 21, 1980

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).

## CONTENTS



### 1

**[M-280, amdt 5; May 15, 1980]**

**CIVIL AERONAUTICS BOARD.**

Short notice of item and closure of items to the May 13, 1980 meeting.

**TIME AND DATE:** 1:30 p.m., May 13, 1980.

**PLACE:**

Room 1027 (open), 1825 Connecticut Avenue, NW.

Room 1012 (closed), Washington, D.C. 20428.

**SUBJECT:**

*Closed:* 2a. North-Atlantic Sectors Fare Flexibility (BDA).

*Closed:* 10a. Dockets 37164, 37264, 37259, 30382, 32188, 31146, 37258, 37269, 37266, 31170, 37271, 35261, 37263, 37084, and 36829; United States-Bermuda Show Cause Proceeding; applications of American, Delta, Eastern, Evergreen, Ozark, Pan American, Republic, Transamerica, Trans Carib Air, Trans World, USAir and Mackey International for Bermuda authority (BIA).

*Added and closed:* 17. Assignment of Individual Board Members to Cover Upcoming Negotiations.

**STATUS:** *Open:* Items 2a, 10a, 16 and 17 were closed.

**PERSON TO CONTACT:** Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1012-80 Filed 5-19-80; 3:51 pm]

BILLING CODE 6320-01-M

### 2

**COMMODITY FUTURES TRADING COMMISSION.**

**TIME AND DATE:** 11:00 a.m., Friday, May 30, 1980.

**PLACE:** 2033 K Street NW., Washington, D.C., eighth floor conference room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance briefing.

**CONTACT PERSON FOR MORE INFORMATION:** Jane Stuckey, 254-6314.

[S-1008-80 Filed 5-19-80; 2:07 pm]

BILLING CODE 6351-01

### 3

**FEDERAL ENERGY REGULATORY COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 32829, May 19, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m. May 21, 1980.

**CHANGE IN THE MEETING:** The following item has been added:

*Item number, docket number, and company.*

ER-12—ER79-512, Long Island Lighting Company.

**Kenneth F. Plumb,**

*Secretary.*

[S-1005-80 Filed 5-19-80; 11:37 am]

BILLING CODE 6450-85-M

### 4

**FEDERAL HOME LOAN BANK BOARD.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 45, FR, p. 32475, May 16, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 11:00 a.m., May 19, 1980.

**PLACE:** 1700 G Street NW., amphitheater, second floor, Washington, D.C.

**STATUS:** Open meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Marshall (202-377-6677).

**CHANGES IN THE MEETING:** The meeting previously scheduled for Monday, May 19, 1980, has been cancelled. The material will be considered at the May 22, 1980 meeting.

Announcement is being made at the earliest practicable time.

No. 349, May 19, 1980.

[S-1002-80 Filed 5-19-80; 9:32 am]

BILLING CODE 6720-01-M

### 5

**[USITC ERB-80-6A]**

**INTERNATIONAL TRADE COMMISSION.**

Executive Resources Board (ERB).

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 31258, May 12, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Friday, May 23, 1980.

**CHANGES IN THE MEETING:** Rescheduling of the meeting.

Commissioners Alberger, Stern, and Calhoun, as members of the Executive Resources Board (ERB), determined by unanimous consent that Commission business requires the rescheduling of the meeting of May 23, 1980, at 10 a.m., to May 22, 1980 at 3 p.m., and affirmed that no earlier announcement of the change in the schedule was possible and directed the issuance of this notice at the earliest practicable time.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 923-0161.

[S-1009-80 Filed 5-19-80; 2:07 pm]

BILLING CODE 7020-02-M

### 6

**NATIONAL LABOR RELATIONS BOARD.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 32831, May 19, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Monday, May 19, 1980.

**CHANGES IN THE MEETING:** The time of the meeting has been changed to 10:30 a.m., Monday, May 19, 1980.

Dated: Washington, D.C., May 16, 1980.

By direction of the Board.

**George A. Leet,**

*Associate Executive Secretary, National Labor Relations Board.*

[S-1006-80 Filed 5-19-80; 11:37 am]

BILLING CODE 7545-01-M

### 7

**NATIONAL RAILROAD PASSENGER CORPORATION.**

Board of Directors meeting.

In accordance with Rule 4a. of Appendix A of the Bylaws of the

National Railroad Passenger Corporation notice is given that the Board of Directors will meet on May 28, 1980.

A. The meeting will be held on Wednesday, May 28, 1980, in the National Guard Association Building, third floor, One Massachusetts Avenue, Northwest, Washington, D.C. beginning at 9:30 a.m.

B. The meeting will be open to the public at 10:30 a.m. beginning with agenda item No. 3, as described below.

C. The agenda items to be discussed at the meeting follow.

**Agenda—National Railroad Passenger Corporation, Meeting of the Board of Directors, May 28, 1980**

*(9:30) Closed Session*

1. Internal Personnel Matters.
2. Litigation Matters.

*(10:30) Open Session*

3. Approval of Minutes of Regular Meeting of April 30, 1980.
4. Commitment Approval Requests
80–137: Chicago, Illinois—Enginehouse and Car Shop-Purchase Tools, Machinery and Equipment.
80–138: Washington On-Board Services Building.
80–139: New Haven Maintenance Facility—Upgrade Facility and Furnish Tools and Machinery.
5. Discussion: Aspects of the Draft Five-Year Plan.
6. Presentation: HEP Conversion Program.
7. Board Committee Reports.
Finance.
Northeast Corridor Improvement Project.
Organization and Compensation.
Nominating.
8. President's Report.
9. New Business.
10. Adjournment.

D. Inquiries regarding the information required to be made available pursuant to Appendix A of the Corporation's Bylaws should be directed to the Assistant Corporate Secretary at (202) 383–3991.

May 19, 1980.

**Barbara J. Willman,**

*Assistant Corporate Secretary.*

[S–1007–80 Filed 5–19–80; 1:47 pm]

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**8**

**[NM–80–22]**

**NATIONAL TRANSPORTATION SAFETY BOARD.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 32831, May 19, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m., Wednesday, May 28, 1980.

**CHANGE IN MEETING:** The time of this meeting has been advanced to 9 a.m., Wednesday, May 28, 1980. The agenda remains the same as previously published.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202–472–6022

May 19, 1980.

[S–1011–80 Filed 5–19–80; 3:17 pm]

**BILLING CODE 4910–58–M**

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**9**

**NUCLEAR REGULATORY COMMISSION.**

**DATE:** Week of May 19.

**PLACE:** Commissioners conference room, 1717 H Street, NW., Washington, D.C.

**STATUS:** Open/closed.

**MATTERS TO BE CONSIDERED:**
Wednesday, May 21.

*2 p.m.*

1. Discussion of Action Plan (approximately 1½ hours, public meeting) (continued from May 16).
2. Discussion of Congressional Testimony by Staff re Performance Appraisal Teams (approximately 1 hour, closed—exemption 9).

Thursday, May 22:

*3 p.m.*

1. Affirmation Session (approximately 10 minutes, public meeting) (items are tentative).
a. Review of ALAB–502 (Rochester Gas & Elec).
b. Diablo Canyon—Release of Physical Sec Plan to Intervenors.
c. UCS Petition on Fire Protection & Electrical Connectors.
d. Role of Staff In Waste Conf. Proceeding.
2. Time Reserved for Discussion and Vote on Affirmation Items (if required) (approximately 15 minutes, public meeting).

Friday, May 23:

*10 a.m.*

1. Oral Presentations in Seabrook Seismic Issue (approximately 2 hours, public meeting).

**CONTACT PERSON FOR MORE INFORMATION:** Walter Magee (202) 634–1410.

**AUTOMATIC TELEPHONE ANSWERING SERVICE:** (202) 634–1498.

**Note.**—Recorded message contains schedule for next several days. Those planning to attend a meeting should reverify the status on the day of the meeting.

**Walter Magee,**

*Office of the Secretary.*

[S–1010–80 Filed 5–19–80; 3:03 pm]

**BILLING CODE 7590–01–M**

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**10**

**[OPO401]**

**PAROLE COMMISSION.**

National Commissioners (the Commissioners presently maintaining Offices at Washington, D.C. Headquarters).

**TIME AND DATE:** Tuesday, May 20, 1980, 9:30 a.m.

**PLACE:** Room 826A, 320 First Street NW., Washington, D.C. 20537.

**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Referrals from Regional Commissioners of approximately 4 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

**CONTACT PERSONS FOR MORE INFORMATION:** Linda Wines Marble, Analyst (202) 724–3094.

[S–1004–80 Filed 5–19–80; 11:37 am]

**BILLING CODE 4410–01–M**

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**11**

**POSTAL RATE COMMISSION.**

**TIME AND DATE:** 9:30 a.m., Tuesday, May 27, 1980.

**PLACE:** Conference room, room 500, 2000 L Street NW., Washington, D.C.

**STATUS:** Open.

**MATTER TO BE CONSIDERED:** Consumer Program to be implemented by the Postal Rate Commission to assure that consumer needs and interests are adequately considered and addressed. (See Executive Order 12160, Section 1–804.)

**CONTACT PERSON FOR MORE INFORMATION.** Stephen Sharfman, Officer of the Commission, Postal Rate Commission, Room 613, 2000 L Street, NW., Washington, D.C. 20268; telephone (202) 254–3840.

[S–1003–80 Filed 5–19–80; 9:32 am]

**BILLING CODE 7715–01–M**

federal register

Wednesday
May 21, 1980

Part II

# Department of Education

## Indian Education Act Regulations

## DEPARTMENT OF EDUCATION

**45 CFR Parts 186, 186a, 186b, 186c, 186d, 186e, 186f, 186g, 186h, 186i, 186j, 186k, 186l, 187, and 188**

**Indian Education Act**

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary of Education revises the regulations for programs authorized by the Indian Education Act ("the Act"). The Secretary makes these revisions because of amendments to the Act contained in the Education Amendments of 1978 and because of the need to clarify the previous regulations.

These regulations cover 14 programs that support a wide variety of activities to improve educational opportunities for Indian children and adults.

**EFFECTIVE DATE:** These regulations are expected to take effect 45 days after they are transmitted to the Congress. These regulations will be transmitted to the Congress several days before they are published in the **Federal Register.** If the Congress disapproves the regulations or takes certain adjournments, the effective date is changed by statute. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Tippeconnic, Acting Associate Deputy Assistant Secretary, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 2177, Washington, D.C. 20202. Telelphone: (202) 245–8020.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The purposes of the 14 programs governed by these regulations are as follows:

Six programs provide educational benefits directly to pre-school, elementary, and secondary school-age Indian children.

Two programs (combined in Part 186g of the regulations) provide training for persons pursuing careers in Indian education.

Two programs provide educational benefits below the college level directly to Indian adults.

Three programs provide for research and development, surveys, and evaluation and dissemination activities related to adult education.

One program provides fellowships for Indian students pursuing degrees in any of six specified fields or related fields.

### II. Proposed Rulemaking and Public Comments

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on June 29, 1979 (44 FR 36154) under the Indian Education Act. During August, 1979, the Federal Government held nine public meetings in various locations across the country on the proposed regulations.

In all, more than 400 comments were received at the public meetings and in written submissions from interested parties. The Secretary of Education has studied all of the comments.

Pertinent comments and the Secretary's responses to them are summarized in Appendix A of this document. That summary also explains why the Secretary has made certain changes in the regulations since publication of the notice of proposed rulemaking.

In their major provisions these final regulations are essentially the same as the proposed regulations. However, as a result of public comments, the Secretary has made changes in the regulations. Some of those changes have been made for technical or editorial reasons. Other changes result from a decision by the Secretary to clarify certain provisions of the notice of proposed rulemaking. Still other revisions reflect changes in policy.

### III. Major Changes

*Restructuring the Regulations*

In comparing the final regulations with the NPRM, the reader will notice many changes in format. These changes result from the Secretary's concern that the format of the regulations be easy to understand and follow.

In the NPRM the provisions governing individual programs under the Indian Education Act, other than the Indian Fellowship Program, were contained in subparts within Parts 186a, 186b, and 186c, corresponding to Parts A, B, and C of the Act. The final regulations adopt a simplified organizational structure in which each program or, in the case of Educational Personnel Development (Part 186g) a pair of similar programs, is included in a separate part of the Code of Federal Regulations. Thus, for example, the entitlement program for local educational agencies and tribal schools is now located in Part 186a, the Indian-Controlled Schools Establishment program in Part 186b and the Indian-Controlled Schools Enrichment program in Part 186c. This use of separate self-contained regulations for individual programs is designed to highlight individual program regulations so as to increase their accessibility to readers. Moreover, all Education Department regulations are now being organized, to the extent feasible, using a uniform approach to assist readers who use many different regulations. However, to assist readers who are accustomed to referring to programs by the appropriate Part of the Act, the purpose statement at the beginning of each program regulation indicates whether the program is authorized under Part A, Part B, or Part C of the Act.

As a result of this change in format, there have been extensive changes in the numbering of specific sections. Thus, in the changes explained in the next portion of this preamble and in the comments and responses in Appendix A, the section numbers and titles correspond to those in the final regulations. The section numbers and titles of the proposed regulations, if different from those in the final regulations, appear in parentheses.

*Changes in Policy and Other Significant Changes*

*Part 186—Indian Education Act—General Provisions*

§ 186.4 *Definition.* (proposed § 186.3)

The Secretary has revised the definition of "Indian organization" to make it clear that the term does not include an agency of State or local government.

*Part 186a—Entitlement Grants—Local Educational Agencies and Tribal Schools*

§ 186a.20 *Selecting the parent committee.* (proposed § 186a.13)

The Secretary has revised the provisions on the selection of the parent committee to—

Make it clear that certified guidance counselors are regarded as teachers for the purpose of selecting and serving on the committee;

Make it clear that teachers who are members of the project staff may not serve on the committee;

Require that at least half of the committee members be Indian; and

Specify that the Secretary consults with appropriate tribal representatives if an LEA asks to use a method other than election to select the committee.

§ 186a.10 *Authorized activities.* (proposed § 186a.22)

In paragraph (a)(7) the Secretary has restricted the use of grant funds for certain types of "parental costs" to cases of extreme hardship.

§ 186a.23 *Developing an evaluation plan.* (proposed § 186a.32)

In paragraph (b) the Secretary has revised the requirement for an "independent evaluator" to read an "evaluator independent of the project."

§ 186a.31 *Amount of grant.* (proposed § 186a.42)

In paragraph (b) of this section, the Secretary has summarized the formula for determining the amount of a grant.

§ 186a.40 *Responsibilities of the local educational agency.* (proposed § 186a.51)

§ 186a.41 *Responsibilities of the parent committee.* (proposed § 186a.52)

In paragraph (i) of § 186a.40 and paragraph (d) of § 186a.41, the Secretary has added provisions requiring an applicant to obtain the advice of the parent committee in developing policies and procedures relating to the hiring of project staff.

§ 186a.42 *Limitations on hiring project staff.* (proposed § 186a.53)

The Secretary has expanded the provisions on the hiring of project staff to—

Make it clear that a member of the parent committee may not participate in a review of applicants for a project staff position or in any other committee actions relating to that position if that individual or any member of his or her immediate family is an applicant for that position; and

Define "immediate family."

*Part 186d—Planning, Pilot, and Demonstration Projects—Local Educational Agencies*

§ 186d.39 *Reservation of funds for districts with high concentrations of Indian Children.* (proposed § 186a.203)

The Secretary has defined districts with high concentrations of Indian children to include those in which the number of Indian children enrolled in the LEA's schools is either 1,000 or more, or at least 50 percent of the district's total enrollment.

*Part 186e—Educational Services for Indian Children*

§ 186e.10 *Authorized projects.* (proposed § 186b.11)

In paragraph (a)(10) of this section, the Secretary has expanded the list of examples of educational service projects that may be supported to include those designed to overcome sex-stereotypes relating to occupations.

*Part 186f—Planning, Pilot, and Demonstration Projects for Indian Children*

§ 186f.10 *Authorized projects.* (proposed § 186b.31)

The Secretary has expanded the list of examples of planning, pilot, and demonstration projects that may be supported to include, in paragraph (e) of this section, projects to develop a comprehensive plan for the coordination of educational programs and services for children of a particular tribe.

*Part 186g—Educational Personnel Development*

§ 186g.30 *Is priority given to certain applications?* (proposed § 186b.55)

In paragraph (b) of this section, the Secretary has provided for the award of ten (10) priority points to applications from Indian institutions. These priority points were provided for in previous regulations (see the previous § 187.54(a)) and inadvertently omitted from the proposed regulations.

*Part 187—Indian Fellowship Program*

§ 187.4 *Which fields of study are eligible?*

The Secretary has added pharmacy as a field related to medicine and oceanography as a field related to natural resources.

*Changes to Selection Criteria*

As discussed more fully in Appendix A to this document, certain changes in the wording of various selection criteria have been made in response to comments. These changes appear in the text of the final regulations. Applications submitted for fiscal year 1980 will be reviewed and awards made on the basis of the wording of those criteria as set out in the proposed regulations. The proposed criteria, including thse that have not been changed in the final regulations, are reprinted in Appendix B to this document.

No changes have been made in the final regulations in the point values assigned to any of the selection criteria.

**IV. Other Changes**

In response to suggestions by the public and other interested parties, these final regulations contain provisions of the Indian Education Act that were not in the notice of proposed rulemaking. The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of these programs without having separately to refer to the statute.

All references in the NPRM to the Commissioner (of Education) and the Office of Education have been changed, respectively, to the Secretary (of Education) and the Department of Education.

Other Information: These regulations are to be recodified under Title 34 of the Code of Federal Regulations instead of under Title 45 as at present. The Secretary of Education will advise the public of this change, at the appropriate time, through a notice in the **Federal Register.**

Legal Authority: The reader will find a citation of statutory or other legal authority in parentheses following each substantive provision.

(Catalog of Federal Domestic Assistance, Numbers: 13.534—Indian Education—Grants to Local Educational Agencies; 13.551—Indian Education—Grants to Non-local Educational Agencies; 13.535—Indian Education—Special Programs and Projects to Improve Educational Opportunities for Indian Students; 13.536—Indian Education—Special Programs Relating to Indian Adult Education; 13.569—Indian Education—Indian Fellowship Program)

Dated: May 15, 1980.

**Shirley M. Hufstedler,**

*Secretary of Education.*

45 CFR is amended as follows:

1. Part 186 is revised as follows:

## PART 186—INDIAN EDUCATION ACT—GENERAL PROVISIONS

Sec.



**Authority:** Title IV of Pub. L. 92-318, 86 Stat. 334, as amended (20 U.S.C. 241aa-241ff, 1211a, 1221h, 3385, 3385a), unless otherwise noted.

### §186.1 Applicability.

The regulations in this part apply to all programs conducted under the Indian Education Act, except the Indian Fellowship Program (see 45 CFR Part 187). The regulations for these programs are contained in the following parts.

186a—Entitlement Grants—Local Educational Agencies and Tribal Schools
186b—Indian-Controlled Schools—Establishment
186c—Indian-Controlled Schools—Enrichment Projects

186d—Demonstration Projects—Local Educational Agencies
186e—Educational Services for Indian Children
186f—Planning, Pilot, and Demonstration Projects for Indian Children
186g—Educational Personnel Development
186h—Educational Services for Indian Adults
186i—Planning, Pilot, and Demonstration Projects for Indian Adults
186j—Adult Education Research and Development Projects
186k—Adult Education Surveys
186l—Adult Education Dissemination and Evaluation Projects

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§186.2 Eligibility.**

Eligibility for each of the programs is described in the section on eligibility under the appropriate part.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§186.3 Other applicable regulations.**

(a) The programs under 45 CFR Parts 186a through 186l are subject to the Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100a (Direct Grant Programs) and 45 CFR Part 100c (Definitions), except for—

(1) Sections 100a.107(a), 100a.111 (d) and (e), and 100a.115 (insofar as it incorporates section 100a.590(c)), relating to the contents of an application;

(2) Section 100a.125(a), relating to applications under separate programs;

(3) Sections 100a.202 through 100a.206, relating to selection criteria;

(4) Section 100a.590(c), relating to a grantee's project evaluation; and

(5) Section 100a.650, relating to the participation of children enrolled in private schools.

(b) Sections 100a.230 through 100a.233, relating to procedures to make a grant, do not apply to the program of entitlement grants to LEAs and tribal schools, for which regulations are contained in 45 CFR Part 186a.

(c) *How to use regulations.* The "Introduction to Regulations of the Education Division" at the beginning of the EDGAR includes general information to assist applicants in using regulations that apply to Department of Education programs.

(d) *How to apply for funds.* General instructions for applying for assistance under an Education Division program are contained in 45 CFR Part 100a.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§ 186.4 Definitions.**

(a) Except as otherwise provided by statute or regulation, the following terms, used in this part and in 45 CFR Parts 186a through 186l are defined in 45 CFR Part 100c:

Applicant.
Application.
Award.
Budget period.
Elementary school.
Facilities.
Fiscal year.
Grant period.
Local educational agency.
Minor remodeling.
Project.
Project period.
Public.
Secondary school.
State.
State educational agency.

(b) The following definitions apply to the terms in this part and in 45 CFR Parts 186a through 186l, unless otherwise provided:

"Adult" means any individual who has attained the age of sixteen.

"Adult education" means services or instruction below the college level for adults who—

(1) Lack sufficient mastery of basic educational skills to enable them to function effectively in society or who do not have a certificate of graduation from a school providing secondary education and who have not achieved an equivalent level of education; and

(2) Are not currently required to be enrolled in schools.

"Ancillary educational personnel" means guidance counselors, librarians, and others who assist in meeting the educational needs of Indian students. The term does not include persons in such positions as clerks, cafeteria personnel, or other positions not directly involved in the educational process.

"Child" means any child who is within the age limits for which the applicable State provides free public education.

"Demonstration project" or "planning, pilot, and demonstration project" means a project that—

(1) Develops, tests, and demonstrates the effectiveness of an educational method, approach, or technique; and

(2) If successful, will be suitable for adaptation by other projects.

"Department" means the U.S. Department of Education.

"Equipment" means—

(1) Machinery, utilities, and built-in equipment;

(2) Any enclosures or structures necessary to house the items listed in paragraph (1) of this definition; and

(3) All other items necessary for the functioning of a facility for the provision of educational services, including items such as—

(i) Instructional equipment and necessary furniture;

(ii) Printed, published, and audio-visual instructional materials; and

(iii) Books, periodicals, documents, and other related materials.

"Free public education" means education that is both—

(1) Provided at public expense, under public supervision and direction, without tuition charge; and

(2) Provided as elementary or secondary school education in the applicable State.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time work load in accordance with an institution's established policies.

"Handicapped" person means a mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health-impaired person or a person with specific learning disabilities, who, because of his or her handicap, requires special educational and related services.

"Indian" means any individual who is—

(1) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(2) A descendant, in the first or second degree, of an individual described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

"Indian institution" means a pre-school, elementary, secondary, or post-secondary school that—

(1) Is established for the education of Indians;

(2) Is controlled by a governing board, the majority of which is Indian; and

(3) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation.

"Indian organization" means an organization that—

(1) Is legally established by tribal or inter-tribal charter or in accordance with State or tribal law, with appropriate constitution, by-laws, and articles of incorporation;

(2) Has the primary purposes of promoting the educational, economic, or social self-sufficiency of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter

of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

"Indian tribe" means any federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" means an educational institution in any State that—

(1) Admits as a regular student only an individual having a high school graduation certificate or the recognized equivalent of a high school graduation certificate;

(2) Is legally authorized within that State to provide a program of education beyond high school;

(3) Provides—

(i) An educational program for which it awards a bachelor's degree;

(ii) An educational program of not less than two years that is acceptable for full credit toward a bachelor's degree; or

(iii) A two-year program in engineering, mathematics, or the physical or biological sciences that is designed to prepare a student to work as a technician and at a semiprofessional level in engineering, scientific, or other technological fields that require the understanding and application of basic engineering, scientific, or mathematical principles or knowledge;

(4) Is a public or other nonprofit institution; and

(5)(i) Is accredited by a nationally recognized accrediting agency or association listed by the Secretary, or, if not accredited, is an institution whose credits are accepted, on transfer, by not less than three institutions that are accredited, on the same basis as if transferred from an institution that is accredited.

(ii) However, in the case of an institution offering a two-year program in engineering, mathematics, or the physical or biological sciences that is designed to prepare a student to work as a technician and at a semiprofessional level in engineering, scientific, or technological fields that requires the understanding and application of basic engineering, scientific, or mathematical principles or knowledge, if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit that type of institution, the Secretary shall appoint an advisory committee, composed of persons specially qualified to evaluate training provided by that type of institution.

The advisory committee shall prescribe the standards of content, scope, and quality that must be met in order to qualify that type of institution to participate under the appropriate program and shall also determine whether particular institutions meet those standards.

(iii) For the purpose of this paragraph the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of education or training offered.

"Local educational agency" (LEA), as used in 45 CFR Parts 186h through 186l (adult education programs under Part C of the Indian Education Act), means—

(1) A public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or combination of school districts or counties recognized in a State as an administrative agency for its public elementary or secondary schools; or

(2) If there is a separate board or other legally constituted local authority having administrative control and direction of adult education in public schools in the area referred to in paragraph (1), that other board or authority.

"Organized group of Indians" means an ethnically and culturally identifiable group of Indians, indigenous to the territory of what is now the United States, and which has been in substantially continuous existence throughout the history of the United States.

"Parent". (1) The term "parent" includes a legal guardian or other individual standing *in loco parentis* (in the place of the parent).

Examples of individuals who may stand *in loco parentis* with respect to a child are—

(i) A foster parent of the child; and

(ii) A grandparent with whom the child resides.

(2) In determining whether an individual stands *in loco parentis* with respect to a child, an LEA may consider such factors as—

(i) The current relationship of the child to the natural parent(s);

(ii) The length and stability of the relationship between the individual and the child;

(iii) Tribal custom and tribal law;

(iv) Applicable State law, whether legislative or judicial; and

(v) Dependency for purposes of State or Federal income tax law.

"Secondary school," as used in 45 CFR Parts 186e through 186g (programs under Part B of the Indian Education Act), means a day or residential school that provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"Secretary" means the Secretary of Education.

"Service area" means the geographic area served by a project.

"State," as used in 45 CFR Parts 186a through 186d (programs under Part A of the Indian Education Act), means any of the 50 States, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, or the Virgin Islands.

"Stipend" means the allowance for personal living expenses paid to a participant in a personnel development project.

"Teacher aide" means a person who assists a teacher in the performance of the teacher's teaching or administrative duties. The term does not include persons in such positions as clerks, cafeteria personnel, or other positions not directly involved in the educational process.

(20 U.S.C. 241aa-241ff, 244, 1202, 1211a, 1221h(a), 3381, 3385, 3385a)

**§ 186.5 Applicability of Section 7(b) of the Indian Self-Determination and Education Assistance Act.**

(a) Awards under parts 186a through 186l that are primarily for the benefit of Indians, as defined in paragraph (b) of this section, are subject to Section 7(b) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act. That section requires that, to the greatest extent feasible, a grantee—

(1) Give preferences and opportunities for training and employment in connection with the administration of the grant to Indians; and

(2) Give preference in the award of contracts in connection with the administration of the grant to Indian organizations and to Indian-owned economic enterprises as defined in Section 3 of the Indian Financing Act of 1974, 25 U.S.C. 1452(e).

(Pub. L. 93–638, Section 7(b); 25 U.S.C. 450e(b))

(b) For the purposes of this section, an "Indian" is a member of an Indian tribe. An "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any

Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Pub. L. 93–638, Section 4 (a), (b); 25 U.S.C. 450b (a), (b))

**§ 186.6 Applications.**

(a) An applicant shall specify in its application the particular program under 45 CFR Parts 186a through 186l under which it is applying.

(b) If an applicant submits an application for a program under 45 CFR Parts 186a through 186l for which the proposed project is not authorized, the Secretary may, with the consent of the applicant, review the application under an appropriate program, if any under Parts 186a through 186l, for which it may be timely considered.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§ 186.7 Allocation of available funds.**

(a) Each year, the Secretary, in accordance with the provisions of 45 CFR Parts 100a.100 through 100a.102, publishes an application notice that states the amount of funds available for new projects under each of the programs governed by 45 CFR Parts 186a through 186l.

(b) When making awards for new projects, the Secretary allocates funds to each program on the basis of the statement of available funds in the application notice. However, the Secretary may reduce the allocation of funds for a program (other than the entitlement grants program described in Part 186a) and reallocate the excess funds to other programs authorized by the appropriate part of the Indian Education Act, if the Secretary determines, on the basis of the appropriate selection criteria, that the amount of funds necessary for approvable activities described in meritorious applications is less than the entire initial allocation for that program.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§ 186.8 Capacity to carry out a project.**

In addition to the criteria for rating applications under the discretionary programs in 45 CFR Parts 186b through 186l, the Secretary, in making awards under those programs, considers an applicant's capacity to carry out successfully the project for which it seeks assistance, including such factors as—

(a) The programmatic and financial management capacity of the applicant;

(b) Past performance by the applicant in carrying out any prior grant under the Indian Education Act or under similar programs, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices, attainment of objectives, and the assumption of responsibility by the applicant's governing board; and

(c) The adequacy of facilities and other resources to be used for the project, including consideration of any dispute over the availability of those facilities and resources to the applicant.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§ 186.9 Salaries and wages.**

A grantee shall pay individuals hired for a project assisted under 45 CFR Parts 186a through 186l salaries and wages that are at least comparable to the salaries and wages paid in the local area to those with similar jobs.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§ 186.10 Organizational and administrative documents.**

(a) A grantee shall have on file, and submit to the Secretary on request—

(1) Articles of incorporation, if incorporated;

(2) A constitution, charter or similar document, if not incorporated;

(3) By-laws;

(4) Personnel policies and procedures;

(5) Travel policies;

(6) Organizational charts and administrative manuals; and

(7) Job descriptions.

(b) An LEA that is a grantee under 45 CFR Parts 186a through 186d shall have on file, and submit to the Secretary on request, the names and addresses of the members of the LEA's parent committee, and the by-laws adopted by the parent committee.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

**§ 186.11 Continuation awards.**

(a) The Secretary may fund projects under 45 CFR Parts 186a through 186l for up to three years, except that the Secretary may fund projects under the Educational Personnel Development programs described in 45 CFR Part 186g for up to four years.

(b) Additional regulations governing continuation awards are in 45 CFR 100a.251 and 100a.253.

(20 U.S.C. 241aa–241ff, 1211a, 3385, 3385a)

2. A new Part 186a is added as follows:

## PART 186a—ENTITLEMENT GRANTS—LOCAL EDUCATIONAL AGENCIES AND TRIBAL SCHOOLS

### Subpart A—General



### Subpart B—What Activities Are Authorized?



### Subpart C—How to Develop a Project and Apply for a Grant



### Subpart D—How Grants Are Made



### Subpart E—Operating a Project



**Authority:** Title IV, Part A, of Pub. L. 92–318, 86 Stat. 334, as amended (20 U.S.C. 241aa–241ff), unless otherwise noted.

### Subpart A—General

**§ 186a.1 What is the purpose of this program?**

This program provides financial assistance under Part A of the Indian Education Act to develop and carry out elementary and secondary school projects that meet the special educational and culturally related academic needs of Indian children.

(Pub. L. 81–874, Section 302(a); 20 U.S.C. 241aa(a); and Pub. L. 95–561, Section 1146; 20 U.S.C. 241bb–1)

**§ 186a.2 Who is eligible to apply?**

(a) *Local educational agencies.* (1) A local educational agency (LEA) is entitled to receive a grant if the number of Indian children enrolled in that agency's schools is either—

(i) 10 or more; or

(ii) At least half the total enrollment for that agency.

(2) However, an LEA may apply without regard to the enrollment requirements of paragraph (a)(1) of this section if it is located—

(i) In Alaska, California, or Oklahoma; or

(ii) On, or in proximity to, an Indian reservation.

(Pub. L. 81–874, Section 303(a); 20 U.S.C. 241bb(a))

(b) *Tribal schools.* An Indian tribe, or an organization that is controlled or sanctioned by an Indian tribal government, that operates a school for the children of that tribe, is eligible to receive a grant on behalf of that school if the school either—

(1) Provides its students an educational program that meets the standards established by the Bureau of Indian Affairs under Section 1121 of the Education Amendments of 1978 (25 U.S.C. 2001), which requires the establishment of standards for the basic education of Indian children in Bureau of Indian Affairs schools; or

(2) Is operated by that tribe or organization under a contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638.

(Pub. L. 95–561, Section 1146; 20 U.S.C. 241bb–1)

**§ 186a.3 Applicability of this part to local educational agencies and tribal schools.**

(a) *Applicable to LEAs.* All the provisions of this Part 186a, except those applicable by their terms only to tribal schools, apply to applicants or grantees that are LEAs.

(b) *Applicable to tribal schools.* The following provisions of this Part 186a apply to applicants or grantees applying for or receiving assistance to support tribal schools, except to the extent that they refer to a parent committee.

(1) Section 186a.6, relating to the supplanting of other funds.

(2) Section 186a.10, relating to authorized activities.

(3) Section 186a.21 through 186a.24, relating to the development of a project.

(4) Section 186a.25(b), relating to the contents of an application.

(5) Section 186a.26, relating to continuation awards.

(6) Sections 186a.30 and 186a.31, relating to the award of grants.

(7) Section 186a.40(n), relating to student eligibility forms.

**§ 186a.4 Other applicable regulations.**

(a) The provisions of 45 CFR Parts 100a and 186 apply to this program.

(b) Grantees under this program are subject to the provisions of 34 CFR 74.102 through 74.105(b), relating to programmatic changes and budget revisions.

(Pub. L. 81–874, Sections 302–307; 20 U.S.C. 241aa–241ff)

**§ 186a.5 Maintenance of effort.**

(a) The Secretary does not make payments to an LEA for any fiscal year unless the appropriate State educational agency (SEA) finds that the combined fiscal effort of that LEA and the State with respect to the provision of free public education by that LEA for the preceding fiscal year was not less than the combined fiscal effort for that purpose for the second preceding fiscal year.

(b)(1) For the purpose of making the finding described in paragraph (a) of this section, an SEA may compute combined fiscal effort on the basis of either aggregate expenditures or per pupil expenditure.

(2) "Aggregate expenditures" means expenditures by the LEA and the State for free public education provided by that LEA, including expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay and debt service, or any expenditures from funds granted under any Federal program of assistance.

(3) "Per pupil expenditure" means aggregate expenditures divided by the number of pupils in average daily attendance at the LEA's schools—as determined in accordance with State law—during the fiscal year for which the computation is made.

(Pub. L. 81–874, Section 306(b)(2); 20 U.S.C. 241ee(b)(2))

**§ 186a.6 Prohibition on supplanting other funds.**

A grantee shall use funds received under this program to supplement, and, to the extent practical, increase the level of State, local, or other Federal funds that would, in the absence of grant funds, be made available by the recipient for the education of Indian children. In addition, a grantee should, to the extent feasible, coordinate the use of funds received under this program with those State, local, or other Federal funds. A grantee may not, however, use grant funds to supplant those State, local, or other Federal funds.

(Pub. L. 81–874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

## Subpart B—What Activities Are Authorized?

**§ 186a.10 Authorized activities.**

(a) A grantee may use grant funds for the establishment, maintenance, and operation of projects specifically designed to meet the special educational or culturally related academic needs, or both, of Indian children. Permissible services and activities include, but are not limited, to—

(1) Remedial instruction in basic skill subject areas;

(2) Instruction in tribal heritage and in Indian history and political organization. This includes current affairs and tribal relationships with local, State, and Federal governments;

(3) Accelerated instruction and other activities that provide additional educational opportunities;

(4) Home-school liaison services;

(5) Creative arts such as traditional Indian art, crafts, music, and dance;

(6) Native language arts, including bilingual projects and the teaching and preservation of Indian languages; and

(7)(i) Where the conditions in paragraph (7)(ii) of this section are met, the following items that parents cannot afford:

(A) School-related items, such as academic expenses and expenses for participation in extracurricular activities sponsored by the school.

(B) In cases of extreme hardship, food, clothing, and medical and dental care.

(ii) The items described in paragraph (7)(i) of this section may be provided only if—

(A) The parent committee and the LEA establish eligibility criteria based on financial need for receipt of those items;

(B) These items are provided only to children whose parents meet those eligibility criteria; and

(C) These items are not available from any other source.

(b) A grantee may also use grant funds—

(1) To plan for and take other steps leading to the development of projects like those described in paragraph (a) of this section and to carry out pilot projects designed to test the effectiveness of those plans.

(c) The Secretary encourages all grantees to use culturally-based materials and techniques in project activities.

(Pub. L. 81–874, Section 304; 20 U.S.C. 241cc)

## Subpart C—How to Develop a Project and Apply for a Grant

### § 186a.20 Selecting the parent committee.

(a) Before developing a project, an applicant shall arrange and publicize the procedures for the selection of a parent committee or the selection of members to open positions on the committee, as appropriate.

(b) Those eligible to serve on the committee are—

(1) Parents of Indian children enrolled in the applicant's schools;

(2) Teachers, including certified guidance counselors, in the applicant's schools, except that members of the project staff may not serve on the committee; and

(3) Indian secondary school students, if any, enrolled in the applicant's schools.

(c) At least half the committee members shall be Indian.

(d) At least half the committee members shall be parents. In addition, the committee shall have at least one teacher, and, if any Indian secondary school students are enrolled in the applicant's schools, at least one of those students.

(e) The committee members shall be elected by those listed in paragraph (b) unless the Secretary, in deference to tribal custom, determines that a method of selection other than election, such as sanction by a tribal government, is appropriate in a particular situation. In such a case, the Secretary may, on written request of the applicant, and before the selection of the committee, allow the use of that other method. In making this determination, the Secretary consults with appropriate tribal representatives.

(f) Any member of the committee may serve as any officer of the committee.

(g) Membership terms may be multi-year and may be staggered. For example, membership terms may be for three years, with one third of the committee selected each year.

(h) An individual may continue to be a member of the committee only so long as that individual meets the qualifications in paragraph (b) of this section.

(i) Section 186a.42 *(Limitations on hiring project staff)* prohibits the applicant from hiring for a position on the project staff any member of the parent committee or any member of the immediate family of a parent committee member, unless the Secretary grants a waiver.

(Pub. L. 81–874, Section 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

### § 186a.21 Conducting a needs assessment.

(a) An applicant shall conduct a needs assessment to determine the special educational and culturally related academic needs of the Indian children enrolled in its schools and the number of children with those needs.

(b) In making this determination, the applicant shall—

(1) Consider dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(2) Rank those needs on a priority basis; and

(3) Examine other services that it offers that could meet those needs, determine how many Indian children receive those services, and determine why those other services are insufficient in either quantity or quality, or both, to meet those needs. This shall include an examination of whether those services are culturally relevant to Indian children.

(Pub. L. 81–874, Section 305(b)(2)(A); 20 U.S.C. 241dd(b)(2)(A))

### § 186a.22 Designing a project.

(a) After the needs assessment is completed, an applicant shall determine which needs will be addressed and shall design a project to meet those needs.

(b) In designing the project, the applicant shall seek to include activities, services, and materials that support and build upon the values, heritage, and traditions of the Indian community.

(c) The project design shall include—

(1) Objectives that are—

(i) Sharply defined;

(ii) Stated in measurable terms; and

(iii) Capable of being achieved within the project period;

(2) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(3) A plan for effective administration of the project;

(4) A plan for regular consultation with and involvement of the parent committee and the Indian community in the operation of the project; and

(5) A plan for coordinating the project with other services and activities.

(Pub. L. 81–874, Section 305(b)(2); 20 U.S.C. 241dd(b)(2))

### § 186a.23 Developing an evaluation plan.

(a) The applicant shall also develop, as part of the project design, an evaluation plan that provides for—

(1) Periodic monitoring of the project's progress;

(2) An objective, quantifiable method, including an appropriate measurement of educational achievement, to determine if the project meets each of its objectives;

(3) An evaluation of the administration of the project;

(4) The involvement of the parent committee in monitoring and evaluation activities; and

(5) Consultation with parents of Indian children served by the project and with other members of the Indian community.

(b) The evaluation plan shall include provisions for an evaluator independent of the project to—

(1) Assist in monitoring and evaluation activities; and

(2) Conduct a final evaluation of the project.

(Pub. L. 81–874, Section 305(a)(4); 20 U.S.C. 241dd(a)(4))

### § 186a.24 Holding a public hearing.

(a) The applicant shall hold a hearing open to the general public, at which it provides an opportunity for full public discussion of the proposed project.

(b) At the hearing, a representative of the applicant shall—

(1) Describe the various alternatives available under this program;

(2) Describe the proposed project, including the LEA's compliance with the "supplement, not supplant" provisions of § 186a.6;

(3) Seek comments and recommendations from those at the hearing; and

(4) Provide a reasonable time for discussion of the proposed project and alternatives to it.

(Pub. L. 81–874, Section 305(b)(2)(B)(i); 20 U.S.C. 241dd(b)(2)(B)(i))

### § 186a.25 Application contents.

(a) *Local educational agencies.* After an applicant that is an LEA has held the public hearing described in § 186a.24 and given full consideration to comments and recommendations made at the hearing, the applicant prepares an application and submits it to the Secretary. In addition to the information required under applicable provisions of 45 CFR Part 100a, the applicant shall include in its application each of the following:

(1) A description of the procedures used to select the parent committee members.

(Pub. L. 81–874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(2) The names, addresses, and telephone numbers of the officers of the parent committee, and the number of parents, teachers, and students on the committee.

(Pub. L. 81–874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(3) A description of the applicant's plan for the continual involvement of the parent committee in the operation and evaluation of the project, including procedures for regular consultation with the committee.

(Pub. L. 81–874, Section 305(b)(2)(C); 20 U.S.C. 241dd(b)(2))C))

(4) A description of how the needs assessment and ranking process described in § 186a.21 was carried out, including a description of the role played by the parent committee.

(Pub. L. 81–874, Section 305(a); 20 U.S.C. 241dd(a))

(5) On a form provided by the Secretary a description of the special educational and culturally related academic needs of the Indian children enrolled in the applicant's schools, including the number of children who demonstrate those needs, and a list of those needs ranked by priority.

(Pub. L. 81–874, Section 305(a); 20 U.S.C. 241dd(a))

(6) A detailed description of the project, including a project design that meets the requirements of § 186a.22, and a statement of the number of children who will participate in each component of the project.

(Pub. L. 81–874, Section 305(a)(2); 20 U.S.C. 241dd(a)(2))

(7) An assurance that the applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance.

(Pub. L. 81–874, Section 305(a)(1); 20 U.S.C. 241dd(a)(1))

(8) A description of the methods of administration that have been or will be adopted to ensure that the applicant will operate the project properly and efficiently.

(Pub. L. 81–874, Section 305(a)(2); 20 U.S.C. 241dd(a)(2))

(9) A description of the applicant's policies and procedures that ensure that funds made available under Part A of the Indian Education Act will be used to supplement and, to the extent practical, increase the level of funds—including other Federal funds—that would, in the absence of funds under Part A of the Act be made available by the applicant for the education of Indian children, and in no case so as to supplant those other funds.

(Pub. L. 81–874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

(10) A statement of how the proposed project will be fiscally and administratively coordinated with other projects to meet the special educational and culturally related academic needs, or both, of Indian children.

(Pub. L. 81–874, Section 305(a); 20 U.S.C. 241dd(a))

(11) A statement of the applicant's fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds that the applicant may receive under Part A of the Indian Education Act.

(Pub. L. 81–874, Section 305(a)(6); 20 U.S.C. 241dd(a)(6))

(12) A description of the procedures, including an appropriate objective measurement of educational achievement, that the applicant will adopt to monitor and evaluate, at least annually, the effectiveness of the proposed project in achieving its objectives. these procedures shall include the involvement of the parent committee and consultation with parents of the Indian children served by the project.

(Pub. L. 81–874, Section 305(a)(4); 20 U.S.C. 241dd(a)(4))

(13) An assurance that the applicant will keep records that the Secretary may reasonably require to carry out the Secretary's functions under Part A of the Indian Education Act and will afford the Secretary the access necessary to verify those records.

(Pub. L. 81–874, Section 305(a)(7); 20 U.S.C. 241dd(a)(7))

(14) In the case of an application for planning, evidence that—

(i) The planning will be directly related to projects to be carried out under Part A of the Indian Education Act and is reasonably likely to result in a project that will be carried out under Part A of the Act; and

(ii) The planning funds are needed because of the innovative nature of the project or because the LEA lacks the resources necessary to plan adequately for projects to be carried out under Part A of the Indian Education Act.

(Pub. L. 81–874, Section 305(a)(3); 20 U.S.C. 241dd(a)(3))

(15) Other information that the Secretary may require as part of the application form.

(Pub. L. 81–874, Section 305(a); 20 U.S.C. 241dd(a))

(b) *Tribal schools.* (1) An applicant applying for assistance to support a tribal school shall comply with paragraphs (a)(4) through (a)(15) of this section, except the provisions of those paragraphs that refer to a parent committee.

(2) If an applicant claims eligibility on the ground that it operates a school under contract with the Bureau of Indian Affairs in accordance with the Indian Self-Determination and Education Assistance Act, the applicant shall include in its application detailed budget information from the contract, such as line-item amounts for particular services and activities.

(Pub. L. 95–561, Section 1146; 20 U.S.C. 241bb–1)

**§186a.26 Continuation awards.**

(a) *Public hearing.* Before submitting an application for a continuation award, a grantee shall hold a hearing open to the general public. At the hearing, the grantee shall provide an opportunity for full public discussion of all aspects of the project to date and for the remainder of the project period, including discussion of such topics as—

(1) The adequacy of other projects and services provided by the grantee to meet the special educational and culturally related academic needs of Indian children;

(2) How the project has been and will be coordinated with other projects and services to meet the special educational and culturally related academic needs of those children; and

(3) The grantee's compliance with the "supplement, not supplant" provisions of §186a.6.

(b) *Parent committee approval.* Before an LEA may submit an application for a continuation award, the application must have the written approval of the parent committee.

(Pub. L. 81–874, Section 305(b)(2)(B); 20 U.S.C. 241dd(b)(2)(B))

## Subpart D–How Grants Are Made.

**§186a.30 Approval of applications by the Secretary.**

(a) The Secretary approves an application for assistance only if—

(1) The application meets all the applicable requirements of the Indian Education Act, of Part 100a, of Part 186, and of this part; and

(2) If the project for which the application is submitted will substantially increase the educational opportunities of Indian children served by the applicant.

(b)(1) If an application that was submitted on or before the application deadline date—

(i) Proposes unauthorized activities; or

(ii) Proposes costs that are not reasonable and necessary, the Secretary may provide the applicant an appropriate opportunity to amend its application and may specify a date by

which the applicant shall amend its application.

(2) If the applicant has not appropriately amended its application by the date specified by the Secretary, the Secretary may disapprove the application.

(Pub. L. 81–874, Section 305(b); 20 U.S.C. 241dd(b))

**§186a.31 Amount of grant.**

(a) The amount of the grant to which an applicant is entitled for any fiscal year is computed on the basis of the formula in Section 303(a) of Pub. L. 81–874. (Title III of that statute is Part A of the Indian Education Act.)

(b) Under the statutory formula, the amount of the grant to which an applicant is entitled is computed by—

(1) Multiplying the number of Indian children enrolled in the schools of the applicant to whom it provides free public education by—

(2) The average per pupil expenditure for all LEAs in the State in which the applicant is located.

(c) In setting the actual amount of a grant, an applicant's entitlement amount is reduced proportionately with that of all other applicants on the basis of available appropriations.

(Pub. L. 81–874, Sections 303(a), 307(a); 20 U.S.C. 241bb(a), 241ff(a))

## Subpart E—Operating a Project

**§186a.40 Responsibilities of the local educational agency.**

It is the responsibility of the LEA to—

(a) Ensure that a parent committee is selected in accordance with §186a.20.

(b) Consult with and involve the parent committee in all phases of the project;

(c) Perform a needs assessment that meets the requirements of §186a.21;

(d) Design a project that meets the requirements of §186a.22 and an evaluation plan that meets the requirements of §186a.23.

(e) Conduct a public hearing in accordance with § 186a.24;

(f) Secure the parent committee's written approval of the project application, applications for continuation awards, and amendments to applications (including revisions to the project budget and project design) before those documents are submitted to the Secretary;

(g) Provide the parent committee with copies of 45 CFR Parts 186 and 186a, other applicable regulations, the grant award document, and correspondence to or from the Department of Education relating to the project;

(h) Prepare the parent committee to carry out its responsibilities by, for example, holding workshops on 45 CFR Parts 186 and 186a and on other applicable regulations;

(i) With the advice of the parent committee, develop policies and procedures relating to the hiring of project staff;

(j) Hire the project staff after considering any recommendations of the parent committee;

(k) Use the best available talents and resources, including persons from the Indian community, in carrying out the project;

(l) Monitor and evaluate the project in accordance with an evaluation plan that meets the requirements of § 186a.23;

(m) Make available to the parent committee and to the Indian community records, including financial records, relating to the project, except those records that are protected by law from disclosure; and

(n) Ensure that a student certification form is on file for each student included in the count of Indian students on which the amount of an entitlement is based.

(Pub. L. 81–874, Sections 303–305; 20 U.S.C. 241bb–241dd)

**§186a.41 Responsibilities of the parent committee.**

It is the responsibility of the parent committee to—

(a) Adopt by-laws. These by-laws shall include, at a minimum, provisions on—

(1) The selection and duties of officers;

(2) Filling vacated terms on the committee;

(3) The conduct of business meetings; and

(4) Amending the by-laws;

(b) Participate in the assessment of needs, and the design, operation, and evaluation of the project;

(c) Review and approve in writing, before they are submitted to the Secretary, the project application, applications for continuation awards, and amendments to applications (including revisions to the project budget and project design);

(d) Advise the LEA on the development of policies and procedures relating to the hiring of project staff;

(e) Review the qualifications of, and make recommendations concerning, applicants for project staff positions; and

(f) Make available to the community copies of its records, such as by-laws, minutes of meetings, and the list of committee members except those records that are protected by law from disclosure.

(Pub. L. 81–874, Sections 305(b)(2) (B), (C); 20 U.S.C. 241dd(b)(2) (B) (C))

**§ 186a.42 Limitations on hiring project staff.**

(a)(1) The LEA may not hire for a position on the project staff any member of the parent committee.

(2) The LEA may not hire for a position on the project staff any member of the immediate family of a parent committee member.

(b) The Secretary may waive the prohibition in paragraph (a)(2) of this section if—

(1) The applicant is unable to hire another person with adequate qualifications; or

(2) The waiver is necessary to further the purpose of the project.

(c) If the Secretary grants a waiver, the affected parent committee member may not participate in any committee action that affects, or is likely to affect, the financial interests of that individual's immediate family member who is on the project staff.

(d) A member of the parent committee may not participate in a review of applicants for a project staff position or in any other committee actions relating to that position, if that individual or any member of his or her immediate family is an applicant for that position.

(e) As used in this section, the term "immediate family" includes an individual's spouse, children, parents, brothers, sisters, legal dependents, and spouses of those persons.

(Pub. L. 81–874, Section 305(b)(2); 20 U.S.C. 241dd(b)(2))

3. A new Part 186b is added as follows:

## PART 186b—INDIAN-CONTROLLED SCHOOLS—ESTABLISHMENT

### Subpart A—General

Sec.



### Subpart B—What Activities Are Authorized?



### Subpart C—How to Apply for a Grant



### Subpart D—How Grants Are Made

**Authority:** Title IV, Part A, of Pub. L. 92–318, 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

## Subpart A—General

### § 186b.1 What is the purpose of this program?

This program provides financial assistance under Part A of the Indian Education Act to plan for and establish Indian-controlled schools.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.2 Who is eligible to apply?

An Indian tribe or Indian organization, or an LEA that will have been an LEA for not more than three years as of the beginning of the proposed project period, is eligible for assistance under this program if—

(a) It plans to establish and operate, or is operating, a school for Indian children that is located on or geographically near one or more reservations;

(b) The majority of the students who are or will be enrolled at that school—

(1) Live on that reservation or those reservations; or

(2) Maintain regular economic, cultural, and family ties with that reservation or those reservations; and

(c) The governing body of that school is composed of a majority of Indians and has full authority to establish policies and to operate the school, including responsibility for and control over—

(1) Operational policies;

(2) Personnel decisions;

(3) Academic standards;

(4) Budgets; and

(5) School facilities.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.3 Other applicable regulations.

(a) The provisions of 45 CFR Parts 100a and 186 apply to all applicants and grantees under this program.

(b) An applicant or grantee that is an Indian tribe or organization is subject to 45 CFR 186a.6 *(Supplanting of other funds).*

(c) An applicant or grantee that is an LEA is subject to the following sections of 45 CFR Part 186a:

(1) Section 186a.5 *(Maintenance of effort).*

(2) Section 186a.6 *(Supplanting of other funds).*

(3) Section 186a.20 *(Selecting the parent committee).* However, if the LEA has formed, or is forming, a parent committee under § 186a.20 for the purposes of applying for an entitlement grant under Part 186a, the LEA may choose to have that committee serve as the parent committee for the purposes of this program.

(4) Sections 186a.40 and 186a.41, relating to the respective responsibilities of the LEA and the parent committee, except § 186a.40(n), relating to student eligibility forms.

(5) Section 186a.42 *(Limitations on hiring project staff).*

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.4 Limitation on assistance.

The Secretary does not provide assistance under this program to support the establishment or operation of a particluar Indian-controlled school for more than three years.

Example: An applicant receives a three-year grant under this program to assume control of a school for Indian children previously operated by a nonprofit organization. At the end of the three-year project period, the Secretary will not provide further assistance under this program to that applicant or to any other applicant for the support of that school. However, that school will continue to qualify for support under the Enrichment Projects program for Indian-Controlled Schools (see 45 CFR Part 186c), if the applicant under that program has not been an LEA for more than three years.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

## Subpart B—What Activities are Authorized?

### § 186b.10 Authorized activities.

Authorized activities include, but are not limited to, those related to—

(a) Establishing and operating an LEA;

(b) Assuming control over and operating a school previously operated by the Federal Government, the State, an LEA, or a private organization; and

(c) Establishing and operating a school.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

## Subpart C—How to Apply for a Grant

### § 186b.20 Application contents.

(a) *All applicants.* In addition to the information required under applicable provisions of 45 CFR Part 100a, an applicant shall include in its application each of the items listed below:

(1) A detailed description of the project, including a project design that meets the requirements of 45 CFR 186a.22, and a statement of the number of children who will participate in the project. However, an applicant that is not an LEA is not required to comply with § 186a.22(b)(4), relating to the involvement of a parent committee in designing a project.

(Pub. L. 81–874, Section 305(a)(2); 20 U.S.C. 241dd(a)(2))

(2) An assurance that the applicant will administer, or supervise the administration of, the activities and services for which it seeks assistance.

(Pub. L. 81–874, Section 305(a)(1); 20 U.S.C. 241dd(a)(1))

(3) A description of the applicant's policies and procedures that ensure that funds made available under Part A of the Indian Education Act will be used so as to supplement and, to the extent practical, increase the level of funds (including other Federal funds) that would, in the absence of funds under Part A of the Act be made available by the applicant for the education of Indian children, and in no case so as to supplant those other funds.

(Pub. L. 81–874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

(4) A description of the methods of administration that have been or will be adopted to ensure that the applicant will operate the project properly and efficiently.

(Pub. L. 81–874, Section 305(a)(2), 20 U.S.C. 241dd(a)(2))

(5) A statement of how the proposed project will be fiscally and administratively coordinated with other projects to meet the special educational and culturally related academic needs, or both, of Indian children.

(Pub. L. 81–874, Section 305(a), 20 U.S.C. 241dd(a))

(6) A statement of the applicant's fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds that the applicant may receive under Part A of the Indian Education Act.

(Pub. L. 81–874, Section 305(a)(5); 20 U.S.C. 241dd(a)(5))

(7) A description of the procedures, including, if appropriate, an objective measurement of educational achievement, that the applicant will adopt to monitor and evaluate at least annually the effectiveness of the proposed project in achieving its objectives. These procedures shall include consultation with parents of the Indian children served by the project.

(8) An assurance that the applicant will keep records that the Secretary may reasonably require to carry out the

Secretary's functions under Part A of the Indian Education Act and will afford the Secretary the access necessary to verify those records.

(Pub. L. 81–874, Section 305(a)(7); 20 U.S.C. 241dd(a)(7))

(9) Documentation from each appropriate Indian tribe, located on a reservation near the school for which assistance is sought, that children who attend the school either live on or maintain regular economic, cultural, and family ties with that reservation.

(10) Other information that the Secretary may require as part of the application form.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

(b) *Local educational agencies.* In addition to the information described in paragraph (a) of this section, an aplicant that is an LEA shall provide the following information in its application:

(1) A description of the procedures used to select the parent committee members.

(Pub. L. 81–874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(2) The names, addresses, and telephone numbers of the officers of the parent committee, and the number of parents, teachers, and students on the committee.

(Pub. L. 81–874, Section 305(b)(2)(B)(ii); 20 U.S.C. 241dd(b)(2)(B)(ii))

(3) A description of the applicant's plan for the ongoing involvement of the parent committee in the operation and evaluation of the project, including procedures for regular consultation with the committee.

(Pub. L. 81–874, Section 305(b)(2)(C); 20 U.S.C. 241dd(b)(2)(C))

(4) A description of how the needs assessment and ranking process described in 45 CFR 186a.21 was carried out, including a description of the role played by the parent committee.

(Pub. L. 81–874, Section 305(a); 20 U.S.C. 241dd(a))

(5) On a form provided by the Secretary, a description of the special educational and culturally related academic needs of the Indian children enrolled in the applicant's schools, including the number of children who demonstrate those needs, and a list of those needs as ranked by priority.

(Pub. L. 81–874, Section 305(a); 20 U.S.C. 241dd(a))

## Subpart D—How Grants Are Made

### § 186b.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186b.31 through 186b.40. the point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.31 Selection criterion: need for the school. (0 to 15 points)

(a) The Secretary reviews each application to determine the need for the school that the applicant proposes to operate.

(b) In making this determination, the Secretary considers—

(1) The educational needs of the Indian children to be served by the school, as indicated by academic achievement levels, dropout rates, standardized test scores, or other appropriate measures;

(2) The extent to which the schools that those children would attend (if the proposed Indian-controlled school were not available) are inadequate to meet those needs;

(3) The extent to which the school for which assistance is sought will increase educational opportunities for Indian children; and

(4) Community factors or other reasons that justify the need for an Indian-controlled school.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.32 Selection criterion: need for financial assistance. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the applicant needs financial assistance under this program to establish an Indian-controlled school.

(b) In making this determination, the Secretary considers evidence that the applicant does not have, and is unable to obtain from other sources, the funds necessary to carry out the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.33 Selection criterion: project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for the effective administration of the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.34 Selection criterion: likelihood of success. (0 to 10 points)

(a) The Secretary reviews each application to determine the likelihood that the project will be successful.

(b) In making this determination, the Secretary looks for evidence that, by the end of the project period—

(1) The applicant will be operating the school and will continue to operate the school without further assistance under this program; and

(2) The school will be able to meet standards for accreditation, registration, or similar recognition established by the Bureau of Indian Affairs or the appropriate State educational agency.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.35 Selection criterion: parental and community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186b.36 Selection criterion: budget and cost effectiveness. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

**§ 186b.37 Selection criterion: adequacy of resources. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

**§ 186b.38 Selection criterion: staff. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of school board members.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

**§ 186b.39 Selection criterion: evaluation plan. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

**§ 186b.40 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers factors such as—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian children; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

4. A new Part 186c is added as follows:

## PART 186c—INDIAN-CONTROLLED SCHOOLS—ENRICHMENT PROJECTS

### Subpart A—General

Sec.



### Subpart B—What Activities Are Authorized?



### Subpart C—How To Apply for a Grant



### Subpart D—How Grants Are Made



**Authority:** Title IV, Part A, of Pub. L. 92–318, 86 Stat. 334, as amended (20 U.S.C. 241bb(b)), unless otherwise noted.

### Subpart A—General

**§ 186c.1 What is the purpose of this program?**

This program provides financial assistance under Part A of the Indian Education Act for enrichment projects designed to meet the special educational and culturally related academic needs of Indian children in Indian-controlled elementary and secondary schools.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

**§ 186c.2 Who is eligible to apply?**

An Indian tribe or Indian organization, or an LEA that will have been an LEA for not more than three years as of the beginning of the proposed project period, is eligible if—

(a) It operates a school for Indian children that is located on or geographically near one or more reservations;

(b) The majority of the students enrolled at that school—

(1) Live on that reservation or those reservations; or

(2) Maintain regular economic, cultural, and family ties with that reservation or those reservations; and

(c) The governing body of that school is composed of a majority of Indians and has full authority to establish policies and to operate the school, including responsibility for and control over—

(1) Operational policies;

(2) Personnel decisions;

(3) Academic standards;

(4) Budgets; and

(5) School facilities.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

**§ 186c.3 Other applicable regulations.**

(a) The provisions of 45 CFR Parts 100a and 186 apply to this program.

(b) An applicant or grantee that is an Indian tribe or organization is subject to 45 CFR 186a.6 (*Supplanting of other funds*).

(c) An applicant or grantee that is an LEA is subject to the following sections of 45 CFR Part 186a:

(1) Section 186a.5 (*Maintenance of effort*).

(2) Section 186a.6 (*Supplanting of other funds*).

(3) Section 186a.20 (*Selecting the parent committee*). However, if the LEA has formed, or is forming, a parent committee under § 186a.20 for the purpose of applying for an entitlement grant under Part 186a, the LEA may choose to have that committee serve as the parent committee for the purposes of this program.

(4) Sections 186a.40 and 186a.41, relating to the respective responsibilities of the LEA and the parent committee, except § 186a.40(n), relating to student eligibility forms.

(5) Section 186a.42 (*Limitations on hiring project staff*).

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### Subpart B—What Activities Are Authorized?

**§ 186c.10 Authorized activities.**

(a) Authorized activities include, but are not limited to, those related to—

(1) Stimulating interest in careers directly related to the manpower needs of the Indian community;

(2) Providing accelerated courses in areas such as mathematics, science, or tribal management;

(3) Introducing a new approach to the teaching of reading;

(4) Stimulating interest in tribal culture and heritage by involving

members of the community in instruction;

(5) Preventing alcoholism and drug abuse; and

(6) Providing opportunities for students to become involved in the arts.

(b) The activities listed in paragraph (a) of this section are examples. Projects should be designed to meet identified needs in the service area.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

## Subpart C—How To Apply for a Grant

### § 186c.20 Application contents.

The information to be included in an application is described in 45 CFR 186b.20.

## Subpart D—How Grants Are Made

### § 186c.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186c.31 through 186c.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.31 Selection criterion: need. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the proposed project.

(b) In making this determination, the Secretary considers—

(1) The clarity of the statement of the educational needs to be addressed by the project;

(2) How widespread those needs are, as indicated by the number and percentage of Indian children with those needs in the area to be served by the project;

(3) The severity of those needs, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(4) A description of the efforts to meet those needs being made by the school and an explanation of why those efforts are insufficient; and

(5) An explanation of why the applicant lacks the financial resources necessary to conduct the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.32 Selection criterion: rationale. (0 to 10 points)

(a) The Secretary reviews each application to determine the soundness of the rationale for the project.

(b) In making this determination, the Secretary looks for—

(1) A justification of why the applicant has selected the particular needs to be addressed by the project;

(2) A clear description of the educational approach to be used;

(3) A justification of why the applicant has chosen this approach; and

(4) Evidence that the approach is likely to be successful with the children who will participate in the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.33 Selection criterion: project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.34 Selection criterion: parental and community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.35 Selection criterion: budget and cost effectiveness. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.36 Selection criterion: adequacy of resources. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.37 Selection criterion: staff. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of school board members.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.38 Selection criterion: evaluation plan. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the evaluation plan for the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

### § 186c.39 Selection criterion: commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to

which the applicant is committed to the education of Indian children in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers factors such as—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian children; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Pub. L. 81–874, Section 303(b); 20 U.S.C. 241bb(b))

5. A new part 186d is added as follows:

## PART 186d—DEMONSTRATION PROJECTS—LOCAL EDUCATIONAL AGENCIES

### Subpart A—General

Sec.



### Subpart B—What Types of Projects Are Authorized?



### Subpart C—How To Apply for a Grant



### Subpart D—How Grants Are Made



**Authority:** Title IV, Part A, of Pub. L. 92–318, 86 Stat. 334, as amended (20 U.S.C. 241bb(c)), unless otherwise noted.

### Subpart A—General

#### § 186d.1 What is the purpose of this program?

This program provides financial assistance under Part A of the Indian Education Act for demonstration projects designed to improve educational opportunities for Indian children.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

#### § 186d.2 Who is eligible to apply?

LEAs are eligible to apply under this program.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

#### § 186d.3 Other applicable regulations.

(a) The provisions of 45 CFR Parts 100a and 186 apply to this program.

(b) In addition, applicants and grantees under this program are subject to the following provisions of 45 CFR Part 186a:

(1) Section 186a.5 *(Maintenance of effort).*

(2) Sections 186a.20 through 186a.26, relating to developing a project and applying for a grant.

(3) Section 186a.30 *(Approval of applications by the Secretary).*

(4) Sections 186a.40 through 186a.42, relating to project operation, except § 186a.40(n), relating to student eligibility forms.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

### Subpart B—What Types of Projects Are Authorized?

#### § 186d.10 Authorized projects.

(a) Projects that may be supported include, but are not limited to, those that—

(1) Test and validate culturally based tests that measure the academic achievement of Indian children;

(2) Test and validate culturally based methods to meet the academic needs of Indian children;

(3) Test and validate culturally based curriculum materials that enhance the cultural identity and academic performance of Indian children;

(4) Improve basic skills;

(5) Employ culturally relevant techniques to lower the dropout rate among Indian children;

(6) Demonstrate culturally based fine arts activities; or

(7) Demonstrate techniques that promote the active involvement of Indian parents in the education of their children.

(b) The projects listed in paragraph (a) of this section are examples. Projects should be designed to meet identified needs in the LEA's service area.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

### Subpart C—How To Apply for a Grant

#### § 186d.20 Application contents.

The information to be included in an application is described in 45 CFR 186a.25(a).

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

### Subpart D—How Grants Are Made

#### § 186d.30 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186d.31 through 186d.38. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

#### § 186d.31 Selection criterion: need and rationale. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project and the soundness of the project rationale.

(b) In making this determination, the Secretary looks for—

(1) An identification and description of the special educational and culturally related academic needs to be addressed;

(2) Evidence that the needs to be addressed are of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is responsive to the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for LEAs having similar educational needs.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

#### § 186d.32 Selection criterion: project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically

outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.33 Selection criterion: parental and community involvement. (0 to 10 points)**

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.34 Selection criterion: budget and cost effectiveness. (0 to 10 points)**

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.35 Selection criterion: adequacy of resources. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.36 Selection criterion: staff. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) The extent to which the parent committee has been involved in the selection of staff.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.37 Selection criterion: evaluation design. (0 to 20 points)**

(a) The Secretary reviews each application to determine the quality and appropriateness of the evaluation design, including how well the evaluation will measure the project's effectiveness in meeting each objective and the impact of the project on the children involved.

(b) In making this determination, the Secretary considers—

(1) The appropriateness of the instruments to collect data;

(2) The appropriateness of the method for analyzing the data;

(3) The timetable for collecting and analyzing the data; and

(4) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.38 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general, and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) The human, physical, and financial resources that the applicant plans to commit to the project; and

(2) Other efforts, both past and present, by the applicant to improve educational opportunities for Indian children.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.39 Reservation of funds for districts with high concentrations of Indian children.**

(a) The Secretary may reserve up to 25 percent of the funds appropriated for this program for any fiscal year for the purpose of making grants to LEAs with high concentrations of Indian children. The purpose of those grants is to enable those LEAs to conduct demonstration projects that examine the special educational and culturally related academic needs of Indian children enrolled in their schools.

(b) An LEA with a high concentration of Indian children is one in which—

(1) Indian children constitute at least 50 percent of the total enrollment in all the LEA's schools, or

(2) The number of Indian children enrolled in the LEA's schools is at least 1,000.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

**§ 186d.40 Annual priorities.**

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 186d.10(a).

(b) The Secretary publishes the selected priorities, if any, in the **Federal Register.**

(c) In addition to the points awarded under §§ 186d.31 through 186d.38, the Secretary awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the selected priorities.

(Pub. L. 81–874, Section 303(c); 20 U.S.C. 241bb(c))

6. A new Part 186e is added as follows:

## PART 186e—EDUCATIONAL SERVICES FOR INDIAN CHILDREN

### Subpart A—General

Sec.



### Subpart B—What Types of Projects Are Authorized?



### Subpart C—How to Apply for a Grant



### Subpart D—How Grants Are Made



**Authority:** Title IV, Part B, of Pub. L. 92–318, 86 Stat. 339, as amended (20 U.S.C. 3385(a), (c)), unless otherwise noted.

## Subpart A—General

### § 186e.1 What is the purpose of this program?

This program provides financial assistance under Part B of the Indian Education Act for—

(a) Educational service projects designed to improve educational opportunities for Indian children of pre-school, elementary school, and secondary school age. Projects must be designed to provide educational services that are not otherwise available to those children in sufficient quantity or quality.

(b) Enrichment projects that introduce innovative and exemplary approaches, methods, and techniques into the education of elementary and secondary school Indian children.

(ESEA, Section 1005(a)(2), (c); 20 U.S.C. 3385(a)(2), (c))

### § 186e.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

### § 186e.3 Other applicable regulations.

The provisions of 45 CFR Parts 100a and 186 apply to this program.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

## Subpart B—What Types of Projects Are Authorized?

### § 186e.10 Authorized projects.

(a) Projects that may be supported include, but are not limited to, those that—

(1) Provide Indian children with culturally related instruction during the school day through a cooperative effort between a public school and an Indian educational center;

(2) Stimulate interest in careers directly related to the manpower needs of the Indian community;

(3) Provide special education services for handicapped and for gifted and talented Indian children;

(4) Provide accelerated courses in areas such as mathematics, science, or tribal management;

(5) Introduce a new approach to the teaching of reading;

(6) Establish after-school education centers;

(7) Stimulate interest in tribal culture and heritage by involving members of the community in instruction;

(8) Are designed to prevent alcoholism and drug abuse;

(9) Provide opportunities for students to become involved in the arts or other extra-curricular activities; and

(10) Overcome sex-stereotypes relating to occupations.

(b) The types of projects listed in paragraph (a) of this section are examples. Projects should be designed to meet needs identified in the applicant's service area.

(ESEA, Section 1005(a)(2), (c); 20 U.S.C. 3385(a)(2), (c))

## Subpart C—How To Apply for a Grant.

### § 186e.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including a statement of the number of children who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(1) The data collection method;

(2) The insurance or methods to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of these who will conduct the evaluation.

(d) Documentation that parents of the children who will participate in the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(e) Information showing that the applicant will coordinate the use of funds received under this program with other resources available to it to ensure that, consistent with the project's purpose, there will be a comprehensive program to improve the educational opportunities of Indian children.

(f) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type that the project is intended to meet, provisions for the participation of those children on an equitable basis.

(ESEA, Section 1005(c), (f)(1); 20 U.S.C. 3385(c), (f)(1))

## Subpart D—How Grants Are Made?

### § 186e.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 186e.32 through 186e.40, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, Section 1005(f)(1); 20 U.S.C. 3385(f)(1))

### § 186e.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186e.32 through 186e.40. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186e.32 through 186e.40 is 100.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

### § 186e.32 Selection criterion: educational need. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the Indian children in the service area need the proposed services.

(b) In making this determination, the Secretary considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Secretary considers—

(1) How widespread the need is, as indicated by the number and percentage of Indian children who need the proposed services; and

(2) The severity of the need, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

### § 186e.33 Selection criterion: lack of comparable services. (0 to 15 points)

(a) The Secretary reviews each application to determine the extent to which the proposed services are presently unavailable in the service area in sufficient quantity or quality.

(b) In making this determination, the Secretary considers—

(1) A description of other services, including those offered by the applicant and by the schools attended by Indian children, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of children who receive those services;

(3) The number of children who need but do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those

services are not used by the children to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

**§ 186e.34 Selection criterion: project design. (0 to 20 points)**

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

**§ 186e.35 Selection criterion: parental and community involvement. (0 to 15 points)**

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(ESEA, Section 1005(c), (f)(1); 20 U.S.C. 3385(c), (f)(1))

**§ 186e.36 Selection criterion: budget and cost effectiveness. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

**§ 186e.37 Selection criterion: adequacy of resources. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

**§ 186e.38 Selection criterion: staff. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(ESEA, Section 1005(c), (f)(1)(C); 20 U.S.C. 3385(c), (f)(1)(C))

**§ 186e.39 Selection criterion: evaluation plan. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective quantifiable method, including a measurement of the project's effectiveness in meeting the needs of the participating students, to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

**§ 186e.40 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general, and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents, such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian children; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(ESEA, Section 1005(c); 20 U.S.C. 3385(c))

7. A new Part 186f is added as follows:

## PART 186f—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN CHILDREN

**Subpart A—General**

Sec.



**Subpart B—What Types of Projects Are Authorized?**



**Subpart C—How To apply for a Grant**



**Subpart D—How Grants Are Made**



**Authority:** Title IV, Part B, of Pub. L 92–318, 86 Stat. 339, as amended (20 U.S.C. 3385(a), (b)), unless otherwise noted.

### Subpart A—General

**§ 186f.1 What is the purpose of this program?**

This program provides assistance under Part B of the Indian Education Act for planning, pilot, and demonstration projects designed to improve educational opportunities for Indian children.

(ESEA, Section 1005(a)(1), (b); 20 U.S.C. 3385(a)(1), (b))

**§ 186f.2 Who is eligible to apply?**

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Elementary or secondary schools for Indian children supported by the Department of the Interior;

(d) Indian tribes;

(e) Indian organizations; and

(f) Indian institutions.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.3 Other applicable regulations.**

The provisions of 45 CFR Parts 100a and 186 apply to this program.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

## Subpart B—What Types of Projects Are Authorized?

**§ 186f.10 Authorized projects.**

Projects that may be supported include, but are not limited to, those that—

(a) Test amd validate culturally related curriculum materials designed to improve the academic achievement of Indian children;

(b) Use culturally relevant techniques to lower the dropout rate among Indian children;

(c) Encourage Indian students to enter the fields of natural sciences and mathematics by developing and using culturally related curricula;

(d) Test and validate culturally relevant achievement tests; or

(e) Develop a comprehensive plan for the coordination of educational programs and services for children of a particular tribe.

(ESEA, Section 1005(a)(1), (b); 20 U.S.C. 3385(a)(1), (b))

## Subpart C—How To Apply for a Grant

**§ 186f.20 Application contents.**

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including a statement of the number of children who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(1) The data collection method;

(2) The instruments or methods to be used for testing and measuring;

(3) The method for analzying the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(d) Documentation that parents of the children who will participate in the project, and other members of the Indian community, adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(e) To the extent consistent with the number of eligible children in the area to be served who are enrolled in private nonprofit elementary and secondary schools and whose needs are of the type which the project is intended to meet, provisions for the participation of those children on an equitable basis.

(ESEA, Section 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

## Subpart D—How Grants Are Made

**§ 186f.30 Is priority given to certain applicants?**

In addition to the points awarded under §§ 186f.32 through 186f.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, Section 1005(f)(1); 20 U.S.C. 3385(f)(1))

**§ 186f.31 How applications are evaluated.**

The Secretary evaluates an application on the basis of the criteria in §§ 186f.32 through 186f.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186f.32 through 186f.39 is 100.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.32 Selection criterion: need and rationale. (0 to 20 points)**

(a) The Secretary reviews each application to determine the need for the project and the soundness of the rationale for the project.

(b) In making this determination, the Secretary looks for—

(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is responsive to the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that address similary needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.33 Selection criterion: project design. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) A plan for effective administration of the project.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.34 Selection criterion: parental and community involvement. (0 to 10 points)**

The Secretary reviews each application to determine the extent to which parents and other members of the Indian community—

(b) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(ESEA, Section 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

**§ 186f.35 Selection criterion: budget and cost effectiveness. (0 to 10 points)**

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.36 Selection criterion: adequacy of resources. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.37 Selection criterion: staff. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(ESEA, Section 1005(b); 20 U.S.C. 3385(b))

**§ 186f.38 Selection criterion: evaluation design. (0 to 20 points)**

(a) The Secretary reviews each application to determine the quality and appropriateness of the evaluation design, including how well the evaluation will measure the project's effectiveness in meeting each objective and the impact of the project on the children involved.

(b) In making this determination, the Secretary considers—

(1) The appropriateness of the instruments to collect data;

(2) The appropriateness of the method for analyzing the data;

(3) The timetable for collecting and analyzing the data; and

(4) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(ESEA, Section 1005(b), (f)(1); 20 U.S. 3385(b), (f)(1))

**§ 186f.39 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian children in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents, such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian students; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(ESEA, Section 1005(b); 20 U.S. 3385(b))

**§ 186f.40 Annual priorities.**

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 186f.10.

(b) The Secretary publishes the selected priorities, if any, in the **Federal Register.**

(c) In addition to the points awarded under §§ 186f.32 through 186f.39, the Secretary awards up to 10 points to an application on the basis of the proportion of the proposed project activities that address the selected priorities.

(ESEA, Section 1005(b); 20 U.S. 3385(b))

8. A new Part 186g is added as follows:

## PART 186g—EDUCATIONAL PERSONNEL DEVELOPMENT

**Subpart A—General**

Sec.



**Subpart B—What Costs Are Allowable?**



**C—How to apply for a Grant.**



**Subpart D—How Grants Are Made?**



**Subpart E—Selection of Participants**



**Authority:** Title IV, Part B, of Pub. L 92–318, 86 Stat. 339, as amended (20 U.S.C. 3385; and the Indian Education Act, Section 422, as amended (20 U.S.C. 3385a), unless otherwise noted.

### Subpart A—General

**§ 186g.1 What is the purpose of this part?**

(a) This part governs two programs, one authorized by Section 1005(d) of the Elementary and Secondary Education Act of 1965, as added by Part B of the Indian Education Act, the other authorized by Section 422 of the Indian Education Act.

(b) These two programs support projects that—

(1) Prepare persons to serve Indian students as teachers, administrators, social workers, and ancillary educational personnel; and

(2) Improve the qualifications of persons serving Indian students in positions listed in paragraph (b)(1) of this section, including the provision of in-service training to those persons.

(c) Project participants may be prepared for positions such as—

(1) Classroom teachers;

(2) Special educators for handicapped or gifted and talented students;

(3) Bilingual-bicultural specialists;

(4) Guidance counselors and school psychologists;

(5) School administrators;

(6) Adult education specialists or instructors; and

(7) Community college administrators.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

**§ 186g.2 Who is eligible to apply?**

(a) Eligible applicants under ESEA, Section 1005(d) are—

(1) Institutions of higher education;

(2) State educational agencies (SEAs) in combination with institutions of higher education; and

(3) Local educational agencies (LEAs) in combination with institutions of higher education.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d))

(b) Eligible applicants under Section 422 of the Indian Education Act are—

(1) Institutions of higher education;

(2) Indian organizations; and

(3) Indian tribes.

(Indian Education Act, Section 422; 20 U.S.C. 3385a)

**§ 186g.3 Other applicable regulations.**

The provisions of 45 CFR Parts 100a and 186 apply to these programs.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

### Subpart B—What Costs Are Allowable?

**§ 186g.10 Stipends and dependency allowances.**

(a) In addition to other costs that are reasonable and necessary to carry out an educational personnel development project, a grantee may, from project funds, pay to a participant who is a full-time student—

(1) A stipend to cover the participant's personal living expenses; and

(2) An allowance for dependents.

(b) Each year, the Secretary announces in the **Federal Register** the maximum stipend and allowance for

dependents. The actual stipend and allowance for dependents paid to a participant shall not be less than—

(1) The amounts stated in the notice; minus

(2) Other financial assistance—other than loans—received or expected to be received by the participant for his or her living expenses and for the support of the participant's dependents.

(c) A grantee may provide a participant a stipend and an allowance for dependents up to the maximum amounts specified in the notice described in paragraph (b), so long as the total financial assistance—other than loans—received or expected to be received by the participant for those purposes does not exceed the participant's need for that assistance.

(d) In general, a grantee may not pay a stipend or dependency allowance to a participant who is not a full-time student. However, the Secretary may approve payments of partial stipends to a teacher aide who must take leave without pay in order to be a part-time student.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

## Subpart C—How To Apply for a Grant

### § 186g.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including the specific number of project participants.

(b)(1) A description of the plan for giving preference to Indians in the selection of participants; and

(2) A statement of the number and percentage of participants who will be Indian.

(c) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan must include descriptions of—

(1) The data collection method;

(2) The instruments or methods to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(e) An assurance that it will, in its final performance report, provide information on the selection, academic performance, and job placement of project participants; and

(f) An assurance that it will cooperate with follow-up studies of project participants conducted or authorized by the Secretary.

(ESEA, Section 1005(d), (f)(1); 20 U.S.C. 3385(d), (f)(1); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

## Subpart D—How Grants Are Made

### § 186g.30 Is priority given to certain applications?

In addition to the points awarded under §§ 186g.32 through 186g.39, the Secretary awards—

(a) Ten points to applications in which all participants will be enrolled in a course of study resulting in a degree at the bachelor's level or higher;

(b) Under the program authorized by Section 1005(d) of ESEA, ten points to applications from eligible Indian institutions;

(c) Under the program authorized by Section 1005(d) of ESEA, ten points to applications for projects in which 100 percent of the participants will be Indian; and

(d) Under the program authorized by Section 42 of the Indian Education Act, twenty-five points to applications from Indian tribes, Indian organizations, and eligible Indian institutions.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

### § 186g.31 How applications are evaluated.

(a) The Secretary reviews and approves applications under Section 1005(d) of the ESEA separately from those under Section 422 of the Indian Education Act.

(b) The Secretary evaluates an application on the basis of the criteria in §§ 186g.32 through 186g.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186g.32 through 186g.39 is 100.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

### § 186g.32 Selection criterion: need. (0 to 10 points)

The Secretary reviews each application to determine the need for the type of personnel to be trained, as indicated by a current survey or other appropriate documentation.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

### § 186g.33 Selection criterion: project design. (0 to 25 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) Educational approaches that take into account the culture and heritage of Indian people;

(5) Techniques designed specifically to enable project participants to meet the needs of Indian students; and

(6) A plan for effective administration of the project.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

### § 186g.34 Selection criterion: budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

### § 186g.35 Selection criterion: adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

**§ 186g.36 Selection criterion: staff. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

**§ 186g.37 Selection criterion: benefit to Indian students. (0 to 5 points)**

(a) The Secretary reviews each application to determine the likelihood that, after receiving training under the project, the participants will serve Indian students as teachers, administrators, teacher aides, or ancillary educational personnel.

(b) In making this determination, the Secretary considers—

(1) Policies or practices of the applicant, such as those governing selection of participants, that increase the likelihood that participants will serve Indian students upon the completion of the training; and

(2) Evidence that, upon completion of the training, participants will be able to obtain positions that involve the education of Indian students.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

**§ 186g.38 Selection criterion: evaluation plan. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(ESEA, Section 1005(d), (f)(1); 20 U.S.C. 3385(d), (f)(1); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

**§ 186g.39 Selection criterion: commitment. (0 to 20 points)**

(a) *Applications under ESEA, Section 1005(d).*

(1) The Secretary reviews each application under ESEA, Section 1005(d) to determine the extent to which the applicant is committed to the education of Indian people in general, and to the project's objectives in particular.

(2) In making this determination, the Secretary considers—

(i) Official statements in the applicant's publications such as course catalogs;

(ii) The human, physical, and financial resources that the applicant plans to commit to the project; and

(iii) Other efforts of the applicant to improve educational opportunities for Indian people.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d))

(b) *Applications under Section 422 of the Indian Education Act.*

(1) The Secretary reviews each application under Section 422 of the Indian Education Act to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(2) In making this determination with respect to applications from institutions of higher education, the Secretary considers the factors listed in paragraph (a)(2) of this section.

(3) In making this determination with respect to applications from Indian tribes and Indian organizations, the Secretary considers—

(i) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(ii) Other efforts by the applicant to improve educational opportunities for Indian students; and

(iii) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Indian Education Act, Section 422; 20 U.S.C. 3385a)

### Subpart E—Selection of Participants

**§ 186g.40 Preference to Indians.**

In selecting project participants, a grantee shall give preference to Indians.

(ESEA, Section 1005(d); 20 U.S.C. 3385(d); and the Indian Education Act, Section 422; 20 U.S.C. 3385a)

9. A new Part 186h is added as follows:

## PART 186h—EDUCATIONAL SERVICES FOR INDIAN ADULTS

### Subpart A—General



### Subpart B—What Types of Projects and Activities Are Authorized?



### Subpart C—How To Apply for a Grant



### Subpart D—How Grants Are Made



**Authority:** Title IV, Part C. of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

### Subpart A—General

**§ 186h.1 What is the purpose of this program?**

This program provides financial assistance under Part C of the Indian Education Act for educational service projects designed to improve educational opportunities for Indian adults.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.2 Who is eligible to apply?**

Eligible applicants are—

(a) Indian tribes;

(b) Indian organizations; and

(c) Indian institutions.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.3 Other applicable regulations.**

The provisions of 45 CFR Parts 100a and 186 apply to this program.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

### Subpart B—What Types of Projects and Activities Are Authorized?

**§ 186h.10 Authorized projects.**

Projects that may be supported include but are not limited to those that—

(a) Enable Indian adults to acquire basic educational skills, including literacy;

(b) Enable Indian adults to continue their education through the secondary school level;

(c) Are designed for the education of handicapped or elderly Indian adults;

(d) Establish career education projects designed to improve employment opportunities; and

(e) Are designed for incarcerated Indian adults.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.11 Authorized activities**

(a) Services and instruction provided under this part shall be below the college level.

(b) Activities that are designed solely to prepare individuals to enter a specific occupation or cluster of closely related occupations in an occupational field after participating in a project are not authorized under the programs in this part. However, activities that are designed to prepare individuals to benefit from occupational training, or activities that incidentally involve the teaching of employment-related skills, are allowable if otherwise authorized under this part.

(Adult Education Act, Sections 303(b), 316(b); 20 U.S.C. 1202(b), 1211a(b))

## Subpart C—How To Apply for a Grant

**§ 186h.20 Application contents.**

An applicant shall include in its application the following information:

(a) A description of the activites for which it seeks assistance, including the specific number of people who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(1) The data collection method;

(2) The instruments to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(e) An assurance that it will, on an annual basis, submit to the Secretary the following information about the project:

(1) The number of people who were served.

(2) The number of dropouts from the project.

(3) The number of people who receive a Graduate Equivalency Diploma (GED) or the increases in grade levels attained by participants; and

(f) An assurance that it will cooperate in follow-up studies of project participants conducted or authorized by the Secretary.

(Adult Education Act, Section 316 (b), (d); 20 U.S.C. 1211a (b), (d))

## Subpart D—How Grants Are Made

**§ 186h.30 How applications are evaluated.**

The Secretary evaluates an application on the basis of the criteria in §§ 186h.31 through 186h.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.31 Selection criterion: educational need. (0 to 15 points)**

(a) The Secretary reviews each application to determine the extent to which the Indian adults in the service area need the proposed services.

(b) In making this determination, the Secretary considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Secretary considers—

(1) How widespread the need is, as indicated by the number and percentage of Indian adults who need the proposed services; and

(2) The severity of the need, as indicated by elementary and secondary school dropout or absenteeism rates, average grade level completed, unemployment rates, or other appropriate measures.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.32 Selection criterion: lack of comparable services. (0 to 15 points)**

(a) The Secretary reviews each application to determine the extent to which the proposed services are currently unavailable in the service area in sufficient quantity or quality, or both.

(b) In making this determination, the Secretary considers—

(1) A description of other services in the area, including those offered by the applicant, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of Indian adults who receive those services;

(3) The number of Indian adults who need but do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the the adults to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.33 Selection criterion: project design. (0 to 20 points)**

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the acitivities related to each objective;

(4) A clear statement of the number of adults who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.34 Selection criterion: community involvement. (0 to 15 points)**

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(b), (d); 20 U.S.C. 1211a(b), (d))

**§ 186h.35 Selection criterion: budget and cost effectiveness. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to

which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.36 Selection criterion: adequacy of resources. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.37 Selection criterion: staff. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

**§ 186h.38 Selection criterion: evaluation plan. (0 to 10 points)**

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(b), (d)(2); 20 U.S.C. 1211a(b), (d)(2))

**§ 186h.39 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(b); 20 U.S.C. 1211a(b))

10. A new Part 186i is added as follows:

## PART 186i—PLANNING, PILOT, AND DEMONSTRATION PROJECTS FOR INDIAN ADULTS

**Subpart A—General**

Sec.



**Subpart B—What Types of Projects Are Authorized?**



**Subpart C—How to Apply for a Grant**



**Subpart D—How Grants Are Made**



**Authority:** Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

### Subpart A—General

**§ 186i.1 What is the purpose of this program?**

This program provides financial assistance under Part C of the Indian Education Act for planning, pilot, and demonstration projects designed to improve employment and educational opportunities for Indian adults.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

**§ 186i.2 Who is eligible to apply?**

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

**§ 186i.3 Other applicable regulations.**

(a) The provisions of 45 CFR Parts 100a and 186 apply to this program.

(b) The provisions of 45 CFR 186h.11, relating to authorized activities, apply to this program.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### Subpart B—What Types of Projects Are Authorized?

**§ 186i.10 Authorized projects.**

Projects that may be supported include, but are not limited to, those that develop, test, and demonstrate the effectiveness of—

(a) Educational approaches designed to assist Indian adults in achieving basic literacy;

(b) Methods for improving the basic skills of Indian adults so that they may benefit from occupational training;

(c) Educational approaches designed to assist Indian adults in qualifying for high school equivalency certificates in the shortest time feasible.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### Subpart C—How to Apply for a Grant

**§ 186i.20 Application contents.**

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including the specific number of people who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(1) The data collection method;

(2) The instruments to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(e) An assurance that it will, on an annual basis, submit to the Secretary the following information about the project—

(1) The number of people who were served;

(2) The number of dropouts from the project; and

(3) The number of people who receive a Graduate Equivalence Diploma (GED) or the increases in grade levels attained by participants; and

(f) An assurance that it will cooperate in follow-up studies of project participants conducted or authorized by the Secretary.

(Adult Education Act, Section 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

## Subpart D—How Grants Are Made

### § 186i.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 186i.32 through 186i.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

### § 186i.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186i.32 through 186i.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186i.32 through 186i.39 is 100.

(Adult Education Act, Section 316 (a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186i.32 Selection criterion: need and rationale. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project and the soundness of the rational for the project.

(b) In making this determination, the Secretary looks for—

(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian adults;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is responsive to the culture and heritage of the adults to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186i.33 Selection criterion: project design. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Secretary looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of adults who will participate directly in the project; and

(5) A plan for effective administration of the project.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186i.34 Selection criterion: community involvement. (0 to 10 points)

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(1), (2), (d); 20 U.S.C. 1211(a)(1), (2), (d))

### § 186i.35 Selection criterion: budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186i.36 Selection criterion: adequacy of resources. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2)).

### § 186i.37 Selection criterion: staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) If appropriate, the plan for staff development and training of the applicant's board members, committee members, or officers.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186i.38 Selection criterion: evaluation design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality and appropriateness of the evaluation design, including how well the evaluation will measure the project's effectiveness in meeting each objective and the impact of the project on the adults involved.

(b) In making this determination, the Secretary considers—

(1) The appropriateness of the instruments to collect data;

(2) The appropriateness of the method for analyzing the data;

(3) The timetable for collecting and analyzing the data; and

(4) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

**§ 186i.39 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In each case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

**§ 186i.40 Annual priorities.**

(a) Each year, the Secretary may select for priority one or more of the types of projects listed in § 186i.10.

(b) The Secretary publishes the selected priorities, if any, in the **Federal Register.**

(c) In addition to the points awarded under §§ 186i.32 through 186i.39, the Secretary awards up to 10 points to an application on the basis of the proportion of the proposed activities that address the selected priorities.

(Adult Education Act, Section 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

11. A new Part 186j is added as follows:

## PART 186j—ADULT EDUCATION RESEARCH AND DEVELOPMENT PROJECTS

**Subpart A—General**

Sec.
186j.1 What is the purpose of this program?
186j.2 Who is eligible to apply?
186j.3 Other applicable regulations.

**Subpart B—[Reserved]**

**Subpart C—How to Apply for a Grant**

186j.20 Application contents.

**Subpart D—How Grants Are Made**

186j.30 Is priority given to certain applicants?
186j.31 How applications are evaluated.
186j.32 Selection criterion: need for the project.
186j.33 Selection criterion: research and development design.
186j.34 Selection criterion: community involvement.
186j.35 Selection criterion: budget and cost effectiveness.
186j.36 Selection criterion: adequacy of resources.
186j.37 Selection criterion: staff.
186j.38 Selection criterion: evaluation plan.
186j.39 Selection criterion: adaptability.
186j.40 Selection criterion: commitment.

**Authority.**—Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

### Subpart A—General

**§ 186j.1 What is the purpose of this program?**

This program provides financial assistance under Part C of the Indian Education Act for research and development projects that develop innovative and effective techniques to assist Indian adults in—

(a) Attaining basic literacy; and

(b) Qualifying for high school equivalency certificates.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.2 Who is eligible to apply?**

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.3 Other applicable regulations.**

(a) The provisions of 45 CFR Parts 100a and 186 apply to this program.

(b) The provisions of 45 CFR 186h.11, relating to authorized activities, apply to this program.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

### Subpart B—[Reserved]

### Subpart C—How To Apply for a Grant.

**§ 186j.20 Application contents.**

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance, including the specific number of people who will participate in the project.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will participate in, or be served by, the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives. This plan shall include descriptions of—

(1) The data collection method;

(2) The instruments to be used for testing and measuring;

(3) The method for analyzing the data to be collected;

(4) A timetable for collecting and analyzing data; and

(5) If known, the qualifications of those who will conduct the evaluation.

(Adult Education Act, Section 316(a)(3) (d); 20 U.S.C. 1211a(a)(3), (d))

### Subpart D—How Grants Are Made

**§ 186j.30 Is priority given to certain applicants?**

In addition to the points awarded under §§ 186j.32 through 186j.40, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

**§ 186j.31 How applications are evaluated.**

The Secretary evaluates an application on the basis of the criteria in §§ 186j.32 through 186j.40. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186j.32 through 186j.40 is 100.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.32 Selection criterion: need for the project. (0 to 15 points)**

(a) The Secretary reviews each application to determine the need for the project.

(b) In making this determination, the Secretary considers the clarity and accuracy of the statement describing the lack of effective techniques for assisting Indian adults to attain basic literacy and to qualify for high school equivalency certificates.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.33 Selection criterion: research and development design. (0 to 25 points)**

(a) The Secretary reviews each application to determine the quality of the research and development design for the project.

(b) In making this determination, the Secretary considers—

(1) The extent to which the applicant exhibits thorough knowledge of previous work in the field and relates the proposed research and development to it;

(2) The extent to which objectives and hypotheses are stated in clear and measurable terms;

(3) The appropriateness and soundness of data collection instruments, sampling designs and techniques, and the procedures for analyzing the data to be collected; and

(4) The degree to which there is an activity plan, including a time-line, that clearly and realistically outlines the activities related to each objective.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.34 Selection criterion: community involvement. (0 to 5 points)**

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

**§ 186j.35 Selection criterion: budget and cost effectiveness. (0 to 10 points)**

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.36 Selection criterion: adequacy of resources. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.37 Selection criterion: staff. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.38 Selection criterion: evaluation plan. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(3), (d); 20 U.S.C. 1211a(a)(3), (d))

**§ 186j.39 Selection criterion: adaptability. (0 to 5 points)**

The Secretary reviews each application to determine the extent to which the techniques developed by the project are likely to be effective in other settings in assisting Indian adults to—

(a) Attain basic literacy; and

(b) Qualify for high school equivalency certificates.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

**§ 186j.40 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(3); 20 U.S.C. 1211a(a)(3))

12. A new Part 186k is added as follows:

## PART 186k—ADULT EDUCATION SURVEYS

### Subpart A—General

Sec.



### Subpart B—[Reserved]

### Subpart C—How to Apply for a Grant



### Subpart D—How Grants Are Made



**Authority:** Title IV, Part C, of Pub. L. 92-318, 86 Stat. 342, as amended (20 U.S.C. 1211a), unless otherwise noted.

### Subpart A—General

**§ 186k.1 What is the purpose of this program?**

(a) This program provides financial assistance under Part C of the Indian Education Act for projects to survey the extent of illiteracy and lack of high school completion among Indians.

(b) Surveys may be local, regional, or national in scope.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

**§ 186k.2 Who is eligible to apply?**

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

**§ 186k.3 Other applicable regulations.**

The provisions of 45 CFR Parts 100a and 186 apply to this program.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

## Subpart B—[Reserved]

## Subpart C—How to Apply for a Grant

### § 186k.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance.

(b) Documentation that individuals who will be affected by the survey, and other members of the Indian community, adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(c) A plan for evaluating the effectiveness of the survey in achieving its objectives.

(Adult Education Act, Section 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

## Subpart D—How Grants Are Made

### § 186k.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 186k.32 through 186k.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

### § 186k.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186k.32 through 186k.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186k.32 through 186k.39 is 100.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

### § 186k.32 Selection criterion: need for the survey. (0 to 20 points)

(a) The Secretary reviews each application to determine the extent to which there is a need for the proposed survey.

(b) In making this determination, the Secretary considers the clarity and accuracy of the applicant's statement on the lack of reliable data concerning illiteracy and lack of high school completion among Indian adults in the population to be surveyed.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

### § 186k.33 Selection criterion: survey and project design. (0 to 25 points)

(a) The Secretary reviews each application to determine the quality of the survey and project design.

(b) In making this determination, the Secretary considers—

(1) The appropriateness and soundness of—

(i) The sample size;

(ii) The method for selecting the sample;

(iii) The survey instrument to be used or the plan for developing and validating an instrument; and

(iv) The plan for analyzing the data to be collected;

(2) The extent to which the objectives are stated in clear and measurable terms;

(3) The degree to which there is an activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective; and

(4) The extent to which there is a plan for effective administration of the project.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

### § 186k.34 Selection criterion: community involvement. (0 to 5 points)

The Secretary reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

### § 186k.35 Selection criterion: budget and cost effectiveness. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(4), (d); 20 U.S.C. 1211a(a)(4), (d))

### § 186k.36 Selection criterion: adequacy of resources. (0 to 10 points)

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

### § 186k.37 Selection criterion: staff. (0 to 15 points)

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of the project staff.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

### § 186k.38 Selection criterion: evaluation plan. (0 to 10 points)

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's process and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

### § 186k.39 Selection criterion: commitment. (0 to 5 points)

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(4); 20 U.S.C. 1211a(a)(4))

13. A new Part 186l is added as follows:

## PART 186l—ADULT EDUCATION DISSEMINATION AND EVALUATION PROJECTS

### Subpart A—General

Sec.
186l.1 What is the purpose of this program?
186l.2 Who is eligible to apply?
186l.3 Other applicable regulations.

### Subpart B—[Reserved]

### Subpart C—How to Apply for a Grant

186l.20 Application contents.

### Subpart D—How Grants Are Made

186l.30 Is priority given to certain applicants?
186l.31 How applications are evaluated.
186l.32 Selection criterion: need for the project.
186l.33 Selection criterion: project design.
186l.34 Selection criterion: community involvement.
186l.35 Selection criterion: budget and cost effectiveness.
186l.36 Selection criterion: adequacy of resources.
186l.37 Selection criterion: staff.
186l.38 Selection criterion: evaluation plan.
186l.39 Selection criterion: commitment.

Authority: Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d)

### Subpart A—General

#### § 186l.1 What is the purpose of this program?

This program provides financial assistance under Part C of the Indian Education Act for projects that—

(a) Disseminate information and materials relating to programs that offer educational opportunities to Indian adults, including—

(1) Curriculum information;

(2) Results of evaluations;

(3) Information on how to participate in particular programs; and

(4) Information on how to start similar programs or operate projects that provide similar eduational opportunities; and

(b) Evaluate the effectiveness of programs that offer educational opportunities to Indian adults.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

#### § 186l.2 Who is eligible to apply?

Eligible applicants are—

(a) State educational agencies (SEAs);

(b) Local educational agencies (LEAs);

(c) Indian tribes;

(d) Indian organizations; and

(e) Indian institutions.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

#### § 186l.3 Other applicable regulations.

The provisions of 45 CFR Parts 100a and 186 apply to this program.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

### Subpart B—[Reserved]

### Subpart C—How to Apply for a Grant

#### § 186l.20 Application contents.

An applicant shall include in its application the following information:

(a) A description of the activities for which it seeks assistance.

(b) The date of any needs assessment, survey, or other research effort, the results of which it describes in its application to demonstrate the need for the project.

(c) Documentation that individuals who will benefit from the project and other members of the Indian community adequately participated in planning and developing the project, and will participate in the operation and evaluation of the project.

(d) A plan for evaluating the effectiveness of the project in achieving its objectives.

(Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

### Subpart D—How Grants Are Made

#### § 186l.30 Is priority given to certain applicants?

In addition to the points awarded under §§ 186l.32 through 186l.39, the Secretary awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, Section 316(d); 20 U.S.C. 1211a(d))

#### § 186l.31 How applications are evaluated.

The Secretary evaluates an application on the basis of the criteria in §§ 186l.32 through 186l.39. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186l.32 through 186l.39 is 100.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

#### § 186l.32 Selection criterion: need for the project. (0 to 20 points)

(a) The Secretary reviews each application to determine the need for the project.

(b) In making this determination for dissemination projects or project components, the Secretary considers—

(1) A statement of the Indian communities or other groups to whom information will be disseminated and an explanation of why those groups need the information; and

(2) The clarity and accuracy of the applicant's description of the current efforts of the applicant and others to disseminate information about Indian adult education to those groups and an explanation of why these efforts are inadequate.

(c) In making this determination for evaluation projects or project components, the Secretary considers—

(1) A description of other evaluations of programs that the applicant proposes to evaluate; and

(2) An explanation of why the proposed evaluation is needed.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

#### § 186l.33 Selection criterion: project design. (0 to 20 points)

(a) The Secretary reviews each application to determine the quality of the design for the project.

(b) In making this determination for dissemination projects or project components, the Secretary considers—

(1) The extent to which the objectives are stated in clear and measurable terms;

(2) The description of the kinds and sources of information and materials to be disseminated;

(3) A description of the methods that will be used to disseminate the information;

(4) The extent to which the activity plan, including a timeline, clearly and realistically outlines the activities necessary for completing each objective; and

(5) The effectiveness of the plan for administering the project.

(c) In making this determination for evaluation projects or project components, the Secretary considers—

(1) The extent to which the objectives are stated in clear and measurable terms;

(2) The extent to which the applicant exhibits thorough knowledge of previous evaluation work in the field and relates the proposed evaluation to it;

(3) The appropriateness and soundness of data collection instruments, sampling designs and techniques, and the procedures for analyzing the data to be collected;

(4) The extent to which the activity plan, including a timeline, clearly and realistically outlines the activities necessary for completing each objective; and

(5) The effectiveness of the plan for administering the project.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

**§ 186I.34 Selection criterion: community involvement. (0 to 5 points)**

The Secretary reviews each application to determine the extent to which the individuals who will benefit from the project and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

**§ 186I.35 Selection criterion: budget and cost effectiveness. (0 to 10 points)**

(a) The Secretary reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Secretary looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

**§ 186I.36 Selection criterion: adequacy of resources. (0 to 10 points)**

(a) The Secretary reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Secretary looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

**§ 186I.37 Selection criterion: staff. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Secretary considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the jobs descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

**§ 186I.38 Selection criterion: evaluation plan. (0 to 15 points)**

(a) The Secretary reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Secretary looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress and modification of the project in light of that assessment.

(Adult Education Act, Section 316(a)(5), (d); 20 U.S.C. 1211a(a)(5), (d))

**§ 186I.39 Selection criterion: commitment. (0 to 5 points)**

(a) The Secretary reviews each application to determine the extent to which the applicant is committed to the education of Indian people in general and to the project objectives in particular.

(b) In making this determination, the Secretary considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, Section 316(a)(5); 20 U.S.C. 1211a(a)(5))

14. Part 187 is revised to read as follows:

## PART 187—INDIAN FELLOWSHIP PROGRAM

### Subpart A—General

Sec.



### Subpart B—How Fellows Are Selected?



### Subpart C—What Conditions Must Be Met By Fellows?



**Authority:** Indian Education Act, Section 423 (20 U.S.C. 3385b) as amended, unless otherwise noted.

### Subpart A—General

**§ 187.1 What is the purpose of this program?**

The Indian Fellowship program provides assistance to enable Indian students to pursue a course of study of not more than four academic years leading to—

(a) A graduate level degree in medicine, law, education, and related fields; or

(b) A graduate or undergraduate degree in engineering, business administration, natural resources, and related fields.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.2 Who is eligible to apply?**

(a) An applicant must be an Indian as defined in § 187.3.

(b) An applicant must be a United States citizen or resident of the United States for other than a temporary purpose.

(c) A fellow in medicine, law, education, or a related field must be a full-time graduate student.

(d) A fellow in engineering, business administration, natural resources, or a related field must be a full-time graduate or undergraduate student.

(e) An undergraduate fellow must be recognized by his or her institution of higher education as a degree candidate in engineering, natural resources, business administration, or a related field.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.3 Definitions.**

The following definitions apply to the terms in this part:

"Fellow" means the recipient of a fellowship under the Indian Fellowship Program.

"Fellowship" means an award under the Indian Fellowship Program.

"Full-time student" means an individual pursuing a course of study that constitutes a full-time work load in accordance with an institution's established policies.

"Indian" means any individual who is—

(a) A member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized by the State in which they reside;

(b) A descendant, in the first or second degree, of any individual

described in paragraph (a) of this definition;

(c) Considered by the Secretary of the Interior to be an Indian for any purpose; or

(d) An Eskimo or Aleut or other Alaska Native.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

"Indian tribe" means any federally or State recognized Indian tribe, band, nation, rancheria, pueblo, Alaska Native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that exercises the power of self-government.

"Institution of higher education" is defined in 45 CFR 186.4.

"Organized group of Indians" means an ethnically and culturally identifiable group of Indians, indigenous to the territory of what is now the United States, and which has been in substantially continuous existence throughout the history of the United States.

"Stipend" means the allowance for personal living expenses paid to a fellow.

"Undergraduate degree" means a bachelor's degree.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.4 Which fields of study are eligible?**

(a) Eligible fields are medicine, law, education, engineering, business administration, natural resources, and related fields.

(b) The following fields are related to medicine:

(1) Veterinary medicine.
(2) Nursing.
(3) Dentistry.
(4) Optometry.
(5) Clinical psychology.
(6) Pharmacy.

(c) The following field is related to engineering:

(1) Architecture.

(d) The following fields are related to business administration:

(1) Accounting.
(2) Tribal administration.
(3) Public administration.

(e) The following fields are related to natural resources:

(1) Forestry.
(2) Wastershed management.
(3) Range science.
(4) Land-use management.
(5) Fisheries.
(6) Environmental biology.
(7) Geology.
(8) Oceanography.

(f) The Secretary considers, on a case-by-case basis, the eligibility of applications for fellowships in fields other than those listed in paragraph (a) through (e) of this section.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.5 What is included in a fellowship?**

(a) Subject to paragraphs (b) through (d) of this section, a fellowship includes—

(1) An amount to cover tuition and all other fees required of students in similar standing at the institution attended by the fellow;

(2) A stipend to cover the fellow's personal living expenses;

(3) An allowance for dependents;

(4) An allowance for books and other necessary instructional materials;

(5) In cases of extreme hardship, reasonable costs associated with necessary research;

(6) In cases of extreme hardship, a travel allowance for a fellow who must move from his or her residence to an institution of higher education.

(b) The Secretary includes in the annual application notice a statement of the maximum stipend and allowance for dependents. The actual stipend and allowance for dependents paid to a fellow are not less than—

(1) The amounts stated in the notice; minus

(2) Other financial assistance—other than loans—received or expected to be received by the fellow for the fellow's living expenses and for the support of the fellow's dependents.

(c) The Secretary may provide a fellow a stipend and an allowance for dependents up to the maximum amounts specified in the application notice, so long as the total financial assistance—other than loans—received or expected to be received by the fellow for those purposes does not exceed the fellow's need for that assistance.

(d) The Secretary does not award a fellowship in an amount greater than—

(1) The amount of the fellow's cost of attendance; less

(2) Other financial aid, received or expected to be received by the fellow.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.6 Application contents: evidence that the applicant is Indian.**

(a) If an applicant is a member of a tribe, a band, or other organized group of Indians, the applicant shall include in an application—

(1) The name of the tribe, band, or other organized group of Indians with which the applicant claims membership; and

(2) The name and address of the organization that has updated and accurate membership data for the applicant's tribe, band, or other organized group of Indians, if such an organization exists.

(b) If an applicant is not a member of a tribe, band, or other organized group of Indians, the applicant shall submit the information required in paragraph (a) of this section for the parent or grandparent through whom the applicant claims eligibility.

(c) An applicant shall also submit—

(1) The tribal enrollment number of the applicant or of the parent or grandparent through whom the applicant claims eligibility; or

(2) At least one of the following as evidence that he or she is Indian as defined in § 187.3:

(i) A copy of the Bureau of Indian Affairs Certification of Degree of Indian Blood for the applicant or for the parent or grandparent through whom the applicant claims eligibility.

(ii) A copy of the tribal enrollment document of the applicant or of the parent or grandparent through whom the applicant claims eligibility.

(iii) A statement from a recognized official of the appropriate tribe, band, or other organized group of Indians that the applicant or a parent or grandparent of the applicant is a member of that tribe, band, or group.

(iv) Evidence that the applicant is considered by the Secretary of the Interior to be an Indian.

(v) Evidence that the applicant is an Eskimo, Aleut, or other Alaska Native.

(vi) If there is no organization that maintains updated and accurate membership data for the appropriate tribe, band, or other organized group of Indians, other evidence satisfactory to the Secretary that the applicant is Indian.

(Indian Education Act, Section 453(a); 20 U.S.C. 1221h(a))

**§ 187.7 Application contents: evidence of admission or attendance.**

(a) An applicant shall submit evidence that he or she is in attendance or has been accepted for admission as a full-time student at an institution of higher education in one of the eligible fields of study listed in §§ 187.1 or 187.4.

(b) An applicant who has not yet been accepted for admission may submit an application that the Secretary may consider, provided that the applicant is accepted by an institution of higher education by a subsequent date to be specified by the Secretary.

(c) The Secretary may require evidence that an applicant will be enrolled in an accredited program of study.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.8 Application contents: transcripts.**

(a) An applicant for an undergraduate fellowship shall submit high school and, if appropriate, undergraduate transcripts.

(b) An applicant for a graduate fellowship shall submit undergraduate and, if appropriate, graduate transcripts.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.9 Application contents: other information and assurances.**

(a) An applicant shall submit information showing the amount of tuition and fees charged by the institution of higher education to be attended.

(b) An applicant shall submit information the Secretary may require in order to determine the extent of the applicant's financial need.

(c) An applicant shall submit other information and assurances the Secretary may require, including an assurance that he or she will cooperate in any evaluations or follow-up studies of the Indian Fellowship Program conducted or authorized by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

## Subpart B—How Fellows Are Selected

**§ 187.11 Is priority given to certain applicants?**

In selecting fellows in the fields of engineering, natural resources, business administration, and related fields, the Secretary, in addition to the points awarded under § 187.12, awards 15 points to applicants for graduate fellowships.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.12 How applications are evaluated.**

The Secretary evaluates and ranks an application with applications from the same field and related fields. The Secretary evaluates an application on the basis of the criteria listed below. The point range for each criterion is stated in parentheses. The number of points the Secretary awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under the criteria in this section is 100.

(a) *Financial need.* (0 to 20 points)

The extent to which the application demonstrates the financial need of the applicant.

(b) *Academic record.* (0 to 30 points)

The quality of the academic record of the applicant. In addition to transcripts, this may include standardized test scores, scholarly publications, honors, and awards.

(c) *Other evidence of potential success.* (0 to 30 points)

The extent to which there is evidence other than the academic record that the applicant will be successful in his or her field. This may include references, statements by the applicant, evidence of related employment experience or community service, and other information request by the Secretary.

(d) *Service to Indians.* (0 to 20 points)

The likelihood that the applicant, upon receipt of his or her degree, will serve Indians. This may be demonstrated by endorsement of a tribe or Indian group, references, statements by the applicant, evidence of employment experience or community service involving Indians, and other information requested by the Secretary.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

## Subpart C—What Conditions Must Be Met By Fellows?

**§ 187.21 Duration and continuation of fellowships.**

(a) A fellowship may be awarded for a period not to exceed four years. However, the Secretary reviews the status of each fellow at the end of each year. The Secretary continues support only if the fellow has—

(1) Complied with the award terms and conditions, Section 423 of the Indian Education Act, and the regulations in this part; and

(2) Remained a full-time student in the field in which the fellowship was awarded.

(b) A fellowship terminates when the fellow receives the degree being pursued. If the fellow wishes to pursue a subsequent degree, he or she may apply for a new fellowship.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.22 Responsibilities of fellows.**

A fellow shall—

(a) Submit to the Secretary two copies of his or her official grade reports at the close of each academic term;

(b) Report to the Secretary any interruption of his or her studies and either—

(1) Request a leave of absence; or

(2) Relinquish the fellowship;

(c) Report to the Secretary and the institution of higher education all other sources of financial assistance that he or she is receiving and for which he or she has applied; and

(d) Report to the Secretary any changes in academic status.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.23 Leave of absence.**

(a) A fellow may request a leave of absence for a period not longer than 12 months.

(b) A leave of absence is permissible only if—

(1) It is approved by the Secretary; and

(2) The institution certifies that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.24 Discontinuation of fellowships.**

(a) The Secretary may discontinue a fellowship if a fellow fails to comply with the provisions of this part or with the terms and conditions of the fellowship award.

(b) The Secretary will discontinue a fellowship only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the Department of Education, the basis for the decision.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

**§ 187.25 Alternate fellows.**

If a fellowship is vacated or discontinued, the Secretary may designate an alternate. The Secretary may award a fellowship to the alternate for a period of study not in excess of the remainder of the period or time for which the fellowship it replaces was awarded.

(Indian Education Act, Section 423; 20 U.S.C. 3385b)

## PART 188—[DELETED]

15. Part 188 is deleted.

Note.—This Appendix is being published for information purposes only and will not be published in Title 45 of the Code of Federal Regulations.

## Appendix A—Summary of Comments and Responses

*General*

*Comment.* One commenter recommended that the entire application review process be outlined in the regulations.

*Response.* No change has been made. To set out the entire application review process would unduly clutter the regulations and would unnecessarily duplicate material from the Education

Division General Administrative Regulations (EDGAR).

*Comment.* One commenter recommended that the regulations require the Department of Education to process applications "in a timely manner."

*Response.* No change has been made. All reasonable steps are taken, and will continue to be taken, to ensure that applications are processed in a timely manner. However, it is unlikely that including the recommended provision in the regulations would be helpful, because of the imprecision of the term "timely." In addition, specifying in the regulations a definite date or time period for processing applications could lead to the hasty disposition of applications, to the detriment of prospective grantees.

*Comment.* One commenter recommended that the following provision be added: "Nothing in these regulations should be considered as preventing a tribe from being designated as a State educational agency."

*Response.* No change has been made. The statement is not necessary since nothing in these regulations would prevent a tribe from being designated as a State educational agency (SEA). If a tribe is so designated, it would be treated both as a tribe and as an SEA.

*Comment.* One commenter recommended that field readers read proposals from their own States so that proposals are reviewed by persons "who have a familiarity with the special and distinct needs and capacities of the potential grantees."

*Response.* No change has been made. The suggested provision would make the field reader selection process and the application review process unnecessarily complicated. It might not be possible to obtain qualified individuals from certain States willing to serve as field readers. Moreover, it would require many more panels and readers than are now used. Under those programs in which local needs and capacities are considered in the selection process, an applicant should explain those needs and capacities in its application so that readers from any State can evaluate them.

*Comment.* One commenter recommended that there be an appeal process for applicants to "seek redress for erroneous application of (application review) procedures by the Office of Indian Education." Another recommended that "tribes, projects and parent committees be allowed a review of all actions or disapproval of any programmatic differences or recommendations, thereby allowing more participation on all levels of a Title IV project."

*Response.* No change has been made. The suggested provisions are not necessary to ensure that applicants and grantees are treated fairly. Each year the Office of Indian Education (OIE) develops a plan for the review of applications. This plan, which must be approved by officials outside OIE, includes safeguards to ensure a fair, professional, and unbiased review of each application. This review process is carefully monitored to ensure its integrity. In addition, the National Advisory Council on Indian Education reviews each step in the process.

*Comment.* One commenter recommended that the regulations provide for the awarding of grants to State educational agencies (SEAs) so that they may offer training and technical assistance to Indian Education Act grantees.

*Response.* No change has been made. The Indian Education Act does not authorize a separate program of grants to SEAs. SEAs are, however, eligible to carry out the activities described by the commenter under the statutory authority, in Part B of the Act, for regional information centers. Awards for these centers will be made by procurement contracts following a review of proposals submitted in response to a Request for Proposals (RFP). An announcement of the RFP was published in the *Commerce Business Daily* on April 18, 1980.

*Comment.* One commenter recommended that the Secretary establish a set-aside of discretionary funds for tribes that are not federally recognized. The commenter noted that the regulations provide for set-aside for Indian-controlled schools and for school districts (LEAs) with high concentrations of Indian students.

*Reponse.* No change has been made. The set-aside of funds for the two programs mentioned by the commenter is expressly authorized by the Indian Education Act. There is no statutory authority for a similar program for tribes that are not federally recognized. It should be noted, however, that those tribes and their members are eligible to participate in the program for LEA Demonstration Projects and, if located on or near a reservation, in the Indian Controlled Schools programs. The demonstation projects program permits a reservation of funds for districts with high concentrations of Indian students.

*Comment.* Several comments were submitted relating to the Indian education regional information centers authorized under Section 1005(e)(1) of Part B of the Indian Education Act (20 U.S.C. 3385(e)(1)). Authority for the centers was added by the Education Amendments of 1978 (Pub. L. 95–561). Some of the commenters stated that regulations dealing specifically with those centers should be developed.

*Response.* No change has been made. As explained in the preamble to the proposed regulations, 44 FR 31856 (June 29, 1979), the Secretary specifies the scope of work for each of the centers in a Request for Proposals (RFP) that includes contract specifications and evaluation criteria for the centers. Regulations governing this procurement process are set out in the Federal Procurement Regulations and the Department of Education Procurement Regulations. There is, consequently, no need to set out, in these regulations, additional provisions relating to the centers. A notice of the availability of the RFP was published in the *Commerce Business Daily* on April 18, 1980. The closing date for receipt of proposals is June 16, 1980.

*Part 186—Indian Education Act—General Provisions*

§ 186.3 *Other applicable regulations.* (Proposed § 186.2)

*Comment.* The Indian Education Act, the program regulations, and the Education division General Administrative Regulations (EDGAR) all set out requirements relating to the contents of an application. One commenter said that it might be difficult for an applicant to know all the applicable requirements, and that, consequently, if an applicant makes an error in attempting to comply with all those requirements, the Secretary should give it an opportunity to correct the error, rather than reject the application.

*Response.* No change has been made in this part. Each applicant will be given an application packet. It is anticipated that the packet will spell out the various applicable requirements, from whatever source, that govern the contents of an application. Since the applicant will normally have to consult only the application packet in preparing its application, the concern of this commenter should be alleviated.

A change has been made, however, with respect to the Local Educational Agencies and Tribal Schools entitlement grants program to permit the Secretary to allow an applicant under that program to modify an application that is deficient in certain respects. See 45 CFR § 186a.30(b).

*Comment.* One commenter recommended that a section on the use of travel funds be included.

*Response.* No change has been made. Detailed provisions relating to the use of project funds for travel are set out in the

Appendices to 34 CFR Part 74, which apply to all Department of Education (ED) grant programs. See, in particular, 34 CFR Part 74, Appendix C, Part II–B, "Allowable Costs", item 3 (Advisory councils), item 19.a (Memberships, subscriptions and professional activities—Meetings and conferences), and item 28 (Travel).

§ 186.4 *Definitions.* (Proposed §§ 186.3, 186a.3, 186b.3, and 186c.3)

*Comment.* One commenter asked for clarification of the phrase "others who assist in meeting the educational needs of Indian students" as that phrase is used in the definition of "ancillary educational personnel."

*Response.* No change has been made. The quoted phrase is sufficiently clear, given the need to allow for differing job descriptions and titles, and the specification in the definition of "ancillary educational personnel" of certain positions that are included and excluded by that term.

*Comment.* Two commenters asked for a definition of the term "culturally related academic needs." Another commenter recommended that the term not be defined in the regulations. That commenter stated that those needs should be determined by each community.

*Response.* No change has been made. The Secretary is sympathetic to both points of view. The term "culturally related academic needs" refers, generally, to the need of Indian children for instructional or other academic services that are based on or relevant to their culture or that are provided by methods that have a basis in Indian culture. To the extent that Indian culture varies considerably from tribe to tribe, local communities are in the best postion to judge the cultural relevance of particular project objectives and activities.

*Comment.* Two commenters requested definitions of "planning" and "pilot" in the context of "planning, pilot, and demonstration projects."

*Response.* No change has been made. The definition in the proposed regulations covers "demonstration projects", as that term is used in Part 186d and "planning, pilot, and demonstration projects," as that term is used in Parts 186f and 186i. The terms "planning," "pilot," and "demonstration" normally refer to components or phases of one type of project, and not three distinct kinds of projects. Therefore, the proposed definition of "planning, pilot, and demonstration projects" has been retained in § 186.4 and separate definitions for planning projects and pilot projects have not been added.

*Comment.* One commenter requested definitions of "band" and "organized group of Indians" as those terms are used in the definition of "Indian."

*Response.* A change has been made. The term "organized group of Indians" is now defined in § 186.4 as an ethnically and culturally identifiable group of Indians, indigenous to the territory of what is now the United States, and which has been in substantially continous existence throughout the history of the United States. However, since the more general term "organized group of Indians" includes the more particular term "band," the Secretary believes it unnecessary to define "band."

*Comment.* One commenter recommended the use of the term "Native American" instead of, or in addition to, the term "Indian" because of the distinctions among Indians, Aleuts, and Eskimos among the Native groups in Alaska.

*Response.* No change has been made. The definition of "Indian" is taken directly from Section 453(a) of the Indian Education Act. Using terminology different from that in the Act would cause undue confusion and uncertainty. Moreover, the Act and the regulations expressly define the term "Indian" to include Eskimos, Aleuts, and other Alaska Natives.

*Comment.* One commenter asked for further information on what is meant by the phrase "considered by the Secretary of the Interior to be an Indian for any purpose," as it is used in the definition of "Indian."

*Response.* No change has been made. The definition of Indian in Section 453(a) of the Indian Education Act describes several categories of individuals who are Indian for purposes of the Act. Included as one of the categories are persons who are considered to be Indian for any purpose by the Secretary of the Interior, who has authority over the Bureau of Indian Affairs (BIA). If an individual is considered an Indian for any purpose by the BIA, that individual would be an Indian for purposes of the Indian Education Act.

*Comment.* Four commenters recommended that the definition of Indian be changed to restrict eligibility to members or descendants of members of federally recognized tribes. On the other hand, three commenters recommended that the current definition of Indian be retained. One pointed out the importance, particularly for Oklahoma Indians, of retaining the provision for eligibility of those who are descendants, in the first or second degree, of a member of a tribe, band, or other organized group of Indians.

*Response.* No change has been made. The definition of Indian is taken directly from Section 453(a) of the Indian Education Act and cannot be restricted by regulation.

*Comment.* One commenter requested a definition of "Indian-controlled school."

*Response.* No change has been made. For the purposes of the Indian Education Act, an Indian-controlled school (referred to in previous regulations as a "nonlocal educational agency") is one that meets certain requirements making it eligible to receive a grant under the set-aside program authorized by Part A of the Act. Since those requirements are spelled out in both §§ 186b.2 and 186c.2, they are not repeated elsewhere.

*Comment.* One commenter asked for a definition of "Indian education."

*Response.* No change has been made. Because of the broad purpose of the Indian Education Act and the great range of permissible activities under the various programs authorized by the Act, the Secretary does not believe that it would be helpful to define the term "Indian education" in the regulations. Interested persons should refer to the lists of authorized projects and activities under the appropriate programs.

*Comment.* One commenter recommended that the definition of "Indian organization" be modified to include organizations "established by tribal law."

*Response.* A change has been made. The definition in the proposed regulations provided that an Indian organization be "established by tribal charter or in accordance with State law." The definition has been modified to read "established by tribal charter or in accordance with State or tribal law."

*Comment.* One commenter recommended that the definition of "Indian organization" be revised by adding "(or inter-tribal)" wherever "tribal" is used to describe charters or governing body membership.

*Response.* A change has been made. The commenter's recommendation has been adopted.

*Comment.* One commenter recommended that the provision in the definition of "Indian organization" precluding entities under the control of an institution of higher education be revised to refer only to a non-Indian institution.

*Response.* No change has been made. The Secretary believes it unwise to encourage applications from campus organizations for projects that do not have the full support of the institution in

question. If the organization is under the control of an Indian institution of higher education, it should attempt to have the institution apply in its own name.

*Comment.* One commenter recommended that the term "tribal custom" as used in the definition of "parent" be expanded to "tribal custom or tribal law" and that the term "applicable State law" be expanded to "applicable State or tribal law."

*Response.* A change has been made. The term "tribal custom" has been expanded to "tribal custom and tribal law."

*Comment.* Two commenters requested a definition of "tribal school."

*Response.* No change has been made. For the purposes of the Indian Education Act, a "tribal school" is one that meets certain requirements enabling it to qualify for an entitlement grant under Part A of the Act. Since those requirements are spelled out in paragraph (b) of § 186a.2 *(Who is eligible to apply?),* they are not repeated elsewhere.

§ 186.5 *Applicability of Section 7(b) of the Indian Self-Determination and Education Assistance Act.* (Proposed § 186.4)

*Comment.* One commenter stated that "the regulations fail to acknowledge Indian preference in Section 7(b) and fail clearly to designate Indian priority points in the awarding of grants and contracts for Indian people and services relating to Indian people."

*Response.* No change has been made. Section 186.4(a) fully acknowledges and complies with Section 7(b) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act. In addition, the Indian Education Act's requirements that priority be given to Indian applicants and participants are implemented throughout these regulations. See, for example, the provisions on priority to applications from Indian tribes, organizations, and institutions in § 186e.30.

*Comment.* Several commenters objected to the definition of Indian in paragraph (b) of this section on the ground that it was less inclusive than the definition of Indian in the Indian Education Act. Many of the commenters were concerned that this definition would require a grantee to give a preference only to Federally-recognized Indians, even though the project might, consistent with the Indian Education Act, be primarily or exclusively serving non-Federally recognized Indians.

*Response.* No change has been made in the definition of Indian in this section. The definition of Indian, as used in Section 7(b) of Pub. L. 93–638, is contained in Section 4(a) of that Act and is repeated in this section of the regulations. The Secretary does not read that Act to permit her to adopt a different definition with respect to the meaning or applicability of Section 7(b).

However, paragraph (a) of § 185.5, which describes the applicability of Section 7(b), has been modified to provide that awards under the Indian Education Act are subject to Section 7(b) if they are primarily for the benefit of those who meet the definition of Indian applicable to Section 7(b). Consequently, a grantee whose project serves primarily non-federally recognized Indians is not subject to the preference requirements of Section 7(b).

In addition, the Secretary is considering to what extent the Indian preference requirements applicable to grantees might be extended to include those who are eligible under the Indian Education Act but who do not meet the definition of Indian in Pub. L. 93–638.

§ 186.8 *Capacity to carry out the project.* (Proposed § 186.5)

*Comment.* One commenter recommended that the opening paragraph be revised so that the Secretary would consider the applicant's "potential" capacity to carry out the project successfully.

*Response.* No change has been made. Since the Secretary will be determining the applicant's capacity to carry out a project at some time in the future, the term "potential" is implied and need not be stated.

*Comment.* One commenter asked that the term "past performance by the applicant," as used in paragraph (b), be clarified. The commenter felt that the consideration of past performance in funding decisions is not harmonious with the intent of the law and stated that in their first year projects often operate on a trial-and-error basis for which they should not be penalized.

*Response.* No change has been made. The term "past performance" refers to how well the applicant has administered other projects under the Indian Education Act or similar programs. In discretionary programs such as the ones to which this provision applies, applicants are generally rated solely on the quality of their written applications. It is reasonable, therefore, that if there is evidence that an applicant has a particularly poor record and is likely to mismanage the project for which it seeks assistance, the Secretary should have the authority to decline to award a grant to that applicant, no matter how highly the written application is rated. However, an application will not be disapproved solely because the applicant has experienced difficulties in the early stages of some other project.

*Comment.* One commenter recommended that the Secretary not consider the adequacy of facilities under this section of the regulations. The commenter stated that the provision authorizing the Secretary to consider this factor is too stringent, since parent committees do not have total control over the selection and maintenance of project facilities.

*Response.* No change has been made. The adequacy of facilities should be considered separately even though the application as a whole is rated highly. Facilities are particularly important, for instance, for an early childhood education project or a special education project. In response to the commenter's reference to parent committees, however, it should be pointed out that § 186.8 does not apply to the entitlement grants program authorized by Part A of the Indian Education Act. (The regulations for that program are in 45 CFR Part 186a.).

*Comment.* Paragraph (d) of the proposed regulations designated "local community factors that may prevent the successful operation of the project" among the factors the Secretary may consider in determining whether to award a grant. One commenter stated that the Secretary "should not get involved in local community problems" and recommended that persons involved in the project try to resolve their own difficulties.

*Response.* A change has been made. The provision has been deleted for reasons stated by the commenter.

§ 186.10 *Organizational and administrative documents.* (Proposed § 2 of the Part 186 Appendix)

*Comment.* One commenter recommended that tribally-created organizations or departments of tribes not be required to have or submit articles of incorporation, charters, constitutions, by-laws, etc., and said that it should be enough that an organization was created by a tribe. The commenter recommended that the requirement be waived if it is documented that the organization complies with the intent of those requirements under tribal law.

*Response.* No change has been made. The requirements in § 186.10 are necessary to ensure that a grantee is a legally established entity, that it is fiscally and administratively sound, and that its project can be effectively evaluated and audited. These concerns apply to all grantees, including tribal departments or tribally-created organizations.

§ 186.11 *Continuation awards.* (Proposed §186.6)

*Comment.* Nine commenters supported the authorization of continuation awards for entitlement grants under Part A of the Indian Education Act, although two recommended that those awards be made with some restraints placed on local educational agencies (LEAs) so that the public school systems "would not have so much control." One commenter was concerned that the approval of three-year projects may give an opportunity to many school districts to avoid the consultation process with Indian parents and said that the regulations should require "clear evidence of continuing participation" by the parent committee in the grantee's reports to the Office of Indian Education and in preparing applications for continuation awards when multi-year projects are approved.

*Response.* No change has been made. Section 186a.26 requires a recipient LEA to hold a public hearing before submitting an application for a continuation award. That section also requires that an application for a continuation award be accompanied by written approval of the parent committee. In addition, the requirements for documentation of parent committee involvement in § 186a.25(a), the provisions on parent committee involvement in the section on LEA responsibilities (§ 186a.40), and the section on parent committee responsibilities (§ 186a.41), apply throughout the entire duration of a project. The Secretary feels that these provisions are adequate to ensure full parent committee involvement.

*Parts 186a Through 186d—Indian Education Act, Part A Programs (Proposed Part 186a)*

*General comments*

*Comment.* Two commenters complained that a "double standard" is being applied. They cited the fact that tribal schools are required to document their eligibility and to meet certain standards, and that both tribal schools and Indian-controlled schools must obtain tribal recognition, while stating that LEAs are not required to do so. One of the commenters stated that the regulations in general are "rigid and severe" for the Indian-controlled schools and not for the public schools.

*Response.* No change has been made. No double standard is being applied. All applicants, including LEAs, are required to document their eligibility.

*Comment.* One commenter recommended that the regulations require an LEA to (1) consult with affected tribes if the LEA is located on or near a reservation and, (2) consider tribal education priorities in designing a Part A project.

*Response.* No change has been made. The Secretary believes that the requirements—in the Act and in the regulations—relating to parent committee and public participation in all phases of the project are adequate to ensure that tribal concerns are considered.

*Comment.* One commenter recommended that a provision be added to allow a parent committee or tribal government to subcontract the Part A project from the LEA if the LEA does not wish to administer the project.

*Response.* No change has been made. While an LEA is required to involve parent committee members and other representatives of the Indian community in the operation of its project, a provision authorizing a formal subcontracting arrangement for the entire project would be inconsistent with the Act's requirement that the LEA administer, or supervise the administration of, the activities and services for which it seeks assistance.

However, the use of contracts or other arrangements to provide particular activities would be an appropriate method of carrying out the statutory requirement that the project "utilize the best available talents and resources (including persons from the Indian community)."

*Part 186a—Entitlement Grants—Local Educational Agencies and Tribal Schools (Proposed §§ 186a.11–186a.83)*

*General*

*Comment.* Two commenters recommended that the regulations specify how much space the LEA should give to the project. One commenter recommended that the regulations specify that adequate facilities be provided.

*Response.* No change has been made. There is no reasonable basis for the Secretary to specify the amount of space that must be provided for a project, particularly given the great variety among projects in terms of number and age of students and project activities.

*Comment.* One commenter recommended that the regulations specify that when a project is finished, the supplies, materials, and equipment continue to be used for and by Indian children.

*Response.* No change has been made. The disposition of supplies and equipment acquired with program funds is governed by the provisions of 34 CFR 74.130 through 74.143. Section 74.131 of 34 CFR prohibits the Secretary from imposing additional property requirements on grantees unless specifically required to do so by Federal statute or Executive Order.

§ 186a.2 *Who is eligible to apply?* (Proposed §§ 186a.12 and 186a.82)

*Comment.* One commenter recommended that the minimum enrollment of Indian students, in order for an LEA to be eligible for an entitlement grant, be increased from 10 to 25. Another commenter questioned the fact that LEAs in Alaska, California, and Oklahoma are exempt from the minimum enrollment requirement and recommended that the exemption be dropped.

*Response.* No change has been made. The minimum enrollment requirement, and the exceptions to it, are set out in the Indian Education Act, and may not be changed by regulation.

*Comment.* Two commenters asked for clarification of the term "sanctioned" in the phrase "an organization that is controlled or sanctioned by an Indian tribal government" in paragraph (b), relating to tribal schools.

*Response.* No change has been made. Tribal sanction may occur in various ways. The school or organization may, for example, be established or operated under tribal charter. Alternatively, the tribal government might, by formal resolution, approve the school as being appropriate for the children of that tribe. It is the responsibility of the organization, however, to demonstrate that it is controlled or sanctioned by a tribal government.

*Comment.* One commenter suggested that it is impossible to know whether a tribal school meets standards established by the Bureau of Indian Affairs (BIA) until the BIA publishes those standards. Another stated that "the applicability of BIA education standards clouds the definition criteria."

*Response.* No change has been made. A school that is operated under Pub. L. 93–638 contract with the BIA (known as a "contract school") qualifies for support under this program. The Act also authorizes support for other schools if they meet standards established by the BIA under Section 1121 of Pub. L. 95–561, the Education Amendments of 1978. The BIA has not yet published those standards in final form. Until it does, the only tribal schools that can qualify for support under the entitlement grants program will be contract schools.

*Comment.* One commenter said that tribes have the authority to waive the BIA educational standards and asked how a school's eligibility under the

program will be judged if those standards are waived. The commenter suggested adding the following language: "However, any such appropriate waiver of standards per Section 1121 shall not be used to judge an applicant as not meeting such standards, or used to disqualify such an organization's application."

Another commenter recommended adding the following: "that schools be eligible if they are meeting standards of the tribal government."

*Response.* No change has been made. Section 1146 of Pub. L. 95–561, which authorizes awards for tribal schools, clearly provides that to qualify for support, a school must meet the standards established under Section 1121 or be operated under a Pub. L. 93–638 contract. No waiver provision is included.

§ 186a.3(b) *Applicability of this part to local educational agencies and tribal schools.* (Proposed § 186a.83)

*Comment.* One commenter recommended that the regulations more clearly specify that tribal school applicants and grantees under the Entitlement Grants program need not have parent committees.

*Response.* No change has been made. Applicants and grantees under this program are not required to have parent committees. Section 186a.3(b) clearly states that the parent committee provisions in the program regulations do not apply to tribal schools.

§ 186a.5 *Maintenance of effort.* (Proposed § 186a.43)

*Comment.* One commenter recommended that this entire section be deleted.

*Response.* No change has been made. This requirement is contained in the Act and is set out here for the convenience of readers.

§ 186a.6 *Prohibition on supplanting other funds.* (Proposed § 186a.21, *Use of funds—General)*

*Comment.* Three commenters recommended that the "supplement, not supplant" requirement be clarified.

*Response.* No change has been made. Because of the tremendous variety and complexity of factual situations, it is difficult to establish generally applicable standards for supplanting. Moreover, the Secretary is reluctant to promulgate supplanting standards by regulation unless the public has had an opportunity to comment on those standards. The Secretary will continue to explore various alternatives, including regulations subject to public comment, to provide further guidance on the "supplement, not supplant" requirement.

*Comment.* One commenter recommended that the use of project funds for a remedial program be considered a violation of the supplanting requirement unless the program involves culturally-based materials and techniques.

*Response.* No change has been made. It would not be accurate to state that the use of project funds for remedial activities would, in all cases, violate the "supplement, not supplant" requirement.

§ 186a.10 *Authorized activities.* (Proposed 186g.22, *Use of funds-authorized activities*)

*Comment.* One commenter pointed out that the proposed regulations allow for planning grants and said that in the past grantees have been told that planning grants can be made only to applicants who have not previously received an entitlement grant. If this is the case, the commenter recommended that the regulations include a statement to that effect.

*Response.* No change has been made. Any applicant, including a prior grantee, may use grant funds to plan a project designed to meet the special educational or culturally related academic needs, or both, of Indian children. However, an applicant that wishes to use funds for planning must include in its application additional supporting material. The required material is described in § 186a.25(a)(14).

*Comment.* One commenter recommended that § 186.18 (a) and (b) from the previous regulations be added. Those provisions contained lists of activities and services, the need for which had to be considered when an applicant conducted a needs assessment. The commenter regarded the lists as a statement of authorized activities.

*Response.* No change has been made. The substance of those provisions was, for the most part, incorporated into § 186a.22 of the proposed regulations and is retained in § 186a.10 of the final regulations.

*Comment.* One commenter recommended that in-service staff training be added as an authorized activity.

*Response.* No change has been made. In-service staff training is authorized if necessary to meet the special educational and culturally related academic needs, or both, of Indian children. However, since the list of authorized activities is not all-inclusive and since the Secretary does not wish to emphasize in-service training, it is not expressly included in the list of examples of authorized activities.

*Comment.* One commenter recommended that "projects to enhance and encourage educational opportunities for women and girls" be added as an authorized activity.

*Response.* No change has been made. While those types of projects are certainly permissible under this program, adopting the recommendation would mean singling out part of the eligible population for services. Projects must be designed to meet locally identified needs. If the local needs assessment shows that Indian girls are more in need of authorized services than are Indian boys, the project may be designed accordingly.

*Comment.* One commenter recommended that example (a) in § 186a.22 of the proposed regulations ("Comparative cultural studies projects with emphasis on the contribution of the Indian") be deleted as an authorized activity.

*Response.* A change has been made. The example has been deleted because the Secretary believes that it could be misinterpreted to authorize projects emphasizing instruction in Indian culture and heritage for non-Indian students. The remaining examples have been redesignated accordingly.

*Comment.* Three commenters recommended deleting paragraph (h) of proposed § 186a.22 (redesignated as § 186a.10(a)(7) of the final regulations) which authorized the use of funds for "educationally related items that parents cannot afford * * * provided that the parent committee and the LEA establish eligibility criteria based on financial need." The reasons given were the difficulty in establishing guidelines to determine financial need, the potential for abuse in determining what is "educationally related", and possible duplication with social service programs.

*Response.* Several changes have been made. The list of items covered by this provision has been divided into two categories: items that are school-related, such as expenses for extracurricular activities, and items such as food, clothing, and medical and dental care. The latter category will be permitted only in cases of extreme hardship. In addition, this paragraph has been revised to provide that the listed items may be provided only to those children who meet the guidelines for financial need established by the LEA and the parent committee and only when they are not available from other sources.

However, the provision authorizing the use of grant funds for these items is retained because program experience

has demonstrated a real need for permitting these types of expenses. While it may be difficult to establish eligibility criteria based on financial need, the Secretary believes that where LEAs and parent committees believe it appropriate to do so, those expenses should be permitted in cases where those items or services are unavailable from any other source. LEAs and parent committees that do not wish to allow payment of those expenses or that are unable to establish eligibility criteria are not required to do so.

*Comment.* One commenter recommended that the parenthetical phrase "(including instructional materials)" be inserted in paragraph (a)(7) to clarify that academic expenses include such items as workbooks and supplementary reading materials.

*Response.* No change has been made. The suggested provision is not added because it is normally the responsibility of the LEA to provide those materials. Moreover, if instructional materials are necessary to carry out the project, they may be obtained with project funds for the use of all students participating in the project rather than just for those whose parents cannot afford them.

*Comment.* One commenter recommended that the regulations contain a definition or base line indicator of "financial need" as that term is used in paragraph (a)(7).

*Response.* No change has been made. The Secretary believes that a determination of financial need standards is appropriately left to local decision-making.

*Comment.* One commenter recommended that paragraph (a)(7) be amended to read: "Educationally related items that parents and/or guardians cannot afford."

*Response.* No change has been made. The suggested revision is not necessary, because the term "parent" is defined in § 186.4(b) to include a legal guardian.

§ 186a.20 *Selecting the parent committee.* (Proposed § 186a.13)

*Comment.* Two commenters recommended that adults other than parents, such as business and community leaders, be allowed to serve on the parent committee. One commenter suggested calling the committee the "community advisory committee."

*Response.* No change has been made. The Indian Education Act authorizes only parents, teachers, and, in most cases, secondary school students, to serve as members of the committee. Therefore, the commenters' recommendation on committee membership cannot be implemented. It should be noted, however, that in addition to the requirements relating to the parent committee, the Act requires that an application from an LEA must (a) show that the project will use the "best available talents and resources (including persons from the Indian community)" and (b) establish procedures to ensure that the program will be "operated and evaluated in consultation with, and (with) the involvement of * * * representatives of the area to be served." The Secretary encourages both LEAs and parent committees to involve business and community leaders in Part A projects.

*Comment.* Two commenters recommended that, because of the extended family concept and the respect that Indian people have for their elders, grandparents be eligible to vote for and serve on parent committees as a standard practice, rather than only when acting *"in loco parentis"* (in place of the parent).

*Response.* No change has been made. Under the Act, membership on the parent committee is limited to parents (including grandparents and others acting *in loco parentis*), teachers, and, in most cases, secondary school students.

*Comment.* One commenter recommended that the regulations require inclusion of both mothers and fathers as members of the parent committee.

*Response.* No change has been made. Both mothers and fathers are eligible to be members of the parent committee. There is, however, no reason to require that any particular individuals actually serve on the committee.

*Comment.* One commenter recommended that the regulations stipulate that at least half the committee members be Indian, because it would otherwise be possible for non-Indian foster parents and teachers to constitute a majority of the committee.

*Response.* A change has been made to incorporate the recommended provision. See § 186a.20(c).

*Comment.* One commenter felt that the regulations should stipulate the maximum and minimum number of parent committee members. The commenter suggested retaining the provision in § 186.16(d) of the previous Part A regulations. That provision limited committee membership to a maximum of 40 persons.

*Response.* No change has been made. The Secretary believes that local situations vary so widely that each community should determine the committee size that best fits its situation.

*Comment.* Two commenters recommended that the regulations specify that parent committee members are to be "elected" rather than "selected." Another commenter recommended that a request to select rather than elect be submitted separately from the proposal.

*Response.* No change has been made with respect to the use of the term "selection." The word "selection" is used to be consistent with the language of the Act and because election is not the only authorized method of selecting parent committee members. However, § 186a.20(e) specifies that the method of selecting members shall be by election unless the Secretary, in deference to tribal custom, determines that some other method, such as sanction by a tribal government, is appropriate in a particular situation.

In those cases, the LEA must submit a written request to use the method that is in accordance with tribal custom. The regulations have been revised to make it clear that this request and the Secretary's action on it occur before the selection of committee members.

*Comment.* One commenter recommended that the Secretary consult with the appropriate tribal government in determining whether a parent committee is to be elected or is to be selected by some other method, in deference to tribal custom, as is authorized under § 186a.20(e).

*Response.* A change has been made. The regulations provide that if an applicant requests to use some method other than election in selecting parent committee members, the Secretary consults with appropriate tribal representatives in deciding whether to allow the use of that other method.

*Comment.* One commenter recommended that the provision prohibiting individuals from the same immediate family from serving simultaneously on the parent committee and the project staff, contained in § 186a.42 (*Limitations on hiring project staff*) (proposed § 186a.53), be included in this section as well.

*Response.* A change has been made to reflect the comment. Section 186a.20(i) has been added to summarize and refer to § 186a.42.

*Comment.* One commenter recommended that teachers (1) not be allowed to vote for parent committee members, and (2) serve on the committee only *ex officio*, in an advisory capacity.

*Response.* No change has been made. The Indian Education Act expressly authorizes teachers both to serve on and participate in the selection of the parent committee. However, § 186a.20(b)(2) has been revised to provide that teachers who are on the project staff may not

serve on the committee, although they may participate in the selection of the committee. This provision is necessary to avoid conflicts of interest.

*Comment.* One commenter requested clarification of who may vote for which candidates in selecting the parent committee.

*Response.* No change has been made. Rules of this nature are left to each community to establish or not, as it prefers.

*Comment.* One commenter recommended that school administrators, such as principals and counselors, be allowed to serve as members of the parent committee.

*Response.* No change has been made with respect to school administrators. The Act limits membership on the committee to parents, teachers, and secondary school students. Moreover, it would be inappropriate for school administrators, who represent the LEA and who are responsible for the administration of the project, to serve on the committee that advises the LEA about the project and that must approve the project application.

It has been the practice under this program to regard certified guidance counselors as teachers for purposes of parent committee membership. To make it clear that this practice will continue, certified guidance counselors are expressly included as teachers under § 186a.20(b)(2).

*Comment.* One commenter recommended that teachers be eligible to select and serve on the parent committee only if they teach Indian children.

*Response.* No change has been made. The Act does not limit the eligibility of teachers to those who actually have Indian children in their classes.

*Comment.* One commenter recommended that the provision concerning Indian secondary school students be changed so that they would be eligible for parent committee selection and membership only if "counted and served."

*Response.* No change has been made. The requirement that the student be "counted" would serve no purpose and would not, as a practical matter, make any real difference. Since the amount of money an LEA receives is directly related to the number of Indian students enrolled in its schools, it is most unlikely that an Indian student wishing to serve on the committee would not be included in the LEA's Indian enrollment count.

The requirement that a student be served has also not been adopted, since it would unduly restrict student eligibility. Moreover, since a grantee is not required to serve all eligible students, it is not known, when the committee members are chosen, which students will be served by the project.

*Comment.* One commenter recommended that it not be mandatory to have a student member of the parent committee because "students become bored with the business meetings and drop out."

*Response.* No change has been made. If there is a problem with students becoming bored, the parent committee members should consult with secondary school students to determine a solution. One possible solution, for example, would be to have students serve shorter terms than non-student members. In any event, this seems to be a problem best handled at the local level.

*Comment.* One commenter recommended that at least two-thirds of the committee members, rather than at least half, be parents.

*Response.* No change has been made. The regulations are consistent with the Indian Education Act, which requires that at least half the committee members be parents.

*Comment.* One commenter recommended changing the language in § 186a.20(f) (Proposed § 186a.13(e)) to read "a member of the committee may also serve as an officer." The provision in the proposed regulations read, "a member of the committee is eligible to serve in any capacity as an officer of the committee."

*Response.* A change has been made. The language of paragraph (f) has been clarified.

*Comment.* Three commenters expressed concern that § 186a.20(f) (Proposed § 186a.13(e)), would allow a secondary school student to be elected committee chairperson and thus be in a position to sign project applications, amendments, and other documents on behalf of the committee, even though the student may be a minor under applicable State law.

*Response.* No change has been made. The Secretary does not object to minors serving as parent committee chairpersons, nor does the Secretary anticipate that their doing so will create any legal difficulties, since a chairperson may act only as a representative of the committee and not in his or her capacity as an individual.

*Comment.* One commenter approved of the provision allowing multi-year and staggered membership terms because it would, in his opinion, ensure that there will be experienced committee members at all times. This commenter, a parent committee member, stated that it takes approximately one year to train a parent committee member. Another commenter recommended that multi-year membership terms be permitted only when the project is multi-year.

*Response.* No change has been made. The use of multi-year and staggered membership terms is optional, not required. The Secretary believes that a determination of whether either or both will be used by applicants that apply for one-year projects should be left to each applicant.

*Comment.* One commenter suggested that the provision in paragraph (h) be reworded to include a requirement that an individual may continue as a member of the committee only if he or she meets any other requirements established in parent committee by-laws in addition to meeting the requirements contained in § 186a.20(b) (Proposed § 186a.13(b)).

*Response.* No change has been made. The parent committee by-laws may include provisions on continuing eligibility for membership, so long as they do not conflict with the provisions of the Act and the regulations.

§ 186a.21 *Conducting a needs assessment.*

*Comment.* One commenter recommended that systematic discussions with Indian students and their parents be encouraged as a valid needs assessment method.

*Response.* No change has been made. The Secretary agrees that those discussions can be an important part of any needs assessment. However, since the regulations require the parent committee to be involved in all phases of project development, including the needs assessment, a separate provision, such as that suggested by the commenter, is not necessary.

*Comment.* Three commenters objected to the recommended use of standardized test scores to determine needs. They stated that standardized tests are culturally biased.

*Response.* No change has been made. The Secretary is sympathetic to the problem of cultural bias in tests. Standardized test scores, however, are offered only as an example of a type of measure that can be used in a needs assessment. If, for example, Indian students score consistently below grade level on standardized tests that measure English reading ability, those scores would be useful in determining the educational needs of those students.

*Comment.* One commenter recommended that the applicant be required to develop a survey instrument for the needs assessment.

*Response.* No change has been made. While a formal survey instrument would be a valuable tool in conducting a needs assessment, particularly for a large LEA, it is not absolutely necessary, and it

would be unduly burdensome to many prospective applicants. The applicant is required, however, to describe in its application how the needs assessment was carried out. (See § 186a.25(a)(4).)

*Comment.* Three commenters recommended that parental involvement in the needs assessment be mandatory. Suggestions included the following: Requiring the applicant to secure written parent committee approval of the needs assessment tool; Requiring the LEA to give the parent committee the results of the needs assessment so that the committee could determine the final order of priority; and Requiring the LEA to design a program in keeping with the needs assessment and the priorities of the Indian community, with the final approval of the parent committee.

*Response.* No change has been made. Parent committee involvement is required throughout the regulations. Section 186a.40(b) states that the LEA must "(c)onsult with and involve the parent committee in all phases of the project." The needs assessment is clearly one of those phases. Section 186a.41(b) provides that the parent committee must "[p]articipate in the assessment of needs," as well as in the design, operation and evaluation of the project. In addition, § 186a.25(a)(4) requires the LEA to include, in its application, a description of the role played by the parent committee in the needs assessment. Finally, if the parent committtee does not agree with the design of a project, it may decline to approve the project application.

In sum, parental involvement in the needs assessment is provided for by the requirements relating to parent committee involvement at all times.

§ 186a.22 *Designing a project.* (proposed § 186a.32(a)–(c))

*Comment.* One commenter recommended that the requirements for project design include an assurance that support materials for the project will be "sex fair" or compensate for sex-biased materials already in use.

*Response.* No change has been made. A provision to this effect was included in the proposed Education Division General Administrative Regulations (EDGAR) but deleted from the final version to enable the Department to more fully study the consequences of such a requirement. (See 45 FR 22563, April 3, 1980.)

*Comment.* One commenter felt that paragraph (c) requires the applicant to develop too many plans and suggested that the requirement is "contrary to the intent to diminish reliance on professional proposal writers and to facilitate community education."

*Response.* No change has been made. While the Secretary is sympathetic to concerns related to the preparation of applications, the material required by this section is vital to the success of a project. The term "plan", however, does not refer to an elaborate and overly-detailed document. It refers, rather, to a distinct set of provisions relating to a particular topic, such as project administration.

§ 186a.23 *Developing an evaluation plan.* (Proposed § 186a.32 (d), (e))

*Comment.* One commenter stated that the evaluation procedures listed in paragraph (a) (proposed § 186a.32(d)) require far more controls than can be realistically implemented on a reservation. The commenter felt that this provision "reflects a university-based bureaucratic orientation" and specifically recommended that paragraph (a)(3)—the requirement for including an evaluation of the project's administration—be deleted.

Another commenter requested an explanation of paragraph (a)(3), relating to the evaluation of the project administration, and paragraph (a)(4), relating to the involvement of the parent committee in monitoring and evaluation activities.

*Response.* No change has been made. The requirement in paragraph (a)(3) for an evaluation of the administration of the project is not, as may have been feared by commenters, a requirement to evaluate the administrators of the project. That, it is assumed, is done as a matter of course under the applicant's personnel policies. Rather, the requirement refers to the need for monitoring and assessing the way in which the project is administered. This evaluation should look at such things as adherence to time lines, distribution of workload, and fiscal accountability. Sound administrative policies and practices are factors that enhance any educational program, and the LEA and the parent committee, as well as the Secretary, will benefit from an assessment of how those policies and practices contribute to the success of a project.

Paragraph (a)(4), which requires the project design to include provisions for the involvement of the parent committee in monitoring and evaluation activities, is just one of many provisions designed to implement the statutory requirement that the parent committee be involved in all phases of an LEA's project. The degree or nature of that involvement should be locally determined through negotiations between the LEA and the parent committee.

*Comment.* Three commenters expressed approval of the requirement in paragraph (b) (proposed § 186a.32(e)) for an independent evaluator but recommended that the regulations make provision for hiring an Indian evaluator or giving preference to Indians in selecting an evaluator.

*Response.* No change has been made. As described in § 186.5 of the regulations, Section 7(b) of Pub. L. 93–638, the Indian Self-Determination and Education Assistance Act, applies to most grants made under the Indian Education Act. Section 7(b) requires that if an LEA hires a project evaluator or contracts for a project evaluation, the LEA must give a preference to Indians and Indian firms.

*Comment.* Two commenters requested a clarification of what is meant by an "independent" evaluator in proposed § 186a.32(e). Fifteen commenters recommended that the requirement for an independent evaluator be deleted. Their reasons included: The cost of hiring an evaluator when the money could be spent on direct services; the fact that many school districts have full-time evaluation staffs, with access to data from other programs, that can conduct an evaluation at no cost to the project; the possibility that this requirement would take responsibility away from the LEA and the parent committee; the possibility that parents would be removed from the whole evaluation process, with an accompanying decrease in overall parental involvement.

*Response.* Two changes have been made. The Act requires that each project application include provisions for "appropriate objective measurement of educational achievement" and that the effectiveness of the project in meeting the special educational needs of Indian students be evaluated at least annually.

A reliable evaluation is best conducted by an objective party—one who has not been involved with the planning or operation of the project. Therefore, the following changes have been made: The phrase "including an appropriate measurement of educational achievement" has been added to § 186a.23(a)(2) of the final regulations; and the reference to an "independent" evaluator has been changed to an evaluator "independent of the project" in § 186a.23(b).

§ 186a.24 *Holding a public hearing.* (Proposed § 186a.33)

*Comment.* One commenter asked whether the public hearing must be held annually.

*Response.* No change has been made. Under § 186a.24, a public hearing must

be held before a project application is submitted. Under § 186a.26 (*Continuation awards*), a grantee must hold a public hearing before it applies for a continuation award. Therefore, the public hearing must be held annually.

*Comment.* Two commenters were concerned with the problem of providing adequate notice to the public about the hearing. One recommended requiring the applicant to notify parents, by mail, at least five days before the hearing. The other commenter recommended that the applicant be required to follow up the public hearing with a flyer or newsletter to be mailed to the entire community.

*Response.* No change has been made. Experience under other programs administered by the Secretary has shown that specifying, in detail, the requirements for matters such as notice of a public hearing is unnecessarily rigid. Applications that are otherwise approvable would either have to be rejected for failure to comply with a technical requirement or exceptions would have to be allowed that would render the requirement meaningless.

*Comment.* One commenter recommended that the regulations require the hearings to be open to the parent committee, as well as to the general public, because "the parent committee is not the general public and should be specifically mentioned since they serve as the representatives of the Indian community."

*Response.* No change has been made. The term "general public" refers to all people in the community, including members of the parent committee.

*Comment.* One commenter recommended that, because of the lack of facilities and the great distances to be covered on some reservations, public hearings should not be required for the needs assessment and that, rather, hearings could be included in the monitoring process.

*Response.* No change has been made. A public hearing is required by the Act. The public hearing requirement is not for purposes of the needs assessment. It is, however, a requirement that at least one public hearing be held prior to the submission of an application. If an LEA wants to hold public hearings as part of its monitoring process, it may do so. However, those hearings would not satisfy the requirement that a public hearing be held before the application is submitted.

*Comment.* One commenter recommended that the regulations require the applicant to "provide at least 10 days for review of the proposed project with allowances made for the inclusion of alternatives to it."

*Response.* No change has been made. For the reasons set out in response to an earlier comment on this section . recommending a minimum time period for notice of a public hearing, the Secretary believes that the proposed provision would be unduly rigid. Applicants are encouraged, however, to provide as much information as possible about the project to the public before the public hearing.

§ 186a.25 *Application contents.* (Proposed Appendix to Part 186a)

Paragraph (a)—LEA's.

*Comment.* One commenter recommended that an LEA be required to give assurances that its responsibilities have been carried out—in particular that it has considered parent committee recommendations.

*Response.* No change has been made. Section 100a.110 of EDGAR requires an applicant to include in its application an assurance that it will comply with applicable requirements. Paragraphs (a)(1) through (a)(4) and paragraph (a)(12) of this section require the applicant to include in its application detailed information concerning parent committee involvement. These requirements are more rigorous than a requirement for a simple assurance. Consequently, the particular assurance suggested by the commenter has not been added.

Paragraph (b)—Tribal schools.

*Comment.* One commenter recommended that a contract school under Pub. L. 93–638 be required to submit only its budget, not its entire contract, since the entire contract is normally very detailed and lengthy.

*Response.* A change has been made. The commenter's recommendation has been adopted. See § 186a.25(b)(2).

§ 186a.26 *Continuation awards.*

*Comment.* One commenter recommended that an applicant for a continuation award be required to include in its application a "plan for significant improvement of the LEA's basic educational services for Indian students over a two or three-year period."

*Response.* No change has been made. Although the Indian community has a legitimate interest in the continued improvement of basic educational services to Indian children, it is beyond the scope of the statute and these regulations to require that an application include this type of plan. However, this section does require that, at the public hearing held before the continuation application is submitted, the public be given an opportunity to discuss fully the adequacy of other activities and services provided by the district and the relationship of the project to those other services and activities. See § 186a.26(a).

*Comment.* One commenter recommended that during the public hearing the LEA discuss what steps it will take to avoid supplanting other funds with Part A funds.

*Response.* A change has been made. The subject of supplanting has been added as a topic of discussion at public hearings under § 186a.24 *(Holding a public hearing)* and § 186a.26 (*Continuation awards*).

§ 186a.30 *Approval of applications by the Secretary.* (Proposed § 186a.41)

*Comment.* Three commenters objected to this section. Two felt that a negotiation period should be specified or a time limit given to provide the applicant the opportunity to correct a deficiency in its application. One of these commenters pointed out that this should be done regardless of the provision in EDGAR that requires a complete application to be submitted by the deadline date.

*Response.* A change has been made. A new paragraph (b) provides that if an application submitted by the deadline date for applications proposes unauthorized activities, or proposes costs that are not reasonable and necessary, the Secretary may provide the applicant an appropriate opportunity to amend its application and may specify a date by which the applicant shall amend its application. If the applicant has not corrected its application by that date, the Secretary may disapprove the application.

*Comment.* One commenter recommended a provision stating that applications will be approved if they "meet the special educational and culturally related academic needs of Indian children" instead of the provision requiring approval only when the educational opportunities of Indian children would be "substantially increased" by the project.

*Response.* No change has been made. The language referred to by the commenter is taken directly from Part A of the Indian Education Act. See Section 305(b)(2)(A) of Pub. L. 81–874, 20 U.S.C. 241dd(b)(2)(A).

§ 186a.31 *Amount of grant.* (Proposed § 186a.42)

*Comment.* One commenter recommended that the formula for determining the amount of an entitlement grant be set out in the regulations.

*Response.* A change has been made. The formula has been summarized in the regulations. However, for the exact language of the formula, interested persons should refer to the statute.

*Comment.* One commenter recommended that the formula take into account local ability to support schools as indicated by such factors as per capita income, local tax structures, and other local resources.

Another commenter said that the formula should take into account the average national per pupil expenditure, rather than the average State per pupil expenditure.

*Response.* No change has been made. The formula is set out in the Act. The commenters' recommendations cannot be implemented without statutory amendment.

§ 186a.40 *Responsibilities of the local educational agency.* (Proposed § 186a.51)

§ 186a.41 *Responsibilities of the parent committee.* (Proposed § 186a.52)

Note.—These two sections contain several parallel provisions. Therefore, many comments apply to both sections. Accordingly, a joint summary of the comments and responses for these two sections follows, with an indication of the provision to which the comment applies.

*Comment.* Two commenters asked for further clarification and detail. One felt that the regulations leave too much to local interpretation with respect to the level of parent committee involvement and participation. Another asked for more detail so that parent committees will not merely be "rubber stamping" LEA decisions.

One commenter approved of the inclusion of the two sections and said that specifications of the roles and responsibilities will lead to "better service delivery."

One commenter suggested that the provisions on LEA responsibilities be refined so that on the one hand, no control is taken away from the parent commitee while, on the other hand, the possibility of the LEA refusing to participate in the program is kept to a minimum. The commenter stated that if the provisions on LEA responsibilities "are strictly implemented . . ., certain LEAs may prefer to drop the Title IV project completely." However, the same commenter recommended that responsibility for providing training for parent committee members be added to the list of LEA responsibilities.

One commenter recommended that funds spent for program evaluations could better be spent for training of and technical assistance to parent committees.

*Response.* No change has been made in response to these comments. The provisions in these two sections are designed to make the respective responsibilities clear to all parties. The specific methods by which these responsibilities are carried out should be worked out cooperatively between the LEA and the parent committee.

As for the concern that control might have been taken away from parent committees while putting too many responsibilities on the LEA, the Secretary does not intend these regulations to reduce the rights and responsibilities or parent committees, nor have LEAs been given any more responsibilities than they previously had under prior program practice. Rather, the various responsibilities are being fully stated in regulations for the first time. In addition, no LEA commented negatively about the inclusion of specified LEA responsibilities.

With respect to the training of parent committee members, § 186a.40 (g) and (h) require the LEA to provide the committee with documents pertaining to the project and to prepare the committee members to carry out their responsibilities by, for example, holding workshops on applicable regulations.

*Comment.* One commenter recommended that the provision concerning salaries and wages (§ 186.9) be repeated here "so that LEAs know they should be paying comparable wages and salaries for people in the Title IV programs."

*Response.* No change has been made. The provision on comparable salaries and wages is applicable to LEAs that are administering Part A projects.

*Comment.* One commenter recommended that a section be added requiring the LEA to commit itself to incorporate programs developed under the Indian Education Act into the regular curriculum "rather then continuing to rely on assistance under the Act to perpetuate the program."

*Response.* No change has been made. Such a requirement has no statutory basis. In addition, it would unduly involve the Federal Government in matters of local curriculum; would, therefore, be of doubtful legality under Section 432 of the General Education Provisions Act ("Prohibition Against Federal Control of Education," 20 U.S.C. 1232a), and would discourage many eligible LEAs participating in the program.

§ 186a.40(a) *(Parent committee selection)*

*Comment.* One commenter recommended that the word "elected" be substituted for the word "selected" with respect to the method of choosing the parent committee.

*Response.* No change has been made. This issue has been addressed in the response to a similar comment on § 186a.20 *(Selecting the parent committee)*

§§ 186a.40(b) and 186a.41(b) *(Parent committee involvement)*

*Comment.* One commenter recommended that, in addition to consulting with the parent committee, the LEA should be required to obtain the approval of the parent committee with respect to all phases of the project.

Another commenter recommended that paragraph (b) of § 186a.41 be spelled out in more detail in order to give the parent committee maximum responsibility in the assessment of needs and in the design, operation, and evaluation of the project.

*Response.* No change has been made. Section 186a.40(b) makes it clear that the LEA must not only consult with but also involve the parent committee in all phases of the project. Section 186a.41(b) also makes clear that the parent committee participates in each phase of the project. In addition, §§ 186a.40(f) and 186a.41(c) make it clear that the parent committee must review and approve in writing the application and any amendments to it. A requirement for parent committee approval on all administrative and programmatic details would be unworkable.

§§ 186a.40(f) and 186a.41(c) *(Parent committee approval)*

*Comment.* One commenter recommended that there be a requirement for the parent committee to review and approve in writing modifications of the scope of work or budget in addition to the items listed in these provisions.

*Response.* A change has been made. The commenter's recommendation has been incorporated into both sections.

§§ 186a.40 (i), (j) and 186a.41 (d), (e) *(Project staff)*

*Comment.* One commenter said that the inclusion of a provision for the parent committee to participate in the selection of personnel is a "positive step." Two commenters asked for more detail on the authority of the parent committee in this process.

*Response.* A change has been made. These provisions have been revised to make it clear that the parent committee is to be involved in developing the policies and procedures relating to the hiring of project staff. As in other phases of the administration of a project subject to these regulations, the method of

involvement and other details are left to local agreement between the LEA and the parent committee.

*Comment.* One commenter recommended that the regulations explain that one of the duties of the LEA is to work with the parent committee in the hiring of project personnel.

*Response.* No change has been made. Sections 186a.40 (i) and (j) and 186a.41 (d) and (e) make this responsibility clear.

*Comment.* Two commenters recommended that the regulations specify what recourse there is for the parent committee if its recommendations for hiring project staff are not followed. One suggested requiring proof from the LEA that the applicant recommended by the parent committee is not qualified.

Another commenter recommended that § 186a.40(j) be revised to provide that it is the responsibility of the LEA to hire the project staff "based on the recommendations" instead of "after considering any recommendations" of the parent committee.

*Response.* No change has been made. It is the responsibility of the LEA as the grantee and actual employer to hire the project staff. It is also the responsibility of the LEA to develop procedures that will involve the parent committee in this phase of the project. However, to require that the staff be hired *based* on parent committee recommendations would interfere with the LEA's prerogative as employer and could lead to deadlocks and delay in hiring project staff.

It is expected, however, that the LEA will seriously consider all parent committee recommendations, offer reasonable explanations if it does not follow those recommendations, and, in general, act in concert with the committee when hiring the project staff.

*Comment.* One commenter recommended that the parent committee be involved with firing, as well as hiring, the project staff.

Another commenter said that sometimes parent committees "are tempted to usurp administrative functions and fire project personnel." The commenter proposed that §§ 186a.40(j) and 186a.41(e) be amended to read, respectively:

The LEA: "Hires the project staff after considering any recommendations of the parent committee and fulfills other personnel functions including training, transfer, and termination in accordance with local policies."

The parent committee: "Recommends a review and evaluation of project staff performance. Such personnel action to be conducted by the administration in accordance with the LEA personnel policies and procedures."

*Response.* No change has been made. The parent committee has no authority to fire project staff, just as it has no authority to hire project staff.

§ 186a.40(l) *(Project evaluation)*

*Comment.* One commenter pointed out that this paragraph refers only to the LEA's responsibility to monitor and evaluate the project and says nothing about a similar role for the parent committee. Another commenter recommended that the regulations require that the Indian community evaluate and monitor the project three times a year.

*Response.* No change has been made. Section 186a.40(b) requires the LEA to involve the parent committee in all phases of the project. This includes monitoring and evaluation. Section 186a.41(b) also requires the parent committee to participate in the evaluation of the project.

Since the parent committee is representative of the Indian community, a separate provision relating to monitoring and evaluation by the Indian community is not needed.

§ 186a.40(m) *(Project records)*

*Comment.* Three commenters recommended that the LEA be required to provide the parent committee with project budget and financial reports and analyses. One commenter said that this should be done to ensure that grant funds are being used to supplement the level of funds available to the community. Another commenter emphasized that the financial records should be spelled out in laymen's terms instead of "confusing" computer printouts. The third commenter recommended that the LEA submit monthly financial reports to the parent committee.

*Response.* A change has been made. Section 186a.40(m) has been amended to include references to financial records. Logistical details, such as the frequency with which these records are made available and the form in which they are prepared, are matters best left to the LEA and the parent committee to work out at the local level.

§ 186a.40(n) *(Student eligibility forms)*

*Comment.* One commenter recommended that there be clarification of who is in charge of the student eligibility forms and asked if the forms may be made available to the parent committee.

Another commenter asked what kinds of records are kept that describe an Indian child's eligibility and asked who has access to this information.

*Response.* No change has been made. The LEA is responsible for collecting and keeping on file an eligibility form (known from its Department of Education document number as a "506 Form") for each student included in its Indian enrollment count. An individual form, however, and the information on that form, is protected by law and may be shared with the parent committee only if the child's parents give written permission. A space for that permission is provided on the form.

§ 186a.42 *Limitations on hiring project staff.* (Proposed § 186a.53)

*Comment.* One commenter expressed concern that Indian preference is not mentioned in this section.

*Response.* No change has been made. The requirement for Indian preference in hiring project staff is described in § 186.5.

*Comment.* Four commenters requested a definition of "immediate family" as used in paragraph (a)(2).

*Response.* A change has been made. The term "immediate family" is defined in paragraph (e) to include an individual's spouse, children, parents, brothers, sisters, legal dependents, and spouses of those persons.

*Comment.* One commenter recommended that a provision be added to this section requiring the applicant to secure a waiver from the Secretary in order to hire anyone for the project staff who is not specifically recommended by the parent committee.

*Response.* No change has been made. Comments regarding parent committee involvement in hiring project staff have been summarized and responded to under §§ 186a.40 and 186a.41.

*Comment.* Six commenters objected to the entire section, making the following points:

1. A prohibition on hiring a member of the immediate family of a parent committee member would hamper some projects, since in some areas there are one or two families that are more talented or more culturally knowledgeable than others. This commenter said that the provision is acceptable as long as there are relatively easy ways to obtain a waiver, such as approval at an agency level below the Secretary.

2. The presumed purpose of this provision (avoiding conflict of interest situations) could be fulfilled by requiring parent committee by-laws to state that committee members cannot vote on issues relating to relatives who are on the project staff.

3. The provision would be unfair to employees and parent committee members hired or elected before the publication of the regulations and should not be retroactive.

4. An entire family unit would be denied an effective voice simply because one of its members is a staff member, even though that family might have children in school.

*Response.* A change has been made. The purpose of this section is to prevent a situation in which members of the same family are simultaneously serving on the project staff and on the parent committee, because of the conflict of interest inherent in such a situation. The section has been amended, consistent with this purpose, by adding a paragraph (d). Under the new provision, a member of the parent committee may not take part in a review of applicants for a project staff position or in any other committee actions relating to that position if that individual or any member of his or her immediate family is an applicant for that position.

If the family member is offered the position, either: (a) he or she can decline to accept it and the parent committee member would remain a fully participating member of the committee, or (b) he or she could accept the position and the parent committee member would resign from the committee.

In response to the specific points made by the commenters:

1. There is a provision for obtaining waivers, although they will not be readily granted.

2. Many of the matters considered by the parent committee, not just review of prospective staff, affect the project staff directly or indirectly—from the needs assessement and project design through project operation evaluation. A member who must abstain continually from participating in committee business is likely to be a less valuable member than one who is free to participate fully in all parent committee activities.

3. The provision applies to all situations, including an employment relationship created before the effective date of these regulations. However, a waiver of the prohibition, available under § 186a.42(b), might be particularly appropriate in such a situation.

4. A family, one of whose members is on the project staff, is significantly represented by that staff member. In addition, nothing prevents a person from being involved in school affairs or from expressing his or her views on the project as a member of the community.

*Other changes.* A new paragraph (c) has been added (with other paragraphs redesignated accordingly) to clarify the consequences of a waiver. This new provision states that when a waiver is granted, the affected member of the parent committee may not participate in any commmittee action that is likely to affect the financial interests of that individual's immediate family member who is on the project staff.

Paragraphs (a) and (b) have been revised to make it clear that the Secretary will not waive the prohibition on simultaneously serving on the project staff and as a member of the parent committee.

*Part 186b—Indian-Controlled Schools—Establishment (Proposed §§ 186a.101–186a.121)*

§ 186b.2 *Who is eligible to apply?* (Proposed § 186a.102)

*Comment.* One commenter requested a definition of the phrase "[m]aintain regular economic, cultural, and family ties" as used in paragraph (b)(2).

*Response.* No change has been made. Because the permissible range of factual situations is quite broad, and because the provision on the maintenance of "regular economic, cultural, and family ties" is new to these regulations, the Secretary believes it advisable to maintain a flexible approach and not to define the quoted phrase in the regulations until there has been some program experience with it.

*Comment.* One commenter expressed concern that the provision in § 186c.2(c) (eligibility for enrichment projects) (Proposed § 186a.132(a)(3)) requiring the governing body to exercise operational control over the school was not included in this section of the proposed regulations, since the eligible applicants are otherwise identical.

*Response.* A change has been made. The provision from proposed § 186a.132(a)(3) has been inserted in this section.

*Comment.* One commenter recommended that paragraphs (a) and (b) be changed by deleting the reference to reservations and substituting instead the words "federally-recognized tribal entities." Another commenter suggested that the words "trust land" be used. These commenters were both concerned that the requirement for an Indian-controlled school to be "on or near a reservation" would prevent schools in Oklahoma from qualifying.

*Response.* No change has been made. The statute expressly requires that a school supported by the program be on or near a reservation. Proximity to trust lands or connection with a federally-recognized tribe is not sufficient.

*Comment.* One commenter recommended that the State of California be considered "on or near a reservation" for purposes of the Indian-Controlled Schools programs.

*Response.* No change has been made. The generally understood meaning of the phrase "on or near a reservation" would not include the entire State of California, nor is there anything in the legislative history of the Indian Education Act to indicate that the phrase was meant to do so.

§ 186b.4 *Limitation on assistance.* (Proposed § 186a.104)

*Comment.* Several individuals and organizations commented on this provision, which limits support for the establishment of an Indian-controlled school to three years: Seven commenters recommended that the provision be deleted; one commenter recommended that the time limit be extended to five years; and one commenter recommended that the time limit be extended to 10 years, "except in instances when no other resources exist to support the continuation of the school."

*Response.* No change has been made. As pointed out in the preamble to the proposed regulations, the Secretary believes that it is unwise to make grants to help create Indian-controlled schools if the continued existence of those schools is dependent on futher funding under this competitive program. The Secretary believes that three years is an adequate amount of time to establish an Indian-controlled school and to obtain funding for basic support from a Pub. L. 93–638 contract or through other means.

*Change.* An example has been added to demonstrate how this section operates.

*Comment.* Several commenters felt that the limitation on basic funding discriminates unfairly against urban Indian schools (often referred to as "survival" or "alternative" schools) since there is little prospect of those schools qualifying for contracts with the Bureau of Indian Affairs or of securing basic support from other sources. One commenter recommended that these schools be treated separately and that the three-year limitation not apply to them.

*Response.* No change has been made. The legislative history behind this program makes it clear that grants are meant to provide seed money, rather than ongoing operational funds. The most comprehensive Congressional report on the Indian Education Act states that the "funds authorized under this section should assist Indian communities in *getting off the ground* with locally controlled schools or school districts" (emphasis supplied), S. Rep. No. 346, 92d Cong., 1st Sess. 99 (1971). In

any event, this section should have very little impact on urban schools, since very few of them are on or near a reservation, and consequently, do not qualify under the Indian-Controlled Schools programs.

These schools are, however, eligible for and have been receiving assistance under Part B of the Indian Education Act. Although programs under that part of the Act are also competitive, with no guarantee of future funding, there is no time limit on assistance under those programs.

§ 186b.10 *Authorized activities.* (Proposed § 186a.103)

*Comment.* One commenter asked for a clarification of what is meant by "establishing" a school and asked if construction monies would be available.

*Response.* No change has been made. "Establishing," as used in this context, means the process of getting a school from the point of planning to the point of having a relatively secure financial base without the necessity of relying on a discretionary program such as this one. Construction is not an allowable expense under the Indian Education Act.

§ 186b.31 *Selection criterion: need for the school.* (Proposed § 186a.112)

*Comment.* One commenter asked for clarification or examples of "other appropriate measures" for determining the educational needs of the Indian children to be served by the school, as that phrase is used in paragraph (b)(1).

*Response.* No change has been made. The three examples provided (academic achievement levels, dropout rates, and standardized test scores) are all permissible measures of the educational needs of the children to be served. The phrase "or other appropriate measures" was added to allow for the use of other reliable measures.

§ 186b.34 *Selection criterion: likelihood of success.* (Proposed § 186a.115)

*Comment.* One commenter objected to this criterion on the ground that it requires the Secretary to resort to "sheer speculation."

Another commenter asked for examples of the type of evidence that would be acceptable. A third commenter recommended that the Secretary consider past projects that the applicant successfully completed.

*Response.* No change has been made. It is true that a judgment as to the likelihood that a prospective grantee will, within three years, have secured other funding sources involves a degree of uncertainty. Given the nature and purpose of this program, however, it is vital that the Secretary consider this factor in selecting grantees.

As for acceptable evidence under this criterion, one indicator, as suggested by one of the commenters, is a past history of successfully completed projects. However, an applicant should note that only if evidence of that history is included in its application can that history be considered under this selection criterion.

Other kinds of evidence could include documentation that the applicant has taken steps toward self-sufficiency by starting negotiations with the BIA for a Pub. L. 93-638 contract or with an SEA to become part of the state's public education system.

*Change.* An example of a factor to be considered, namely, the likelihood that the school will be able to meet accrediting standards established by the BIA or an appropriate SEA, has been added as paragraph (b)(2).

*Comment.* One commenter asked how the Secretary intends to make determinations about the likelihood of success without the input of parent committees and tribes.

*Response.* No change has been made. An applicant is free to include whatever evidence it chooses, including comments of parent committees and tribes.

*Comment.* One commenter took exception to the use of the word "evidence" in paragraph (b) and recommended the use of the term "supporting information" instead.

*Response.* No change has been made. The terms "supporting information" and "evidence" are not substantively different in this context.

*Comment.* One commenter asked why the phrase "without further assistance under this program" is included in this criterion.

*Response.* No change has been made. The phrase "without further assistance under this program" emphasizes the fact that, in accordance with the purpose of the program, a successful project is one that results in the establishment of an Indian-controlled school that is able to obtain basic operating funds from other sources.

§ 186b.35 *Selection criterion: parental and community involvement.* (Proposed § 186a.116)

*Comment.* One commenter said that parental and community involvement in planning, developing, operating, and evaluating a project sounds good in principle but proves unrealistic in practice. The commenter pointed out that both the educational differences and geographic distances between parents and educators are substantial on a reservation and stated that unless the Secretary can provide effective and inexpensive models for community and parental involvement, this criterion should apply only to the evaluation component of the project.

*Response.* No change has been made. While involving parents and other members of the Indian community in all phases of a project may present difficulties in some situations, a project is far more likely to receive community support and, consequently, be successful if there is such involvement.

§ 186b.36 *Selection criterion: budget and cost effectiveness.* (Proposed § 186a.117)

*Comment.* One commenter recommended that the regulations include guidelines and examples of costs that are reasonable in relation to project objectives.

*Response.* No change has been made. Since the permissible objectives and activities involved in authorized projects are numerous, it would not be helpful to include guidelines in these regulations. Detailed provisions relating to allowable costs for all Department of Education grant programs are set out in 34 CFR 74.170 through 74.176 and in the Appendices to Part 74.

*Part 186c—Indian-Controlled Schools—Enrichment Projects (Proposed §§ 186a.131–186a.142)*

§ 186c.2 *Who is eligible to apply?* (Proposed § 186a.132)

*Comment.* One commenter recommended the same change as was recommended for § 186b.2—that the use of the term "reservation" be replaced by "federally recognized tribes or tribal entities" in paragraphs (a) and (b).

*Response.* No change has been made, for the reasons set out in response to the similar comment on § 186c.2.

*Part 186d—Demonstration Projects—Local Educational Agencies (Proposed §§ 186a.201–186a.220)*

§ 186d.10 *Authorized projects.* (Proposed § 186a.201(b))

*Comment.* One commenter recommended that the examples of allowable projects include those that meet the special needs of Indian girls and women.

*Response.* No change has been made. While such projects are certainly permissible under this program, adopting the commenter's recommendation would mean singling out part of the eligible population for services. Projects must be designed to meet locally identified needs. If the applicant determines that Indian girls in its service area are more in need of

services than are Indian boys, then the project may be designed accordingly.

*Comment.* One commenter expressed concern that LEAs, but not Indian tribes and organizations, are eligible to apply for funds under this program, although acknowledging that tribes and Indian organizations can apply for demonstration projects under Part B of the Act. (See 45 CFR Part 186f). The commenter recommended that the regulations require oversight of these projects by Indian organizations, Indian tribes, and Indian institutions.

*Response.* No change has been made. The requirements for parent committee and Indian community involvement are as strong for this program as they are for the LEA entitlement program. Those requirements should be sufficient to ensure that projects are responsive to the needs and wishes of the Indian community.

§ 186d.39 *Reservation of funds for districts with high concentrations of Indian children.* (Proposed § 186a.203)

*Comment.* As proposed, this section allowed the Secretary to reserve up to 25 percent of the demonstration program funds for awards to LEAs with high concentrations of Indian students. "High concentration" was defined as an Indian student enrollment of at least 300 that constitutes at least 80 percent of the total enrollment of the LEA.

Six commenters objected to this definition as being too restrictive. Among the specific comments or recommendations were the following: The definition would not include non-reservation LEAs, either urban or rural; the definition should be changed to include LEAs with at least 300 Indian students or with Indian students who constitute at least 80 percent of the total enrollment, but not to require that both criteria be met; the definition should be changed to include LEAs with at least 300 Indian students, who constitute 51 percent or more of the total enrollment; grants under the demonstration program should be distributed as follows: one-third to urban non-reservation LEAs; one-third to rural non-reservation LEAs; and one-third to reservation LEAs; the minimum number of Indian students should be reduced from 300 to 250, and the minimum Indian percentage of total enrollment should be reduced from 80 percent to 50 percent; and a special provision should be made for the State of California so that LEAs with 300 or more Indian students who constitute five or ten percent of the total would qualify.

*Response.* A change has been made. To increase the number of LEAs who will qualify as "high concentration districts" and to include urban districts, this category has been modified to include LEAs in which the number of Indian students enrolled in the LEA's schools is either 1,000 or more, or constitutes at least 50 percent of the LEA's total enrollment.

It should be kept in mind that all LEAs, whether or not they qualify as "high concentration" districts, are eligible to apply for at least 75 percent of the funds available for LEA demonstration projects.

§ 186d.40 *Annual priorities.* (Proposed § 186a.220)

*Comment.* Three commenters had questions or comments about this section: One recommended that the Secretary select priorities only after consulting with tribal governments; one recommended that the Secretary select priorities only after consulting with the National Advisory Council on Indian Education; and one asked for clarification of how the Secretary would choose priorities and how the provision would affect continuation grants.

*Response.* No change has been made. In determining which, if any, of the priorities listed in § 186d.40 will be chosen for a particular year, the Secretary will consult with the National Advisory Council on Indian Education and other Indian organizations, as appropriate. Notice of the selected priorities, if any, will be published in the **Federal Register**, usually in the application notice. The selection of priorities will affect only new projects and, thus, will not affect continuation awards.

*Parts 186e Through 186l (Proposed Part 186b (Indian Education Act—Part B) and Part 186c (Indian Education Act—Part C))*

**Note.**—The following comment applies to Parts 186e through 186l.

*Comment.* One commenter recommended that, under those programs that provide a priority to applications from Indian tribes, Indian organizations, and Indian institutions, the number of priority points for those applications be increased from 25 to 40. Another commenter recommended that it be increased to 50.

*Response.* No change has been made. Program experience has shown that if a maximum of 100 points is awarded for the quality of an application, an additional 25 points awarded to Indian tribes, Indian organizations, and Indian institutions ensures that those applicants received adequate preference. Consequently, there is no justification for increasing the number of priority points.

*Part 186e—Educational Services for Indian Children (Proposed § 186b.11–186b.23)*

§ 186e.10 *Authorized projects.* (Proposed § 186b.11(b))

*Comment.* One commenter recommended that the list of examples of projects include "those that are designed to stimulate interest in non-stereotyped careers for girls."

*Response.* A change has been made. Projects that overcome sex stereotypes of occupations have been added to the list of examples of permissible projects. (See § 186e.10(a)(10).)

§§ 186e.32–186e.40 *Selection factors.* (Proposed §§ 186b.14–186b.23)

*General*

*Comment.* One commenter recommended that the selection criteria include a reference to sex equity as a factor to be considered in granting points.

*Response.* No change has been made. It is not clear exactly in what context the commenter recommended that sex equity be considered.

§ 186e.39 *Selection criterion: evaluation plan.* (Proposed § 186b.22)

*Comment.* One commenter recommended that, in addition to a plan for periodic assessment of a project's progress, this criterion should also include procedures for modifying project activities based on that assessment.

*Response.* A change has been made. The commenter's recommendation has been adopted. Similar changes have also been made in other criteria in these regulations relating to evaluation plans.

*Part 186f—Planning, Pilot, and Demonstration Projects for Indian Children (Proposed §§ 186b.31–186b.43)*

*General*

*Comment.* One commenter recommended that provision be made for dissemination of the results of these projects, either by requiring that information be submitted to the planned Indian education regional centers or through professional journals, Indian education publications, demonstrations at regional conferences, and similar means.

*Response.* No change has been made. It is expected, however, that grantees will share information about their projects with interested organizations and individuals. It is also expected that the centers will work closely with demonstration project grantees and will

disseminate information about those projects.

§ 186f.40 *Annual priorities.* (Proposed § 186b.43)

*Comment.* Several commenters sought clarification of the procedures by which the Secretary would establish annual priorities, and, more particularly, clarification as to whether Indian tribes and Indian communities would be consulted on the priorities. One commenter recommended that the Secretary consult with the National Advisory Council on Indian Education before establishing priorities.

*Response.* No change has been made. See the response to similar comments on § 186d.40.

*Part 186g—Educational Personnel Development (Proposed §§ 186b.51–186b.64 and §§ 186b.71–186b.77)*

*General*

*Comment.* One commenter recommended that Indian organizations and the National Advisory Council on Indian Education be consulted on the selection of both grantees and participating students under the Educational Personnel Development program authorized by ESEA, Section 1005(d). The commenter expressed concerned that most of the eligible applicants under this program are non-Indian organizations and questioned those applicants' expertise in carrying out authorized projects. The commenter also stated that a majority of students participating in those applicants' projects should be Indian.

*Response.* No change has been made. With respect to the selection of grantees, applications are reviewed by experts in the field of Indian education. In addition, the National Advisory Council on Indian Education participates in the application review process. Any additional reviews would be cumbersome and inappropriate.

The selection of individual project participants is necessarily the responsibility of the various grantees. A requirement of outside involvement in the selection of participants would be inappropriate. However, under the Indian Education Act and § 186g.40, a grantee must, in the selection of project participants, give preference to Indians. In addition, under § 186g.30(c), applications under ESEA, Section 1005(d) for projects in which all participants will be Indian will receive a 10-point priority. These provisions should ensure that an overwhelming percentage of participants under this program are Indian.

*Comment.* One commenter expressed concern that the Educational Personnel Development programs limit the opportunity for non-Indian institutions to apply, and that, consequently, there is little or no opportunity for training and staff development for prospective Indian personnel in urban and rural non-reservation areas.

*Response.* No change has been made. Non-Indian institutions are, in fact, likely to receive most of the grants under the ESEA, Section 1005(d) program, since, under that program, eligibility is limited to institutions of higher education. (See § 186g.2(a).) Out of 12 grantees under this program for fiscal year 1979, 10 were non-Indian institutions.

§ 186g.1 *What is the purpose of this part?* (Proposed §§ 186b.51 and 186b.71)

*Comment.* One commenter stated that since these programs now allow the training of individuals in the field of adult eduction, the implication is that there are different certification requirements for adult educators than for elementary and secondary educators. The commenter recommended that the regulations require that institutional or State certification requirements be discussed in the application.

*Response.* No change has been made. However, it is likely that a thorough, well-written application for a professional training project would include a discussion of certification requirements as part of the design of the training project.

*Comment.* One commenter said that social workers usually don't work in a school setting and that, therefore, these programs should not support the preparation of individuals as social workers.

*Response.* No change has been made. Social workers are listed in the Act as one of the kinds of professionals to whom training may be provided. However, the Act also provides that the purpose of projects under these programs is to improve educational opportunities for Indian children. Consequently, a project to train social workers must be designed to train them to work with Indian students in an educational context.

§ 186g.2(a) *Who is eligible to apply?* (Proposed § 186b.52)

*Comment.* One commenter recommended that the list of eligible applicants under the program authorized by ESEA, Section 1005(d) include Indian tribes that operate institutions of higher education.

*Response.* No change is made. The list of eligible applicants is taken directly from the Act. Indian tribes are eligible to apply for similar projects under the Educational Personnel Development program authorized by Section 422 of the Indian Education Act. However, an institution of higher education operated by an Indian tribe would be eligible to apply in its own name under ESEA, Section 1005(d). (See § 186g.2(a)(1).)

§ 186g.10 *Stipends and dependency allowances.* (Proposed §§ 186b.54 and 186b.74)

*Comment.* One commenter recommended that the meaning of the term "full-time student" be clarified.

*Response.* No change has been made. A full-time student is defined in § 186.4 as "an individual pursuing a course of study that constitutes a full-time work load in accordance with an institution's established policies."

*Comment.* Two commenters objected to the provision in paragraph (b)(2), reading it to require that, in awarding stipends and dependency allowances to project participants, a grantee must deduct other financial assistance (other than loans). One commenter stated that this provision, which he assumed was designed to prevent duplication of financial assistance, is based on the unsupported assumption that the receipt of multiple awards is a wide-spread abuse. The commenter suggested that the provision be deleted.

*Response.* A clarifying change has been made. The provision in question is not intended to prevent abuse so much as it is intended to ensure that, given the limited funds available, an individual does not receive more assistance than is needed for living expenses and dependency allowances. To the extent that a participant will receive assistance for those purposes from other sources, his or her need for that assistance under this program is reduced. However, the provision in question also establishes a minimum stipend and allowance for dependents, to ensure that a student receives at least that much financial assistance.

In addition, a grantee may provide a participant a stipend and an allowance for dependents up to the maximum amounts specified in the application notice, so long as the total financial assistance (other than loans) received or expected to be received by the participant for those purposes does not exceed the participant's need for that assistance. A provision to this effect has been added as paragraph (c).

*Comment.* One commenter recommended that provisions be added expressly stating that project funds may

be used to pay for tuition and books for a project participant, similar to provisions under the regulations for the Indian Fellowship Program in Part 187.

*Response.* No change has been made. Under some circumstances, tuition, fees, and books are allowable costs for projects funded under these programs. Requests will be considered on a case-by-case basis.

*Comment.* One commenter recommended that the Secretary be authorized to approve payments for salary reimbursement for a teacher aide who is a participant in a training program while that aide serves as a student teacher.

*Response.* No change has been made. If a participant who is employed elsewhere as a teacher aide must give up that employment in order to serve a required period as a student teacher, that participant is eligible, as a full-time student, for a stipend and, if applicable, a dependency allowance.

*Comment.* One commenter stated that paragraph (d), which he read to authorize the payment of stipends and dependency allowances to certain participants who are part-time students, conflicts with paragraph (a), which limits the payment of stipends and dependency allowances to full-time students. The commenter also recommended that the limited funds under this program not be used to replace salaries.

*Response.* A change has been made. As a matter of general practice, the Secretary will pay stipends only to those participants who are full-time students. Further, the Secretary agrees with the commenter that funds under this program should not be used to reimburse the salaries of teacher aides or to pay the salaries of teacher aide substitutes. Those provisions have, therefore, been deleted. However, the Secretary also believes that one of the major strengths of this program is that it can help improve the stability and quality of educational services in an Indian community by providing the means for Indian paraprofessionals who are committed to the education of Indians in those communities to become certified teachers or qualified for other professional level positions. Therefore, a provision has been added to permit the Secretary to approve payments of partial stipends to teacher aides who must take leave without pay to participate in a project funded under this program, even though they may be participating as part-time students.

§ 186g.20 *Application contents.* (Proposed § 7 of Part 186b Appendix)

*Comment.* One commenter recommended inserting in paragraph (d)(2) the words "or methods" after the word "instruments" in the phrase "the instruments to be used for testing and measuring," on the grounds that few standardized instruments are available to Indian educators.

*Response.* A change has been made. The commenter's recommendation has been adopted. An identical change has been made in corresponding provisions of other program regulations.

§ 186g.30 *Is priority given to certain applicants?* (Proposed § 186b.55)

*Comment.* One commenter asked if paragraph (c), which awards priority to projects in which 100 percent of the participants will be Indian, violates Title VI of the Civil Rights Act of 1964.

*Response.* No change has been made. Under the Indian Education Act, a grantee under this program is required to give preference to Indians in the selection of project participants. Since the Congress passed the Act after Title VI was enacted and since the general rule is that statutory provisions should be read so as not to be in conflict with each other, it must be presumed that the Congress did not view the requirement of Indian preference as a violation of Title VI.

Consequently, if it is not a violation of Title VI for a grantee to give a preference to Indians in the selection of project participants, it would not be a violation of Title VI for an applicant to propose a project in which all participants will be Indian.

*Comment.* One commenter objected to the 100 percent provision on the grounds that it reduces the possibility of cultural interchange and interferes with the prerogative of local communities to select individuals to participate in a project. The commenter recommended that the provision be modified to allow a small, but unspecified, percentage of non-Indians to participate in the project without losing the priority points.

*Response.* No change has been made. Experience under this program has shown that relying on an unspecified percentage is unworkable because it provides little guidance to applicants and application reviewers. Further, it should be noted that the 100 per cent provision does not apply under the section 422 program, under which grants are generally made to Indian tribes and organizations.

*Comment.* One commenter recommended that under § 186g.30(a), the academic level at which 10 priority points is given be changed from bachelor's level or higher to masters level or higher, since, the commenter stated, there is a greater need for trained educational personnel at the masters or doctoral level.

*Response.* No change has been made. The Secretary believes that the need for Indian educators with degrees at the bachelor's level is as great as is the need for Indian educators with degrees at the master's or doctoral level.

*Comment.* One commenter asked for a clarification with respect to the percentage of project participants that will have to be working toward degrees at the bachelor's level or higher in order for the application to receive the 10 priority points under that provision.

*Response.* A clarifying change has been made. Paragraph (a) now expressly refers to all project participants.

*Comment.* One commenter recommended that, under the program authorized by ESEA Section 1005(d), 10 priority points to be awarded to applications that are made in concert with Indian tribes or with tribal support.

*Response.* No change has been made. Projects under that program are likely to be regional or national in scope and, therefore, are not always in proximity to a single tribe or group of tribes. Moreover, the similar program authorized by Section 422 of the Indian Education Act is designed for Indian tribes, Indian organizations, and Indian institutions.

§§ 186g.32–186g.39 *Selection criteria.* (Proposed §§ 186b.57 through 186b.64)

*Comment.* One commenter recommended that the selection criteria include the extent to which the applicant will incorporate its project methods into the institution's regular teacher training program.

*Response.* No change has been made. While a criterion to that effect might be appropriate with respect to pilot or demonstration projects, it is not an appropriate criterion here, since it goes well beyond the purposes of the program. The Secretary, however, encourages grantees to adapt successful project methods for use in their other activities.

§ 186g.37 *Selection criterion: benefit to Indian students.* (Proposed § 186b.62)

*Comment.* One commenter recommended that the provision in paragraph (b)(2) be changed to read, "Evidence that, upon completion of the training, participants have obtained [rather than "will be able to obtain"] positions that involve serving Indian students."

*Response.* No change has been made. This criterion is designed to increase the likelihood that the project will be successful, not only by providing training, but by producing graduates with marketable skills. In submitting evidence related to this criterion, applicants could certainly include information about the employment record of past participants, if available.

*Parts 186h–186l (Proposed Part 186c—Indian Education Act (Part C))*

*General*

*Comment.* Two commenters recommended that the regulations include cultural activities or arts and crafts as authorized activities. One of these commenters recommended that the regulations specify that cultural activities be permitted provided that those activities do not make up more than 10 percent of the project budget.

*Response.* No change has been made. Any activities, including culturally related activities, that are directly related to achieving the purposes of the program are authorized. Since each applicant is free to determine the appropiate mix of activities in its application, there is no reason to limit, by regulation, the proportion of a project that consists of a particular type of authorized activity.

*Part 186h—Educational Services for Indian Adults (Proposed §§ 186c.11–186c.22)*

*Comment.* One commenter suggested that the regulations specify that a minimum amount of funds be set aside for this program.

*Response.* No change has been made. Funds are allocated annually to each program on the basis of the President's budget and Congressional appropriations.

*Comment.* One commenter recommended that the regulations give the Secretary the discretion to fund only one project per city or reservation. The commenter pointed out that some cities have simultaneously received two Indian adult education grants and felt that this is a duplication of effort and creates "unnecessary political problems" between grantees serving the same population.

*Response.* No change has been made. Under standard administrative practice, the Secretary does not approve more than one application to provide substantially similar services to the same participants. Consequently, a separate provision on that matter is not needed in these regulations.

However, if an applicant proposes to serve different individuals, or to provide services different from those of another applicant, the applicant should not be denied a grant solely because it would result in more than one award to serve a particular geographic area.

*Comment.* One commenter recommended that the examples of projects that may be supported include those that emphasize careers for women.

*Response.* No change has been made. Part C of the Indian Education Act authorizes adult education projects. It does not support projects that emphasize specific careers.

*Comment.* One commenter asked if a project to teach a native language to members of a tribe would be allowable. The commenter said that the program would provide adults with culturally related instruction and would stimulate interest in tribal culture and heritage by involving the community in the instruction.

*Response.* No change has been made. The eligibility of projects will be judged on a case-by-case basis. The comment does not include sufficient information to determine whether a particular project would be supportable. All projects under this program must be designed to improve educational opportunities for Indian adults.

§ 186h.11 *Authorized activities.* (Proposed § 186c.11)

*Comment.* Four commenters objected to paragraph (a), which specifies that services and instruction be below the college level. Their reasons and recommendations included the following: College opportunities should be available through the program; this limitation forces projects to terminate services as soon as participants in the program earn General Equivalency Diplomas (GEDs), even though the participants might be in need of further services; since English composition is not required under the GED program grantees are prevented from teaching it, even though it is needed for further academic success; advanced study and remedial work will ensure success in further or higher education; students in college need tutoring and counseling services; and students in college need financial support.

*Response.* No change has been made. Part C of the Indian Education Act, which is the statutory authority for the programs under Parts 186h through 186l is part of the Adult Education Act. That Act defines adult education as "services or instruction below the college level." That definition is set out in § 186.4(b).

However, this provision does not necessarily require grantees to stop providing services to a participant as soon as he or she earns a GED. Under the statutory definition of adult education, services and instruction may be provided to those who "lack sufficient mastery of basic educational skills to enable them to function effectively in society," even though they may have obtained a high school diploma or GED.

*Comment.* Four commenters objected to and asked for clarification of the provision in paragraph (b) that precludes the preparation of individuals to enter a specific occupation. One asked if typing classes would be allowed.

*Response.* No change has been made. Paragraph (b) is intended to highlight the difference between adult education and vocational (or occupational) education. It is not the purpose of projects funded under this part to support vocational education. Consequently, projects to train individuals in specific occupations, such as automotive mechanics, meat cutting, and animal husbandry, are not authorized under this part. Applicants interested in those types of projects should consider other sources of funding, such as the vocational education contract program for Indian tribes, 45 CFR §§ 105.201 *et seq.*

However, the provision in question also recognizes the fact that adult education projects often include instruction in subject matters, such as mathematics, or the teaching of skills, such as personal typing, that will increase a participant's employment potential or have the incidental effect of providing employment-related skills.

Because of the great range of possible project objectives, it is not advisable to specify, in these regulations, the particular activities and services authorized or prohibited by this provision. Individual situations will be treated on a case-by-case basis. Prospective applicants may wish to consult the Office of Indian Education before developing their projects.

*Comment.* One commenter asked for clarification of the distinction between "career education projects" as used in § 186h.10(d) and occupational training projects.

*Response.* No change has been made. A career education project is one that incorporates an awareness of a variety of careers into the basic educational framework of the project. It helps make the participants aware of job possibilities and the relevance of educational programs (for example, instruction in basic skills) to those jobs.

An occupational training project is one that trains people for a specific job. Occupational training projects are not authorized under this program or the

other program authorized by Part C of the Indian Education Act. An authorized project may, however, be designed to improve basic skills so that Indian Adults may thereafter benefit from an occupational training program. (See § 186h.10(a).)

§ 186h.39 *Selection criterion: commitment.* (Proposed § 186c.22)

*Comment.* Two commenters recommended that other applicants, in addition to tribes, be required to submit a list of their priorities.

*Response.* No change has been made. It is generally the case that tribes, unlike other eligible applicants under this program, regularly prepare "band analyses" or other documents establishing official tribal priorities. The commitment of other eligible applicants (Indian organizations and Indian institutions) is best reflected in their official documents and in the record of their efforts to improve educational opportunities for Indian people. Consideration of these factors, which also apply to Indian tribes, is provided for by § 186h.39 (b)(1) and (b)(2).

*Part 186i—Planning, Pilot, and Demonstration Projects for Adult Indians (Proposed §§ 186c.31–186c.43)*

*Comment.* One commenter asked for a clarification of the distinctions among planning, pilot, and demonstration projects; service projects; and research projects.

*Response.* No change has been made. Planning, pilot, and demonstration projects are generally of an innovative, experimental nature, scientifically designed to determine the effectiveness of an educational method or approach on the students involved. Service projects are designed to increase educational opportunities by providing services to meet locally identified needs. A service project uses methods, materials, and approaches previously shown to be effective. A research project is not limited to the demonstration of a particular educational method. Rather, it is designed to learn about educational problems or to discover, through testing of various methods, effective techniques to meet those problems.

*Comment.* One commenter recommended that some provision be made for dissemination of results.

*Response.* No change has been made. It is expected, however, that grantees under this program will provide information about their projects, including results, to the Indian education regional centers and to other interested parties.

§ *186i.32 Selection criterion: need and rationale.* (Proposed § 186c.35)

*Comment.* One commenter recommended adding the following to the list of factors to be considered under this criterion: "(7) Includes a plan to employ quality personnel and a plan for on-going staff development."

*Response.* A change has been made. A modified version of the commenter's recommendation has been incorporated. The quality of the staff is considered under the selection criterion on staff in §186h.37 and § 186i.37. A plan for staff development and board member training, if appropriate, has been added to those criteria.

§ *186i.40 Annual priorities.* (Proposed § 186c.43)

*Comment.* One commenter recommended that this section be deleted. Two commenters asked for clarification of how the priorities are to be determined and asked that applicants be given adequate advance notice. Another commenter recommended that priorities be determined only after consultation with the National Advisory Council on Indian Education.

*Response.* No change has been made. See the response to similar comments on § 186d.40

*Part 186j—Adult Education Research and Development Projects (Proposed §§ 186c.51–186c.63)*

*Comment.* One commenter recommended that a provision be included on the dissemination of project results.

*Response.* No change has been made. It is expected, however, that grantees under this program will provide information about their projects, including results, to the Indian education regional centers and to other interested parties.

*Part 186k—Adult Education Surveys (Proposed §§ 186c.71–186c.82)*

§ 186k.32 Selection criterion: need for the survey.

*Comment.* Two commenters asked for clarification of the terms "clarity and accuracy" as used in paragraph (b) and questioned the usefulness of the criterion since the survey itself will determine the extent of illiteracy and lack of high school completion among Indians.

*Response.* No change has been made. This criterion deals with the clarity and accuracy of the statement describing the need for the survey, not with the need of Indian adults for educational programs.

*Part 187—Indian Fellowship Program*

*Comment.* One commenter recommended that fellows be required to serve Indians one year for each year of their fellowships.

*Response.* No change has been made. Up to 20 points out of a possible 100 are awarded in the review of fellowship applications (see § 187.12(d)) on the basis of the likelihood that an applicant will serve Indians following receipt of his or her degree.

However, because of the nature of this fellowship program, a service requirement would be extremely difficult to administer and to enforce. Given the variety of fields that Indian Fellowship students are in, and the difficulties that would arise in deciding which jobs would qualify as service to Indians and which would not, the adoption of a service requirement is not feasible.

*Comment.* To achieve consistency in language, one commenter recommended the use of one or the other (but not both) of the terms "postbaccalaureate" or "graduate" degree. The commenter also recommended that the regulations make clear that non-degree candidates, such as post-graduate students, are not eligible.

*Response.* A change has been made to result in consistent terminology. The term "graduate degree" is now used consistently to refer to all degrees beyond the bachelor's degree. With respect to non-degree candidates, students are not eligible at any level unless they are degree candidates.

*Comment.* One commenter recommended that since "many of the qualified fields of study appear to relate to more predominantly male occupations and professions, * * * special consideration should be given to women seeking to enter those fields of study."

*Response.* No change has been made. Indian men and women applicants will be judged according to identical criteria.

*Comment.* One commenter recommended that provisions be added to ensure a distribution of fellowships to applicants from throughout the country.

*Response.* No change has been made. National competition is the most equitable way of selecting the most qualified Indian fellows.

*Comment.* One commenter recommended that an average figure be established for the amount of fellowships.

*Response.* No change has been made. Maximum stipends and dependency allowances are the same for all fellows at similar educational levels. The amount for tuition and fees cannot be

standardized since those charges vary considerably from institution to institution.

§ 187.2 *Who is eligible to apply?*

*Comment.* One commenter recommended that nursing students be eligible at the undergraduate, as well as graduate, level.

*Response.* No change has been made. The Indian Education Act limits the award of fellowships in the field of medicine and related fields, including nursing, to students at the graduate level.

*Comment.* One commenter recommended that freshmen and, possibly, sophomores not be eligible for fellowships. The commenter pointed out that other sources of financial aid are available to these students and that students need the first two years of college to decide on a field of study.

*Response.* No change has been made. Section 187.2(e) makes it unlikely that most freshmen and sophomores will be eligible, since that provision requires an undergraduate fellow to be recognized by the appropriate institution as a degree candidate in an eligible field of study. Students are not usually recognized as degree candidates in a particular field until their junior year. If, however, a freshman or sophomore is so recognized, that student is clearly eligible under the Act without regard to the availability of other funding sources.

§ 187.4 *Which fields of study are eligible?*

*Comment.* Two commenters recommended that pharmacy be added as an eligible field.

*Response.* A change has been made. Pharmacy has been added as a field related to medicine.

*Comment.* Various commenters recommended that certain fields of study be included, either in their own right, or as related to one or more of the eligible fields specified in the Act. The recommended fields were political science, humanities, philosophy, creative writing and other fine arts, religious studies, and Native American studies.

*Response.* No change has been made. Section 423 of the Indian Education Act lists the eligible fields and allows awards to those in "related" fields. None of the recommended fields are included in the statutory list, nor are they generally regarded as being related to any of the listed fields. Individual cases will, however, be reviewed on a case-by-case basis, as provided in § 187.4(f).

*Comment.* One commenter recommmended that oceanography be added as a field related to natural resources.

*Response.* A change has been made. The commenter's recommendation has been adopted.

*Comment.* One commenter recommended that criminal justice and law enforcement be added as eligible fields related to law.

*Response.* No change has been made. The Secretary interprets the statutory reference to fellows in the field of law to be limited to students working toward law degrees.

*Comment.* One commenter recommended that the regulations make clear that the list of eligible related fields is not exclusive, by adding the words "such as" before the examples.

*Response.* No change has been made. Paragraph (f) states that applications in other fields will be considered on a case-by-case basis.

*Comment.* Two commenters recommended that guidance counseling, educational administration, special education, vocational education, and career education be listed as fields related to education.

*Response.* No change has been made. The fields named are normally considered to be within the field of education and need not be separately listed in the regulations.

§ 187.5 *What is included in a fellowship?*

*Comment.* One commenter recommended that, in a case of extreme hardship, a reasonable allowance for tutorial services be included in the fellowship.

*Response.* No change has been made. A fellow should be able to obtain tutorial services through his or her institution or to pay for those services out of his or her stipend.

*Comment.* One commenter recommended that the language in paragraphs (a)(5) and (a)(6) concerning the payment of travel and research expenses be changed from "in cases of extreme hardship" to "as needed."

*Response.* No change has been made. Because of the limited funds available, fellowships will include funds for research and personal travel to school only in cases of extreme hardship.

*Comment.* One commenter objected to the provision in paragraph (b) that the maximum stipend will be a set amount minus other financial assistance and said that that provision would make it "virtually impossible to recruit American Indian doctoral students who are older and have more family responsibility (and who have) good paying jobs."

*Response.* A clarifying change has been made. The provision in question is intended to ensure that, given the limited funds available, an individual does not receive more assistance than is needed for living expenses and dependency allowances. To the extent that a fellow will receive assistance for those purposes from other sources, his or her need for that assistance under this program is reduced. However, the provision in question also established a minimum stipend and allowance for dependents, to ensure that a student receives at least that much financial assistance.

In addition, the Secretary may provide a fellow a stipend and an allowance for dependents up to the maximum amounts specified in the application notice, so long as the total financial assistance (other than loans) received or expected to be received by the fellow for those purposes does not exceed his or her need for that assistance. A provision to this effect has been added as paragraph (c).

§ 187.6 *Application contents: evidence that the applicant is Indian.* (Proposed Appendix to Part 187, § 2)

*Comment.* One commenter expressed concern with what she characterized as the "loose eligibility criteria utilized in the past" and urged that the regulations include a "tighter" definition of Indian.

*Response.* No change has been made. The definition of Indian in § 187.3 is taken directly from Section 453(a) of the Indian Education Act. However, § 187.6 does impose more detailed requirements than in the past for a student to establish his or her eligibility as an Indian.

*Comment.* One commenter expressed concern over the tightened requirements for proof that an applicant is Indian and suggested that the recognition of that student by the tribe, band, or group to which he or she belongs should be sufficient proof. The commenter also suggested that provision should be made for submitting documentation other than BIA certification, such as school records or birth certificates.

*Response.* No change has been made. The regulations allow the applicant to satisfy the requirement of paragraph (c) by submitting a "statement from a recognized official of the appropriate tribe, band, or other organized group of Indians that the applicant or a parent or grandparent of the applicant is a member of that tribe, band, or group." See paragraph (c)(2)(iii).

*Changes.* A new paragraph (vi) has been added to paragraph (c)(2), to accommodate those applicants as to whom there is no organization that

maintains membership data for the appropriate tribe. Those applicants may submit other evidence, in place of the name and address of such an organization, to establish that they are Indian.

*Comment.* One commenter expressed concern that some individuals who are Indian may not be able to show definite proof that they are Indian.

*Response.* No change has been made. Since eligibility under this program is limited to Indians, it is important that an applicant be able to establish his or her eligibility by demonstrating that he or she is an Indian. The regulations, by allowing several ways to establish eligibility, are flexible enough to ensure that eligible individuals will be considered and that ineligible individuals will not be.

§ 187.11 *Is priority given to certain applicants?*

*Comment.* One commenter felt that this provision, which gives priority to applicants for graduate fellowships in fields for which both graduate and undergraduate candidates are eligible, should be deleted on the grounds that, if retained, it will be unlikely that undergraduates will receive fellowships and that there is a need for individuals with undergraduate degrees in tribal administration.

*Response.* No change has been made. This priority provision is necessary because financial aid is far more abundant and available for undergraduate students than for graduate students. Moreover, experience with a similar provision under the Indian Fellowship Program (see § 187.74(b) of the previous Indian Education Act regulations) demonstrates that this does not preclude undergraduates from receiving fellowships.

*Comment.* One commenter recommended that the 15-point priority for graduate students be increased or that there be a return to the former method of increasing the number of points for each year of school completed.

Another commenter recommended that in the fields under which both graduate and undergraduate students are eligible, three points should be awarded for each year of undergraduate education plus an additional three points for any bachelor's or master's degrees completed. The commenter also recommended that in those fields in which only graduate students are eligible, one point be awarded for each year of graduate education completed plus three points for a master's degree.

*Response.* No change has been made. Fifteen points is adequate to ensure that graduate students are given a preference in this program. Additionally, the Secretary believes it is no longer appropriate to distinguish among undergraduate students and among graduate students on the basis of completed years of study. Past experience shows that those distinctions are unnecessarily complicated.

§ 187.12 *How applications are evaluated.*

*Comment.* One commenter expressed concern over the increased weight given to the applicant's financial need and recommended that consideration be given to the availability of other Federal support for Indians and for particular courses of study.

One commenter recommended that the point distribution for the selection criteria be changed so that less emphasis is placed on financial need and more is placed on the likelihood that the student will serve Indians.

One commenter recommended that the number of points for financial need be reduced to 10 points, and that the other criteria be given weights of 30 points each.

One commenter recommended that the number of points for financial need and the likelihood of service to Indians be increased to 30 points.

*Response.* No change has been made. The Secretary believes that the provisions in the proposed regulations most appropriately reflect the importance of the various criteria, and they are therefore retained. However, the Secretary will continue to review this matter and may publish revised criteria in the future.

**Appendix B—Selection Criteria for Fiscal Year 1980**

**Note.**—This Appendix is being published for information purposes only and will not be published in Title 45 of the Code of Federal Regulations.

## PART 186a—INDIAN ELEMENTARY AND SECONDARY SCHOOL ASSISTANCE ACT

**General**

Sec.
186a.1 Indian Elementary and Secondary School Assistance Act.
186a.2 Eligibility.
186a.3 Definitions.

**Indian-Controlled Schools—Establishment**

*General*

186a.101 Purpose.
186a.102 Eligibility.
186a.103 Authorized activities.
186a.104 Limitation on assistance.

*Selection Factors*

186a.111 Application evaluation.
186a.112 Selection criterion: Need for the school. (0 to 15 points)
186a.113 Selection criterion: Need for financial assistance. (0 to 15 points)
186a.114 Selection criterion: Project design. (0 to 15 points)
186a.115 Selection criterion: Likelihood of success. (0 to 10 points)
186a.116 Selection criterion: Parental and community involvement. (0 to 10 points)
186a.117 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
186a.118 Selection criterion: Adequacy of resources. (0 to 5 points)
186a.119 Selection criterion: Staff. (0 to 19) points)
186a.120 Selection criterion: Evaluation plan. (0 to 10 points)
186a.121 Selection criterion: Commitment. (0 to 5 points)

**Enrichment Projects**

*General*

186a.131 Purpose.
186a.132 Eligibility.

*Selection Factors*

186a.133 Application evaluation.
186a.134 Selection criterion: Need. (0 to 20 points)
186a.135 Selection criterion: Rationale. (0 to 10 points)
186a.136 Selection criterion: Project design. (0 to 15 points)
186a.137 Selection criterion: Parental and community involvement. (0 to 10 points)
186a.138 Selection criterion: Budget and cost effectiveness. (0 to 5 points)
186a.139 Selection criterion: Adequacy of resources. (0 to 10 points)
186a.140 Selection criterion: Staff. (0 to 10 points)
186a.141 Selection criterion: Evaluation plan. (0 to 15 points)
186a.142 Selection criterion: Commitment. (0 to 5 points)

**Appendix**

**Indian-Controlled Schools**

*Establishment; General*

*Selection Factors*

**§ 186a.111 Application evaluation.**

The Commissioner evaluates an application on the basis of the criteria in §§ 186a.112 through 186a.121. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81-874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.112 Selection criterion: Need for the school. (0 to 15 points)**

(a) The Commissioner reviews each application to determine the need for the school that the applicant proposes to operate.

(b) In making this determination, the Commissioner considers—

(1) The educational needs of the Indian children to be served by the school, as indicated by academic achievement levels, dropout rates, standardized test scores, or other appropriate measurements;

(2) The extent to which the schools that those children would stand (if an Indian-controlled school were not available) are inadequate to meet those needs;

(3) The extent to which the school for which assistance is sought will increase the educational opportunities for Indian children; and

(4) Community factors or other reasons that justify the need for an Indian-controlled school.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.113 Selection criterion: Need for financial assistance. (0 to 15 points)**

(a) The Commissioner reviews each application to determine the extent to which the applicant needs financial assistance under this program to establish an Indian-controlled school.

(b) In making this determination, the Commissioner considers evidence that the applicant does not have, and is unable to obtain from other sources, the funds necessary to carry out the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.114 Selection criterion: Project design. (0 to 15 points)**

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) An effective plan for administration of the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.115 Selection criterion: Likelihood of success. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the likelihood that the project will be successful.

(b) In making this determination, the Commissioner looks for evidence that, by the end of the project period, the applicant will operate and continue to operate the school without further assistance under this program.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.116 Selection criterion: Parental and community involvement. (0 to 10 points)**

The Commissioner reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.117 Selection criterion: Budget and cost effectiveness. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.118 Selection criterion: Adequacy of resources. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.119 Selection criterion: Staff. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) The plan for appropriate training for staff and school board members.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.120 Selection criterion: Evaluation plan. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the quality of the evaluation plan for the project.

(b) In making this determination, the Commissioner looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.121 Selection criterion: Commitment. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian students; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**Enrichment Projects**

*General*

*Selection Factors*

**§ 186a.133 Application evaluation.**

The Commissioner evaluates an application on the basis of the criteria in §§ 186a.134 through 186a.142. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.134 Selection criterion: Need. (0 to 20 points)**

(a) The Commissioner reviews each application to determine the need for the proposal project.

(b) In making this determination, the Commissioner considers—

(1) The clarity of the statement of the educational needs to be addressed by the project;

(2) How widespread those needs are, as indicated by the number and percentage of Indian children with those needs;

(3) The severity of those needs, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures;

(4) A description of the efforts to meet those needs being made by the school and a statement of why those efforts are insufficient; and

(5) An explanation of why the applicant lacks the financial resources necessary to conduct the project.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.135 Selection criterion: Rationale. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the soundness of the rationale for the project.

(b) In making this determination, the Commissioner looks for—

(1) A justification of why the applicant has selected the particular needs to be addressed by the project.

(2) A clear description of the educational approach to be used.

(3) A justification of why the applicant has chosen this approach.

(4) Evidence that the approach is likely to be successful with the children who will participate in the project.

**§ 186a.136 Selection criterion: Project design. (0 to 15 points)**

For the text of this criterion, see § 186a.114.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.137 Selection criterion: Parental and community involvement. (0 to 10 points)**

For the text of this criterion, see § 186a.116.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.138 Selection criterion: Budget and cost effectiveness. (0 to 5 points)**

For the text of this criterion, see § 186.117.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.139 Selection criterion: Adequacy of resources. (0 to 10 points)**

For the text of this criterion, see § 186a.118.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.140 Selection criterion: Staff. (0 to 10 points)**

For the text of this criterion, see § 186a.119.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

**§ 186a.141 Selection criterion: Evaluation plan. (0 to 15 points)**

For the text of this criterion, see § 186a.120.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 303(b))

**§ 186a.142 Selection criterion: Commitment. (0 to 5 points)**

For the text of this criterion, see § 186a.121.

(Pub. L. 81–874, sec. 303(b); 20 U.S.C. 241bb(b))

## PART 186b—INDIAN EDUCATION ACT (PART B)

*General*

Sec.



**Educational Services**

*General*



*Selection Factors*



**Planning, Pilot, and Demonstration Projects**

*General*



*Selection Factors*



**Educational Personnel Development—I**

*General*



*Selection Factors*



**Educational Personnel Development—II**

*General*



*Selection Factors*



*Appendix*

**Authority.**—Title IV, Part B, of Pub. L. 92–318, 86 Stat. 339, as amended (20 U.S.C. 887c–1, 3385), unless otherwise noted.

**Educational Services**

*General*

*Selection Factors*

**§ 186b.13 Is priority given to certain applicants?**

In addition to the points awarded under §§ 186b.15 through 186b.23, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, sec. 1005(f)(1); 20 U.S.C. 3385(f)(1))

**§ 186b.14 How is an application evaluated?**

The Commissioner evaluates an application on the basis of the criteria in §§ 186b.15 through 186b.23. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186b.15 through 186b.23 is 100.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.15 Selection criterion: Educational need. (0 to 15 points)**

(a) The Commissioner reviews each application to determine the extent to which the Indian children in the service area need the proposed services.

(b) In making this determination, the Commissioner considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Commissioner considers—

(1) How widespread the need is, as indicated by the number and percentage of Indian children who need the proposed services; and

(2) The severity of the need, as indicated by dropout rates, academic achievement levels, standardized test scores, or other appropriate measures.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.16 Selection criterion: Lack of comparable services. (0 to 15 points)**

(a) The Commissioner reviews each application to determine the extent to which the proposed services are presently unavailable in the service area in sufficient quantity or quality.

(b) In making this determination, the Commissioner considers—

(1) A description of other services, including those offered by the applicant and by the schools attended by Indian children, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of children who receive those services;

(3) The number of children who do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the children to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.17 Selection criterion: Project design. (0 to 20 points)**

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—

(1) A clear statement of the purpose of the project;

(2) Objectives that are—

(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of children who will participate directly in the project; and

(5) An effective plan for administration of the project.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.18 Selection criterion: Parental and community involvement. (0 to 15 points)**

The Commissioner reviews each application to determine the extent to which parents and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(ESEA, sec. 1005 (c), (f)(1); 20 U.S.C. 3385 (c), (f)(1))

**§ 186b.19 Selection criterion: Budget and cost effectiveness. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination the Commissioner looks for information that shows—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.20 Selection criterion: Adequacy of resources. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Commissioner looks for information that shows—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.21 Selection criterion: Staff. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—

(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project;

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff; and

(4) The plan for appropriate training of project staff and the applicant's board members, committee members, or officers.

(ESEA, sec. 1005(c), (f)(1); 20 U.S.C. 3385(c), (f)(1))

**§ 186b.22 Selection criterion: Evaluation plan. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Commissioner looks for—

(1) An objective, quantifiable method, including a measurement of the project's effectiveness in meeting the needs of the participating students, to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**§ 186b.23 Selection criterion: Commitment. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general (or, in the case of State and local educational agencies, to the education of Indians) and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) Relevant excerpts from official documents, such as the applicant's charter, constitution, and by-laws;

(2) Other efforts by the applicant to improve educational opportunities for Indian students; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(ESEA, sec. 1005(c); 20 U.S.C. 3385(c))

**Planning, Pilot and Demonstration Projects**

*Selection Factors*

**§ 186b.33 Is priority given to certain applicants?**

In addition to the points awarded under §§ 186b.35 through 186b.42, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(ESEA, sec. 1005(f)(1); 20 U.S.C. 3385(f)(1))

**§ 186b.34 How is an application evaluated?**

The Commissioner evaluates an application on the basis of the criteria in §§ 186.35 through 186b.42. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under sections 186b.35 through 186b.42 is 100.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

**§ 186b.35 Selection criterion: Need and rationale. (0 to 20 points)**

(a) The Commissioner reviews each application to determine the need for the project and the soundness of the rationale for the project.

(b) In making this determination, the Commissioner looks for—

(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian children;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is based on the culture and heritage of the children to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

**§ 186b.36 Selection criterion: Project design. (0 to 15 points)**

For the text of this criterion, see section 186b.17.

(ESEA, sec. 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

**§ 186b.37 Selection criterion: Parental and community involvement. (0 to 10 points)**

For the text of this criterion, see § 186b.18.

**§ 186b.38 Selection criterion: Budget and cost effectiveness. (0 to 10 points)**

For the text of this criterion, see § 187.19.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

**§ 186b.39 Selection criterion: Adequacy of resources. (0 to 5 points)**

For the text of this criterion, see section 186b.20.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

**§ 186b.40 Selection criterion: Staff. (0 to 15 points)**

For the text of this criterion, see § 186b.21.

(ESEA, sec. 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

**§ 186b.41 Selection criterion: Evaluation design. (0 to 20 points)**

(a) The Commissioner reviews each application to determine how well the evaluation will isolate and measure the project's effectiveness in meeting each objective and the impact of the project on the students involved.

(b) In making this determination, the Commissioner considers—

(1) Plans for the use of control groups, pre- and post-testing, or other comparable procedures;

(2) The appropriateness of the instruments to collect data;

(3) The appropriateness of the method for analyzing the data;

(4) The timetable for collecting and analyzing the data; and

(5) Procedures for periodic assessment of the project's progress.

(ESEA, sec. 1005(b), (f)(1); 20 U.S.C. 3385(b), (f)(1))

**§ 186b.42 Selection criterion: Commitment. (0 to 5 points)**

For the text of this criterion, see § 186b.23.

(ESEA, sec. 1005(b); 20 U.S.C. 3385(b))

**Educational Personnel Development—I**

*Selection Factors*

**§ 186b.55 Is priority given to certain applications?**

In addition to the points awarded under § 186b.57 through 186b.64, the Commissioner awards—

(a) Ten points to applications for projects in which 100 percent of the participants will be Indian; and

(b) Ten points to an application for a project in which participants will work toward degrees at the baccalaureate level or higher.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.56 How is an application evaluated?**

The Commissioner evaluates an application on the basis of the criteria in §§ 186b.57 through 186b.64. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186b.57 through 186b.64 is 100.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.57 Selection criterion: Need. (0 to 10 points)**

The Commissioner reviews each application to determine the need for the type of personnel to be trained, as indicated by a current survey or other appropriate documentation.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.58 Selection criterion: Project design. (0 to 25 points)**

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—

(1)—A clear statement of the purpose of the project;

(2) Objectives that are—(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) Educational approaches that take into account the culture and heritage of Indian people;

(5) Techniques designed specifically to enable project participants to meet the needs of Indian students; and

(6) An effective plan for administration of the project.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.59 Selection criterion: Budget and cost effectiveness. (0 to 10 points)**

For the text of this criterion, see § 186b.19.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.60 Selection criterion: Adequacy of resources. (0 to 5 points)**

For the text of this criterion, see § 186b.20.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.61 Selection criterion: Staff. (0 to 15 points)**

For the text of this criterion, see § 186b.21.

(ESEA, sec. 1005(d); 20 U.S.C. 3085(d))

**§ 186b.62 Selection criterion: Benefit to Indian students. (0 to 5 points)**

(a) The Commissioner reviews each application to determine the likelihood that, after receiving training under the project, the participants will serve Indian students as teachers, administrators, teacher aides, or ancillary educational personnel.

(b) In making this determination, the Commissioner considers—

(1) Policies or practices of the applicant, such as those governing selection participants, that increase the likelihood that participants will serve Indian students upon the completion of the training; and

(2) Evidence that, upon completion of the training, participants will be able to obtain positions that involve serving Indian students.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**§ 186b.63 Selection criterion: Evaluation plan. (0 to 10 points)**

(a) The Commissioner reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Commissioner looks for—

(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(ESEA, sec. 1005(d), (f)(1); 20 U.S.C. 3385(d), (f)(1))

**186b.64 Selection criterion: Commitment. (0 to 20 points)**

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to Indian education in general, and to the project's objectives in particular.

(b) In making this determination, the Commissioner considers—

(1) Official statements in the applicant's publications such as course catalogs;

(2) The expected use of the applicant's human, physical, and financial resources to support the project; and

(3) Other efforts of the applicant to improve educational opportunities for Indian people.

(ESEA, sec. 1005(d); 20 U.S.C. 3385(d))

**Educational Personnel Development—II**

*Selection Factors*

**§ 186b.75 Is priority given to certain applications?**

In addition to the points awarded under §§ 186b.76 and 186b.77, the Commissioner awards—

(a) Twenty-five points to applications from Indian tribes, Indian organizations, and eligible Indian institutions; and

(b) Ten points to application for projects in which the participants will be enrolled in a course of study resulting in degrees at the baccalaureate level or higher.

(Indian Education Act, sec. 422; 20 U.S.C. 887c–1)

**§ 186b.76 How is an application evaluated?**

The Commissioner reviews each application on the basis of the criteria in §§ 186b.57 through 186b.63 and 186b.77.

(Indian Education Act, sec., 422; 20 U.S.C. 887c–1)

**§ 186b.77 Selection criterion: Commitment. (0 to 20 points)**

(a) In addition to the criteria in sections 186b.57 through 186b.63 the Commissioner reviews each application to determine the extent to which the applicant is committed to education in general (or, in the case of institutions of higher education, to the education of Indians) and to the project objectives in particular.

(b) In making this determination in the case of applications from institutions of higher

education, the Commissioner considers the factors in § 186b.64(b).

(c) In making this determination in the case of applications from Indian tribes and Indian organizations, the Commissioner considers the factors in § 186b.23(b).

(Indian Education Act, sec. 422; 20 U.S.C. 887c–1)

## PART 186c—INDIAN EDUCATION ACT (PART C)

**General**

Sec.



**Educational Services**

*General*



Sec.



*Selection Factors*



**Planning, Pilot, and Demonstration Projects**

*General*



*Selection Factors*



**Educational Services**

*Selection Factors*

### § 186c.13 How is an application evaluated?

The Commissioner evaluates an application against the criteria in §§ 186c.14 through 186c.22. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available is 100.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.14 Selection criterion: Educational need. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the Indian adults in the service area need the proposed services.

(b) In making this determination, the Commissioner considers the conclusions and supporting evidence from a current needs assessment or other appropriate documentation for the service area. In particular, the Commissioner considers—(1) How widespread the need is, as indicated by the number and percentage of Indian adults who need the proposed services; and

(2) The severity of the need, as indicated by elementary and secondary school dropout rates, average grade level completed, unemployment rates, or other appropriate measures.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.15 Selection criterion: Lack of comparable services. (0 to 15 points)

(a) The Commissioner reviews each application to determine the extent to which the proposed services are currently unavailable in the service area in sufficient quantity or quality, or both.

(b) In making this determination, the Commissioner considers—(1) A description of other services in the area, including those offered by the applicant, that are designed to meet the same educational needs as those to be addressed by the project;

(2) The number of Indian adults who receive those services;

(3) The number of Indian adults who do not receive those services;

(4) Evidence that those other services are insufficient in either quantity or quality, or an explanation of why those services are not used by the adults to be served by the project; and

(5) Evidence that the applicant lacks the financial resources necessary to carry out the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.16 Selection criterion: Project design. (0 to 20 points)

(a) The Commissioner reviews each application to determine the quality of the design for the project.

(b) In making this determination, the Commissioner looks for—(1) A clear statement of the purpose of the project;

(2) Objectives that are—(i) Related to the purpose of the project;

(ii) Sharply defined;

(iii) Stated in measurable terms; and

(iv) Capable of being achieved within the project period;

(3) An activity plan, including a timeline, that clearly and realistically outlines the activities related to each objective;

(4) A clear statement of the number of adults who will participate directly in the project; and

(5) An effective plan for administration of the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.17 Selection criterion: Community involvement. (0 to 15 points)

The Commissioner reviews each application to determine the extent to which the individuals to be served and other members of the Indian community—

(a) Were involved in planning and developing the project; and

(b) Will be involved in operating and evaluating the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a (b), (d))

### §186c.18 Selection criterion: Budget and cost effectiveness. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the project has an adequate budget and is cost effective.

(b) In making this determination, the Commissioner looks for information that shows—(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.19 Selection criterion: Adequacy of resources. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the resources to be devoted to the project are adequate.

(b) In making this determination, the Commissioner looks for information that shows—(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.20 Selection criterion: Staff. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the staff that the applicant plans to use for the project.

(b) In making this determination, the Commissioner considers—(1) The qualifications and experience of the project director and of key staff members or, if any of these positions are vacant, the appropriateness of the job descriptions for those positions;

(2) The time that the project director and each key staff member will devote to the project; and

(3) The degree to which the applicant has given or will give preference to Indians in the hiring of project staff.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

### § 186c.21 Selection criterion: Evaluation plan. (0 to 10 points)

(a) The Commissioner reviews each application to determine the quality of the plan for evaluating the project.

(b) In making this determination, the Commissioner looks for—(1) An objective, quantifiable method to determine if the project achieves each of its objectives; and

(2) Procedures for periodic assessment of the project's progress.

(Adult Education Act, sec. 316(b), (d); 20 U.S.C. 1211a (b), (d))

### § 186c.22 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general and to the project objectives in particular.

(b) In making this determination, the Commissioner considers—(1) Relevant excerpts from official documents such as the applicant's charter, constitution, and by-laws;

(2) Other efforts of the applicant to improve educational opportunities for Indian people; and

(3) In the case of an application from an Indian tribe, a listing of official tribal priorities.

(Adult Education Act, sec. 316(b); 20 U.S.C. 1211a(b))

## Planning, Pilot, and Demonstration Projects

*Selection Factors*

### § 186c.33 Is priority given to certain applicants?

In addition to the points awarded under §§ 186c.35 through 186c.42, the Commissioner awards 25 points to applications from Indian tribes, Indian organizations, and Indian institutions.

(Adult Education Act, sec. 316(a) (1), (2); 20 U.S.C. 1211(a) (1), (2))

### § 186c.34 How is an application evaluated?

The Commissioner evaluates an application on the basis of the criteria in §§ 186c.35 through 186c.42. The point range for each criterion is stated in parentheses. The number of points the Commissioner awards for each criterion depends on how well the application addresses all the factors under that criterion. The total number of points available under §§ 186c.35 through 186c.42 is 100.

(Adult Education Act, sec. 316(a) (1), (2); 20 U.S.C. 1211a(a) (1), (2))

### § 186c.35 Selection criterion: Need and rationale. (0 to 20 points)

(a) The Commissioner reviews each application to determine the need for the project and the soundness of the rationale for the project.

(b) In making this determination, the Commissioner looks for—(1) An identification and description of the specific problem to be addressed;

(2) Evidence that the problem to be addressed is one of significant magnitude among Indian adults;

(3) A clear statement of the educational approach to be developed, tested, and demonstrated;

(4) Evidence that the planned educational approach is based on the culture and heritage of the adults to be involved in the project;

(5) A description of a literature review, site visits, or other appropriate activity that shows that the applicant has made a serious attempt to learn from other projects that addressed similar needs or tried similar approaches; and

(6) Evidence that the project is likely to serve as a model for communities having similar educational needs.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186c.36 Selection criterion: Project design. (0 to 15 points)

For the text of this criterion, see section 186c.16.

(Adult Education Act, sec. 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

### § 186c.37 Selection criterion: Community involvement. (0 to 10 points)

For the text of this criterion, see section 186c.17.

(Adult Education Act, sec. 306(a) (1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

### § 186c.38 Selection criterion: Budget and cost effectiveness. (0 to 10 points)

For the text of this criterion, see section 186c.18.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186c.39 Selection criterion: Adequacy of resources. (0 to 5 points)

For the text of this criterion, see section 186c.19.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186c.40 Selection criterion: Staff. (0 to 15 points)

For the text of this criterion, see section 186c.20.

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

### § 186c.41 Selection criterion: Evaluation design. (0 to 20 points)

(a) The Commissioner reviews each application to determine how well the evaluation will isolate and measure the project's effectiveness in meeting each objective and the impact of the project on the adults involved.

(b) In making this determination, the Commissioner considers—(1) Plans for the use of control groups, pre- and post-testing, or other comparable procedures;

(2) The appropriateness of the instruments to collect data;

(3) The appropriateness of the method for analyzing the data;

(4) The timetable for collecting and analyzing the data; and

(5) Procedure for periodic assessment of the project's progress.

(Adult Education Act, sec. 316(a)(1), (2), (d); 20 U.S.C. 1211a(a)(1), (2), (d))

### § 186c.42 Selection criterion: Commitment. (0 to 5 points)

(a) The Commissioner reviews each application to determine the extent to which the applicant is committed to education in general (or, in the case of State and local educational agencies, to the education of Indians) and to the project objectives in particular.

(b) In making this determination, the Commissioner considers the factors set out in section 186c.22(b).

(Adult Education Act, sec. 316(a)(1), (2); 20 U.S.C. 1211a(a)(1), (2))

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Part III

# Department of Education

## Basic Skills and Educational Proficiency Programs

## DEPARTMENT OF EDUCATION

### 45 CFR Parts 162,162a, 162b, 162c

### Basic Skills and Educational Proficiency Programs

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary of Education issues final regulations to implement Title II and Title IX B of the Elementary and Secondary Education Act. These regulations govern grants to help public and private agencies coordinate resources and improve their basic skills efforts for children, youth, and adults. They establish requirements, evaluation criteria, and funding priorities that are considered necessary to implement the statutory purposes.

**EFFECTIVE DATES:** These regulations are expected to take effect 45 days after they are transmitted to the Congress. They are transmitted to the Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M. Keyes, Department of Education (Room 1150, Donohoe Building), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: 202–245–8242.

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking for these programs was published in the **Federal Register** on April 27, 1979 (44 FR 25148). It proposed to amend Part 162 of 45 CFR to implement the programs authorized by Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

During May of 1979 the Secretary held public meetings on the proposed regulations in Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; San Francisco, California; and Seattle, Washington. Interested parties were also given 60 days to make written comments on the proposed regulations. The appendix summarizes the comments received and the Secretary's responses to them.

The most important issues raised by the comments are summarized as follows:

#### General

Commenters requested a format that more clearly delineates the regulations that apply to each of the three components. Accordingly, the Secretary has divided the regulations into four parts: Part 162, pertinent to all Basic Skills Improvement and Educational Proficiency programs; Part 162a, pertinent to the National Basic Skills Improvement component; Part 162b, pertinent to the State Basic Skills Improvement component; and Part 162c, pertinent to the Educational Proficiency component. As a result, the regulations have been re-numbered in many sections.

Many commenters requested more specific direction in many provisions of the regulations. The Secretary, instead, prefers to state broad regulations and permit applicants and grantees to use their discretion in choosing ways to comply with the provisions.

Section 162a.42, for example, requires a State educational agency or local educational agency to assure in its application that it will have effective procedures for evaluating its project. Commenters wanted more specific requirements pertaining to project evaluation. In this example and many others, the Secretary prefers to state the requirement in broad terms rather than impose a very specific, inflexible means of meeting the requirement.

In response to suggestions by the public and other interested parties, these final regulations contain provisions that were not in the notice of proposed rulemaking. These include (1) certain provisions of the statute governing these programs and (2) the general selection criteria found in the Education Division General Administrative Regulations (EDGAR §§ 100a.202 through 100a.206). The purpose of incorporating these provisions into the final regulations is to enable applicants and grantees to understand better the requirements of these programs without having to refer to these additional documents.

#### Definitions

(Section 162.4) Many commenters wanted to expand the definition of "basic skills." The Secretary defines "basic skills"—as does the statute—as comprising reading, mathematics, oral communication, and written communication.

#### Basic Skills Improvement in the Schools Program

(Section 162a.10) The regulations state that an applicant, before preparing its application, shall assess basic skills needs in each project school within the project area. Some commenters did not want to do a needs assessment. The Secretary believes that a needs assessment is the key way for an applicant to determine: Which schools should be selected as projects schools; Which of the four basic skills areas need to be addressed; and When those basic skills areas need to be addressed.

(Section 162a.10) Some commenters wanted to know which children should be served. The Secretary's response is that a grantee shall serve, as far as possible, all children in each project school under the Basic Skills Improvement In the Schools Program. The statutory purpose of the program is to improve the quality of education throughout the project school.

#### Parent Participation Program

(Section 162a.11) Commenters wanted volunteers included within the target population, and they wanted to delete the requirement that training activities for parents and volunteers relate directly to the school curriculum. The final regulations include volunteers as part of the target population. They also specify that parents and volunteers are to work with schools in carrying out projects under this program but that the training activities are not restricted to those relating directly to the specific school curriculum.

#### Out-of-School Basic Skills Improvement Program

(Sections 162a.12 and 162a.13) Commenters asked for a more specific description of the target population to be served under the Out-of-School Basic Skills Improvement Program. The Secretary has clarified this by including examples in the appendix.

#### Formula Grant Program

(Section 162b.20) Commenters questioned how funds may be used under the Formula Grant Program. The regulations now require an SEA to subgrant at least 95 percent of its formula grant funds.

#### Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: May 15, 1980.

**Shirley M. Hufstedler,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 13.599, Basic Skills and Educational Proficiency)

45 CFR is amended as follows:

1. Part 162 is revised as follows:

## PART 162—BASIC SKILLS IMPROVEMENT AND EDUCATIONAL PROFICIENCY

### Subpart A—General

Sec.



**Authority:** These regulations are issued under the authority of Title II and Part B of Title IX, of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561, 92 Stat. 2201 (20 U.S.C. 2881–2922; 20 U.S.C. 3331 and 3332).

### Subpart A—General

#### § 162.1 Programs under this part.

Parts 162, 162a, 162b, and 162c contain regulations for a number of programs to improve achievement in and mastery of the basic skills of reading, mathematics, and oral and written communication:

(a) Part 162—General. Unless otherwise specified, these provisions apply to parts 162a, 162b, and 162c.

(b) Part 162a, the National Basic Skills Improvement component, consists of three programs which are demonstration in nature. They are—

(1) The Basic Skills Improvement in the Schools Program (section 205), which assists projects to demonstrate improved delivery of basic skills instruction in the schools;

(2) The Parent-Participation Program (section 206), which assists activities that enlist parents and volunteers in teaching basic skills to children; and

(3) The Out-of-School Basic Skills Improvement Program (section 208), which assists projects to help children, youth, and adults improve their basic skills outside the normal school program.

(c) Part 162b, the State Basic Skills Improvement component, consist of two programs. They are—

(1) The Formula Grant Program (sections 221 through 223), which provides support to help a State plan and implement basic skills improvement projects, primarily through subgrants by the State to subgrantees; and

(2) The State Leadership Program (sections 221 and 224), which provides support for a State to—

(i) Carry out leadership and training in the area of basic skills; and

(ii) Develop and implement statewide plans for improving the basic skills achievement of children, youth, and adults.

(d) Part 162c, the Educational Proficiency component, consists of two programs. They are—

(1) The Proficiency Standards Program (section 921), which assists projects to help students reach levels of educational proficiency set by the applicant; and

(2) The Achievement Testing Program (section 922), which provides assistance to develop the capacity of State educational agencies (SEAs) and local educational agencies (LEAs) to conduct projects of testing the basic skills achievement of elementary and secondary school children.

(e) The Secretary enters into contracts to carry out the programs authorized by sections 204 (technical assistance), 207 (technology and instruction), 209 (evaluation and dissemination), 231 (inexpensive book distribution), and 232 (special mathematics instruction).

(20 U.S.C. 2881, 2885, 2886, 2887, 2888, 2901–2904, 3331, 3332)

#### § 162.2 Eligible applicants.

(a) The following kinds of agencies are eligible to apply for grants for any of the three programs in the National Basic Skills Improvement component:

(1) An SEA.

(2) An LEA.

(3) A public or nonprofit private agency, organization, or institution, including an institution of higher education. Examples of private agencies that are eligible to apply under the Out-of-School Basic Skills Improvement Program include, but are not limited to: labor unions, volunteer organizations, and business associations. A for-profit agency, organization, or institution is not eligible to receive a grant but may receive a contract under any procurement that may be issued for these three programs.

(b) Any State is eligible to apply for either or both programs in the State Basic Skills Improvement component.

(c) The following kinds of agencies are eligible to apply for the Proficiency Standards Program:

(1) An SEA.

(2) An LEA, if the appropriate SEA does not intend to submit an application. The LEA is responsible for contacting the SEA to determine if there will be a State application.

(d) The following kinds of agencies are eligible to apply for the Achievement Testing Program:

(1) An SEA.

(2) An LEA.

(3) Any other public agency, organization, or institution, including a public institution of higher education. A nonprofit or for-profit private agency, organization, or institution is not eligible to receive a grant but may receive a contract under any procurement that may be issued for this program.

(20 U.S.C. 2884, 2902–4, 3331, 3332)

#### § 162.3 Regulations that apply to Basic Skills Improvement and Educational Proficiency.

The following regulations apply to Basic Skills Improvement and Educational Proficiency:

(a) The Education Division General Administrative Regulations (EDGAR) in 45 CFR Part 100c (Definitions); and

(1) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component, 45 CFR Part 100a (Direct Grant Programs); or

(2) For the programs in the State Basic Skills Improvement component, 45 CFR Part 100b (State-Administered Programs).

(b) The regulations in these Parts: 162 and 162a, 162b, or 162c, as appropriate.

#### § 162.4 Definitions.

(a) *Definitions in EDGAR.* The following terms used in this Part are defined in 45 CFR Part 100c:

Applicant, application, award, budget period, elementary school, facilities, grant, grantee, local educational agency, nonprofit, nonpublic, preschool, private, project, public, secondary school, State, State educational agency, subgrant, subgrantee.

(20 U.S.C. 1221e 3(a)(1))

(b) *Definitions specific to these regulations.* As used in these regulations—

"Secretary" means the Secretary of Education;

"Basic Skills" means reading, mathematics, and oral and written communication; and

"Section" or "Sec.", unless otherwise indicated, means a section of Title II or Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

(20 U.S.C. 2881–2922, 3331–3332)

#### § 162.5 Submission of applications.

(a)(1) For the programs in the National Basic Skills Improvement component and the Educational Proficiency component, the Secretary establishes annually—in an application notice published in the **Federal Register**—a closing date for receiving applications.

(2) An applicant shall submit a separate application for each program under which it wants a grant.

(3) The Secretary reviews separately each application in competition with other applicants seeking assistance under that program.

(b)(1) For the programs in the State Basic Skills Improvement component, an applicant enters into an individualized agreement with the Secretary under the requirements described in—

(i) Section 162b.10 of these regulations for the Formula Grant Program; or

(ii) Section 162b.11 of these regulations for the State Leadership Program.

(2) The Secretary and the State may decide to enter into a consolidated agreement under the Formula Grant Program and the State Leadership Program if the State wishes to participate in both programs.

(20 U.S.C. 2885, 2886, 2888, 2902, 2904, 3331, 3332)

2. A new Part 162a is added as follows:

## PART 162a—NATIONAL BASIC SKILLS IMPROVEMENT PROGRAMS

### Subpart A—General



### Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?



### Subpart C—[Reserved]

### Subpart D—How Is a Grant Made?



### Subpart E—What Conditions Must Be Met by a Grantee?



Authority: These regulations are issued under the authority of Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2201 (20 U.S.C. 2881-2922; 20 U.S.C. 3331 and 3332).

### Subpart A—General

#### § 162a.1 What general provisions apply?

Unless otherwise indicated the provisions of subpart A of 45 CFR Part 162 (§§ 162.1 through 162.5) apply to programs under this part (162a): the National Basic Skills Improvement Component.

### Subpart B—What kinds of projects does the Department of Education assist under these programs?

#### § 162a.10 Basic skills improvement in the schools program.

(a) In order to be considered for a grant under this program, an applicant must propose a project that includes the six project elements described in the "Instruction in Basic Skills" section of the Act (sec. 205). The six elements are—

(1) Assessing schoolwide needs to identify the instructional needs of children in basic skills;

(2) Establishing learning goals and objectives for each project school;

(3) Developing comprehensive projects to address the needs through the use of resources available under this part and other resources from local, State, and Federal programs;

(4) Demonstrating techniques for coordinating the efforts of local agencies, organizations, and institutions, to improve achievement in basic skills;

(5) Conducting preservice training projects for teaching personnel, including teacher aides and other ancillary educational personnel, and in-service training and development projects designed to enable those personnel to improve their ability to teach basic skills; and

(6) Actively involving teachers, teacher aides, administrators, and other educational personnel in order to improve their ability to use available resources to carry out the purposes of this part.

(b) An applicant shall propose to conduct its project in all grades of the project schools, elementary, secondary, or both.

(c)(1) An applicant shall assess in each project school the instructional needs in all four basic skills areas.

(2) Each project must address at least one of the four basic skills areas—reading, mathematics, oral communication, or written communication—in each project school.

(3) However, if the proposed instructional activities do not address all four basic skills areas in each project school, the applicant shall show evidence in the application that those basic skills areas not addressed by the project are being met by other than project resources.

(20 U.S.C. 2885)

#### § 162a.11 Parent participation program.

(a) In order to be considered for a grant under this program—described in Sec. 206 as "Parental Participation in Basic Skills Instructions"—an applicant must propose a project directed to enlisting parents or volunteers, or both, in working with schools to improve the basic skills of children.

(b) Activities that enlist parents and volunteers in working with schools to improve the basic skills of children may include, but are not limited to—

(1) Developing and disseminating materials that, with appropriate training, parents and volunteers may use with children in the home; or

(2) Conducting voluntary training activities to encourage parents and volunteers to assist children in developing basic skills.

(20 U.S.C. 2886)

#### § 162a.12 Out-of-School Basic Skills Improvement Program.

(a) In order to be considered for a grant under this program—described in sec. 208 as "Involvement of Educational Agencies and Private Organizations"—an applicant must propose a project that helps children, youth, or adults or any of these to improve their basic skills outside a normal school program.

(b) Activities that carry out the purpose described in paragraph (a) include, but are not limited to, the following:

(1) Free distribution of books to children, or lending or selling books to persons for the purpose of improving reading skills.

(2)(i) Instructional projects and voluntary tutorial projects outside of the school for those in need of basic skills improvement.

(ii) These projects may be known as "academies."

(iii) An applicant that proposes this type of project is subject to the requirements of § 162a.13.

(3) Efforts by community organizations to encourage individuals to improve their basic skills.

(20 U.S.C.2888)

#### § 162a.13 Out-of-school Basic Skills Improvement Program: requirements for instructional projects.

An applicant that proposes an instructional project or voluntary tutorial project outside a school must include the following in its project:

(a) Procedures for—

(1) Identifying and recruiting participants who are most in need of basic skills improvement; and

(2) Focusing on the individual's ability to function effectively in society.

(b) Provisions for instruction at convenient times and locations.

(c) Procedures for effective coordination with other organizations

such as employment and training agencies, private businesses, vocational and technical institutions, and local schools.

(20 U.S.C. 2888)

**§ 162a.14 Duration of awards.**

(a) Under the conditions described in EDGAR, applicants under the programs in the National Basic Skills Improvement component may apply for multi-year projects.

(b) Through an application notice published in the **Federal Register**, the Secretary announces—

(1) The amount, if any, available for multi-year projects; and

(2) The percentage decrease, if any, in the amount of funding available to multi-year grantees entering, for example, the second, third, fourth, or fifth project year.

(20 U.S.C. 2885, 2886, 2888, 2921, 2922)

**§ 162a.15 Reservation of funds.**

(a) The Secretary may reserve funds to support projects in all or some of the activities described under each program of the National Basic Skills Improvement component in §§ 162a.10 through 162a.13.

(b) In the application notice, the Secretary notifies prospective grant applicants of:

(1) The amount of funds reserved, if any, for each of the types of projects; and

(2) Any limitations on the size of an individual grant for a particular type of project.

(20 U.S.C. 2885, 2886, 2888, 2921, 2922)

**Subpart C—[Reserved]**

**Subpart D—How Is a Grant Made?**

**§ 162a.30 State review of applications affecting an LEA.**

(a) An applicant under a program in this part (162a) shall seek written comments from the State educational agency (SEA) in each State in which the proposed activities are to take place if—

(1) The applicant is a local educational agency (LEA); or

(2) Any other applicant (other than an SEA) proposes to conduct an activity that—

(i) Involves an instructional program operated by an LEA; or

(ii) Involves preservice or in-service training of LEA personnel.

(b) In seeking the SEA's comments, the applicant shall specifically ask the SEA to state whether it considers the proposed activities to be consistent with the State's basic skills plan.

(c) The SEA may comment on the consistency of the proposed activities with the State's basic skills plan only if it has informed potential applicants in a timely manner of the criteria by which it intends to judge consistency.

(d) The applicant shall submit a copy of its application to the SEA at least 15 days before the closing date for submitting applications to the Secretary. To ensure consideration of its comments, the SEA shall forward its comments to the Secretary within 30 days.

(e) The Secretary considers an application for funding if—

(1) The SEA has indicated that the application is consistent with the State's basic skills plan;

(2) The SEA was given the required opportunity to comment, but did not do so; or

(3) The Secretary determines that the proposed activities make a special contribution to the purposes of the Act.

(20 U.S.C. 2881, 2882(b), 2890))

**§ 162a.31 How does the Secretary evaluate an application?**

(a) The Secretary evaluates an application under the National Basic Skills Improvement component on the basis of the criteria in § 162a.32.

(b) The Secretary awards up to 100 possible points for these criteria. The maximum possible score for each criterion is indicated in parentheses.

(c) In addition to the criteria in § 162a.32, the Secretary may take into account the geographic distribution of awards among the States in deciding which projects to support.

**§ 162a.32 What selection criteria does the Secretary use?**

(a) *Plan of operation.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(vi) For grants made after October 1, 1980, if the applicant is a local educational agency or State educational agency, a clear description of how the applicant will provide an opportunity for participation of students enrolled in private non-profit schools.

(b) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (5 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Project objectives.* (10 points)

The extent to which the project objectives are clear and are based on—

(1) The needs of the target population;

(2) High quality research; and

(3) Experience regarding basic skills instruction.

(g) *Coordination.* (20 points)

The extent to which the project provides for effective coordination of Federal, State, and local basic skills resources and activities.

(h) *Involvement of those affected.* (10 points)

The extent to which affected schools, organizations, and individuals have been and will be involved in planning and implementing the proposed activities.

(i) *Incorporation of results.* (10 points)

The extent to which the project's results can be incorporated into—

(1) The regular instructional program of the schools;

(2) Regular basic skills improvement activities in non-school settings; or

(3) A statewide basic skills plan.

(j) *Validation and dissemination.* (10 points)

The quality of the plan to validate the results of the project and to disseminate those results to interested agencies and institutions and to the general public.

(20 U.S.C. 2885, 2886, and 2888)

### Subpart E—What Conditions Must Be Met by a Grantee?

#### § 162a.40 Coordination requirement.

A recipient under the programs in this part (162a) shall coordinate its activities with other local, State, and Federally-supported activities in the project area that relate to basic skills improvement.

(20 U.S.C. 2881–2890)

#### § 162a.41 Participation of private school children.

An SEA or LEA applicant under any of the three programs shall include an assurance in its application that it will provide for the equitable participation of children attending private, nonprofit elementary and secondary schools. EDGAR establishes the rules for this participation (see EDGAR, §§ 100b.650 through 100b.662).

(20 U.S.C. 2882)

#### § 162a.42 Other requirements for LEAs and SEAs.

An SEA or LEA applicant shall include in its application an assurance that it will have effective procedures to—

(a) Evaluate the effectiveness of the project and report its findings to the Secretary; and

(b) Incorporate successful practices into the regular instructional program.

(20 U.S.C. 2882)

3. A new Part 162b is added as follows:

## PART 162b—STATE BASIC SKILLS IMPROVEMENT

### Subpart A—General

Sec.

162b.1 What general provisions apply?

### Subpart B—How Does a State Apply for a Grant?

162b.10 Formula Grant Program: individualized agreement.

162b.11 State Leadership Program: individualized agreement.

### Subpart C—How Is a Grant Made to a State?

162b.20 Formula Grant Program: apportionment of funds.

162b.21 State Leadership Program: apportionment of funds.

### Subpart D—Subgrants Under the Formula Grant Program

162b.30 Eligibility for a subgrant.

162b.31 What kinds of projects may a State assist under subgrants?

162b.32 In-school projects.

162b.33 Parent-involvement projects.

### Subpart E—What Conditions Must Be Met by a Grantee and Subgrantee?

162b.40 Participation of private school children.

**Authority:** These regulations are issued under the authority of Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561, 92 Stat. 2201 (20 U.S.C. 2881–2922; 20 U.S.C. 3331 and 3332).

### Subpart A—General

#### § 162b.1 What general provisions apply?

Unless otherwise indicated the provisions of subpart A of 45 CFR Part 162 (§§ 162.1 through 162.5) apply to programs under this part (162b): the State Basic Skills Improvement Component.

### Subpart B—How Does a State Apply for a Grant?

#### § 162b.10 Formula Grant Program: individualized agreement.

(a) An SEA wishing to participate in the Formula Grant Program shall develop with the Secretary an individualized agreement. The Secretary announces in the **Federal Register** a closing date for receipt of the agreement.

(b) This agreement must include a description of—

(1) Recent basic skills activities in the State;

(2) The proposed goals and activities of the State project;

(3) Evaluation plans; and

(4) Expected outcomes.

(c) The agreement must also—

(1) Designate the State educational agency (SEA) as the agency responsible for administration of the agreement;

(2) Provide for a process of active and continuing consultation with the SEA by persons broadly representative of the educational resources of the State and of the general public. The purpose of this consultation is to provide advice to the SEA on the planning, development, implementation and evaluation of a comprehensive State program for improving basic skills. The educational resources that must be represented include—

(i) Public and nonprofit private elementary and secondary school children;

(ii) Institutions of higher education;

(iii) Parents of elementary and secondary school children;

(iv) Areas of professional competence relating to basic skills instruction in reading and mathematics;

(v) Classroom teachers in the State; and

(vi) Local administrators including principals and superintendents.

(3) Describe—

(i) The basic skills instructional projects in elementary and secondary schools for which subgrant funds are sought or are likely to be sought; and

(ii) Procedures for giving priority to basic skills projects that already are receiving Federal financial assistance and show reasonable promise of achieving success;

(4) Contain criteria for achieving an equitable distribution of subgrant funds that are to be made available to local educational agencies (LEAs). The criteria shall—

(i) Take into account the size of the population to be served beginning with preschool children, the relative needs of pupils in different population groups within the State, and the financial ability of the LEA serving those pupils; and

(ii) Ensure that the distribution will include subgrants to LEAs having high concentrations of children with low reading or mathematics proficiency;

(5) Provide for the coordination and evaluation of subgrant projects assisted under the State project;

(6) Provide for technical assistance and support services for LEAs participating in the State project;

(7) Provide for the dissemination to the educational community and the general public of information about the objectives of the State project and results achieved in the course of its implementation;

(8) Provide for making a report to the Secretary or the Secretary's designee at least once every three years and whatever other reports—in the form and containing the information—the Secretary may require;

(9) Provide that not more than five percent of the amount allotted to the State under this program for any fiscal year may be retained by the SEA for purposes of administering the agreement;

(10) Provide that subgrant projects shall be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the purposes of this program; and

(11) Provide that Federal funds expended under the program will supplement the level of State and local funds that would be available for the projects in the absence of Federal assistance and will not supplant those State and local funds.

(20 U.S.C. 2901–2903)

**§ 162b.11 State Leadership Program: individualized agreement.**

(a) An SEA wishing to participate in the State Leadership Program shall enter into an individualized agreement with the Secretary to carry out activities based on needs identified by the State. The Secretary announces in the **Federal Register** a closing date for receipt of the agreement. The activities of grantees are limited to—

(1) The development of a comprehensive statewide program providing for the coordination of all Federal and State projects that offer instruction in basic skills;

(2) The planning of activities that involve local administrators, teachers, and parents in the development of strategies to improve instruction in basic skills;

(3) Statewide assessments of needs related to basic skills, including the needs of both students and instructional personnel;

(4) In-service training projects for local administrators, instructional personnel, and other staff members involved in instruction in basic skills; and

(5) The provision of technical assistance and the dissemination of information related to basic skills instruction to LEAs and other organizations and institutions involved in projects of instruction in basic skills.

(b) The agreement must include a description of—

(1) The proposed goals and activities of the State leadership project;

(2) How the applicant will implement the proposed activities;

(3) The applicant's evaluation plans;

(4) The expected outcomes of the State leadership project; and

(5) The proposed budget.

(20 U.S.C. 2904)

## Subpart C—How Is a Grant Made to a State?

**§ 162b.20 Formula Grant Program: apportionment of funds.**

(a) Each year the Secretary apportions available funds among the States that have entered into an agreement under § 162b.10 according to the formula described in section 223 of the Act ("Distribution of Funds"). If any States are not funded, the Secretary apportions the excess funds among those States that have entered into an agreement with the Secretary according to their number of school-age (5 through 17 years) children.

(b) The State shall subgrant at least 95 percent of the grant.

(c) The State shall subgrant to LEAs at least 70 percent of the grant.

(20 U.S.C. 2902, 2903)

**§ 162b.21 State Leadership Program: apportionment of funds.**

The Secretary apportions available funds among the States on the same basis as that described in § 162b.20(a).

(20 U.S.C. 2904)

## Subpart D—Subgrants Under the Formula Grant Program

**§ 162b.30 Eligibility for a subgrant.**

The following kinds of agencies are eligible to apply to the State for a subgrant:

(a) For in-school projects, only an LEA.

(b) For parent involvement projects—

(1) An LEA;

(2) An institution of higher education; and

(3) Any other public or nonprofit private agency or institution.

(20 U.S.C. 2902(b))

**§ 162b.31 What kinds of projects may a State assist under subgrants?**

In order to be considered for a subgrant, an applicant must propose—

(a) An in-school project serving preschool, elementary, or secondary school children (or any of these); or

(b) A parent-involvement project.

(20 U.S.C. 2902 (d) and (e))

**§ 162b.32 In-school projects.**

(a) In developing its application for an in-school project subgrant, an LEA shall consult with teachers and building administrators in its district.

(b)(1) In order to be considered for a subgrant, the LEA shall propose a systematic strategy for improving basic skills instruction in its district.

(2) This systematic strategy must provide for the planning and implementation of comprehensive basic skills instructional projects throughout participating schools.

(c) Each school-level project must, as a part of its schoolwide improvement effort—

(1) Address the needs of all students;

(2) Use and coordinate available resources from all Federal, State, and local sources; and

(3) Provide for—

(i) Diagnostic assessment to identify the needs of all children in the school;

(ii) Establishment of learning goals and objectives for the school;

(iii) Preservice and in-service training, to the extent practicable, to enable teaching and administrative personnel—including teacher aides and other ancillary educational personnel—to improve their ability to teach students the basic skills;

(iv) Activities to enlist the support of parents to aid in the instruction of their children at home and school;

(v) Procedures for evaluating the effectiveness of the project. These shall include periodic testing of basic skills achievement and the publication of test results of basic skills performance, by grade level and by school, without identification of individual children; and

(vi) Assessment, evaluation and collection of information on individual children by teachers during each year those children are involved in a preschool project. This information must be made available to teachers in the subsequent year, as well as to the parents or guardians of each child.

(d) The LEA shall involve teachers, administrators, and parents in the development of school-level projects.

(20 U.S.C. 2902(d))

**§ 162b.33 Parent-involvement projects.**

(a) In order to be considered for a subgrant for a parent-involvement project, an LEA or other eligible applicant shall propose a project directed to enlisting parents in working with schools to improve the basic skills of children.

(b) Activities that enlist parents in working with schools to improve the

basic skills of children may include, but are not limited to—

(1) Development and dissemination of materials that parents may use in the home to improve their children's performance in basic skills;

(2) Encouragement of closer contacts between parents and teachers to improve coordination between learning experiences in the home and those in the school;

(3) Planning, developing, and improving centers—accessible to parents—to provide training materials and professional guidance, including volunteers, for parents who desire to assist in the instruction of their children; and

(4) Demonstration training projects for parents who desire to develop new skills to complement the instruction their children receive in school.

(20 U.S.C. 2902 (b) and (e))

### Subpart E—What Conditions Must Be Met by a Grantee and Subgrantee?

#### § 162b.40 Participation of private school children.

A State shall ensure that its subgrantees provide for the equitable participation of children attending private elementary and secondary schools. EDGAR establishes the rules for this participation (see EDGAR, §§ 100b.650 through 100b.662).

(20 U.S.C. 2902(c))

4. A new Part 162c is added as follows:

## PART 162c—EDUCATIONAL PROFICIENCY

### Subpart A—General

Sec.



**Authority:** These regulations are issued under the authority of Title II and Part B of Title IX of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95-561, 92 Stat. 2201 (20 U.S.C. 2881-2922; 20 U.S.C. 3331 and 3332).

### Subpart A—General

#### § 162c.1 What general provisions apply?

Unless otherwise indicated the provisions of subpart A of 45 CFR Part 162 (§§ 162.1 through 162.5) apply to programs under this part (162c): Educational Proficiency.

### Subpart B—What Kinds of Projects Does the Department of Education Assist Under These Programs?

#### § 162c.10 Proficiency Standards Program.

(a) In order to be considered for a grant under the Proficiency Standards Program, an applicant must propose a project to help students reach levels of educational proficiency set by the applicant.

(b) In its application, the applicant shall—

(1) Describe the proficiency standards being established in reading, writing, mathematics, and in any other proposed subjects;

(2) Describe instructional projects designed to assist students in reaching the proficiency standards; and

(3) Assure that supplementary instruction in the tested subject matter is provided to students who fail any examination described in the educational proficiency plan.

(20 U.S.C. 3331)

#### § 162c.11 Achievement Testing Program.

(a) In order to be considered for a grant under the Achievement Testing Program, an applicant must propose a project to develop the capacity of one or more State or local educational agency to test and assess the basic skills achievement of elementary and secondary students.

(b) Activities that meet the purpose described in paragraph (a) of this section include, but are not limited to, the following:

(1) Providing information to SEAs and LEAs about the availability of different tests of achievement and the uses of those tests.

(2) Providing training for administrators, teachers, and other instructional personnel in SEAs and LEAs on the uses of tests and test results.

(3) Conducting research and evaluation to determine improved means of assessing more accurately the achievement of children in basic skills and of diagnosing instructional needs.

(20 U.S.C. 3332)

### Subpart C—[Reserved]

### Subpart D—How Is a Grant Made?

#### § 162c.30 State review of applications affecting an LEA.

(a) An applicant under a program in this part (162c) shall seek written comments from the State educational agency (SEA) in each State in which the proposed activities are to take place if—

(1) The applicant is a local educational agency (LEA); or

(2) Any other applicant (other than an SEA) proposes to conduct an activity that—

(i) Involves an instructional project operated by an LEA; or

(ii) Involves pre-service or in-service training of LEA personnel.

(b) In seeking the SEA's comments, the applicant shall specifically ask the SEA to state whether it considers the proposed activities to be consistent with the State's basic skills plan.

(c) The SEA may comment on the consistency of the proposed activities with the State's basic skills plan only if it has informed potential applicants in a timely manner of the criteria by which it intends to judge consistency.

(d) The applicant shall submit a copy of its application to the SEA at least 15 days before the closing date for submitting applications to the Secretary.

(e) The Secretary may refuse to consider an application for funding if the SEA has indicated that the application is inconsistent with the State's basic skills plan.

(20 U.S.C. 3331-3332)

#### § 162c.31 How does the Secretary evaluate an application under the Proficiency Standards Program?

(a) The Secretary evaluates an application under the Proficiency Standards Program on the basis of the criteria in § 162c.32.

(b) The Secretary evaluates an application under the Achievement Testing Program on the basis of the criteria in § 162c.33.

(c) The Secretary awards up to 100 possible points for these criteria.

(d) The maximum possible score for each complete criterion is indicated in parentheses.

(e) In addition to the criteria in § 162c.32 and § 162c.33 the Secretary may take into account the geographic distribution of awards among the States in deciding which projects to support.

#### § 162c.32 What selection criteria does the Secretary use for the Proficiency Standards Program?

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows

the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Quality of objectives.* (20 points)

The quality of the project objectives, including the extent to which the objectives are based on needs of the target population and on high quality research and experience regarding the setting of proficiency standards.

(g) *Procedures for involvement.* (10 points)

The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and adopting the proficiency standards.

(h) *Use of test results.* (15 points)

The extent to which the applicant proposes effective procedures to convert proficiency test results into usable information for improving curriculum and instruction.

(20 U.S.C. 3331)

**§ 162c.33 What selection criteria does the Secretary use for the Achievement Testing Program?**

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that insures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (7 points)

(1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (b)(2) (i) and (ii) of this section plans to commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(3) To determine the qualifications of a person, the Secretary considers evidence of experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaulation plan.* (15 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 45 CFR 100a.590—Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (3 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Quality of objectives.* (15 points)

The quality of the project objectives, including the extent to which the objectives are based on the needs of the applicant and on high quality research and experience regarding achievement testing.

(g) *Procedures for involvement.* (10 points)

The extent to which the applicant proposes effective procedures for involving teachers, parents, and experts in developing and implementing the project.

(h) *Use of test results.* (10 points)

The extent to which the applicant proposes effective procedures to convert achievement test results into usable information for improving curriculum and instruction.

(i) *Procedures for improvement.* (10 points)

The extent to which the applicant proposes effective procedures for improving the uses of tests and for finding other means of more accurately assessing achievement.

(20 U.S.C. 3331, 3332)

Note. This Appendix is being published for information purposes only and will not be published in Title 45 of the Code of Federal Regulations.

## Appendix

The following is a summary of comments received on the Notice of Proposed Rulemaking. Each comment is followed by a response that indicates any changes made or why no change was considered necessary. The comments are arranged in the order of the regulatory sections to which they now pertain. Cross references to section numbers are made, where appropriate, before the word "comment."

Note.—Section numbers in parentheses refer to the numbers used in the notice of proposed rulemaking of April 27, 1979. If no number appears in parentheses, the section number in the final regulations is the same as that in the notice of proposed rulemaking.

§ 162.1 *Programs under this part.*

§ *162.1 Comment.* Six commenters said that the overall intent of the programs was not only to improve basic skills achievement but also to bring mastery of the basic skills of reading, mathematics, oral and written communication.

*Response.* A change has been made. The statute clearly includes this intent (see Section 201(1)).

§ *162.1 Comment.* Six commenters suggested that the overall intent of the programs should include improving ways to motivate students to acquire mastery of the basic skills.

*Response.* No change has been made. While improving motivation is a valuable intent, there is nothing in the statute which specifically refers to it.

§ 162.1(b)(1) *(§ 162.1(a)(1)) Comment.* One commenter said that the Basic Skills Improvement In The Schools Program description should include projects which show likelihood of becoming demonstration projects as well as projects which are fully developed and are ready to be demonstrated.

*Response.* A change has been made. The statute allows funding for projects which are ready to be demonstrated as well as projects which show a future likelihood of being able to demonstrate improved delivery of instructional services in the basic skills.

§ 162.1(b)(1) *(§ 162.1(a)(1)) Comment.* One commenter stated that the Basic Skills Improvement In The Schools Program description omits the goal of improving the delivery system of basic skills instruction in project schools.

*Response.* A change has been made. The overall intent of the program is not just to improve the instruction of basic skills but also to improve the delivery system—the administrative structures which support basic skills instruction throughout project schools.

§ 162.1(b)(3) *(§ 162.1(a)(3)) Comment.* One commenter stated that the Out-of-School Basic Skills Improvement Program should be limited to youths and adults.

*Response.* No change has been made. Congress has defined the target population for this program as children, youth and adults who are in need of basic skills instruction outside of any regular school program.

§ 162.1(c)(2)(ii) *(§ 162.1(b)(2)(ii)) Comment.* One commenter stated that the program description for the State Leadership Program seems to duplicate the Out-of-School Basic Skills Improvement Program because both programs include youths and adults among their target populations.

*Response.* No change has been made. While both programs aim at the same overall goal of improving basic skills achievement among children, youth, and adults, the State Leadership Program is a State administered program to promote basic skills development within a regular school program. The Out-of-School Basic Skills Improvement Program, however, is a direct grant program to promote basic skills achievement outside any regular school program.

§ 162.1(d)(2) *(§ 162.1(c)(2)) Comment.* Three commenters requested that the program description of the Achievement Testing Program be closer to the language of the law. One commenter stated that the word "measure" is broader than the word "test" used in the statute. Three commenters stated that use of the word "measure" is appropriate because it does not connote a "norm referenced standardized achievement test."

*Response.* A change has been made. The regulation now refers to the statutory term "tests" rather than to measures. The Secretary is not limiting the meaning of the word "tests" to only a norm referenced standardized achievement test.

The Secretary encourages grantees to use a variety of valid and reliable tests of achievement and not to judge the success of a program by only one test. Applicants and grantees are also encouraged to study the opinions of researchers and professional associations in planning the evaluation of basic skills projects or in planning the testing of children, youths, or adults in such projects.

§ 162.1(e) *(§ 162.1(d)) Comment.* One commenter objected to the Secretary carrying out certain sections of the law by contract rather than by grant. Another commenter wanted rules for the contracts or a description of the types of projects the Secretary will fund under contracts. Still another commenter wanted a consortium of school districts to be eligible for submitting a proposal under such contracts.

*Response.* No change has been made. The Secretary requests proposals for contracts in the Commerce Business Daily when it is determined, according to the principles described in the Federal Grant and Cooperative Agreement Act of 1977, that the statutory purposes of the program may best be achieved by that means. The Secretary believes that such is the case with respect to the programs authorized by sections 204, 207, 209, 231, and 232 of the act. The Secretary will announce requests for proposals in Commerce Business Daily—a publication which is available by writing: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The Secretary will designate in Commerce Business Daily the types of projects which will be funded by contracts. The Secretary will also

indicate there which agencies are eligible to submit a proposal and whether a consortium of applicants may submit a proposal.

§ 162.2 *Eligible applicants.*

§ *162.2(a) Comment.* One commenter suggested that eligible applicants under the Basic Skills Improvement in the Schools Program be required to have teacher bargaining units concur with local plans and programs.

*Response.* No change has been made. There is no authority in the statute for such a requirement. In addition, the intent of the commenter is accomplished by the requirement in the law that there be "active involvement of teachers, teacher aides, administrators and other educational personnel" in carrying out such a project. (Sec. 205(6)).

§ *162.2(a)(3) Comment.* One commenter suggested that examples be given of nonprofit private agencies that are eligible to apply for a grant under the Out-of-School Basic Skills Improvement Program.

*Response.* A change has been made. Appropriate examples are provided.

§ *162.2(a)(3) Comment.* Two commenters said that the rule did not allow for-profit entities to apply for grants but that the law (Sec. 204) did. Another commenter thought that nonprofit private agencies were not eligible to apply for a grant because they are not specifically mentioned.

*Response.* A change has been made. Under Section 204 of the law, the Secretary is given the authority to make a grant only to a public agency or nonprofit, private agency, organization, or institution. Correspondingly, the same section allows the Secretary to make contracts to a variety of agencies—including State and local educational agencies, and other public and private agencies, organizations and institutions. If a nonprofit entity applies, the Secretary may award it a contract or a grant. If a for-profit entity applies, it must apply for a contract because the Secretary is allowed to award only a contract (not a grant) to a for-profit entity. The Secretary has tried to clarify this distinction by adding the word "nonprofit" to the agencies which are eligible to apply for a grant.

§ *162.2(d)(3) Comment.* One commenter said that the rule is inconsistent with the law because the rule allows private agencies to apply for a grant under the Achievement Testing Program.

*Response.* A change has been made. Under Section 922(a) of the law, the Secretary may award only a contract to a private agency—regardless of whether it is a nonprofit or a for-profit private agency. Accordingly, the Secretary has stated in the rules that any private agency, organization, or institution—non-profit or for-profit—is eligible under the Achievement Testing Program to apply only for a contract, not for a grant.

§ 162.4 *Definitions.*

§ *162.4 Comment.* A large number of comments concerning the definition of the term "basic skills" were received. Twenty-two commenters suggested that one or more of the subject areas should be defined more explicitly. One commenter said the definition should be expanded. Another commenter said that the definition should be left open to the discretion of the grantees. Another commenter suggested that the definition not limit reading, oral communication or written communication to the English language. One commenter thought the definition concentrated too much on skills and not enough on feelings about those skills. One commenter questioned whether the definition would foster reading, writing and speaking rather than mathematics. Another commenter questioned just how broadly a grantee could define each of the four subject areas. One commenter suggested that there be no limitation upon the instructional strategies grantees could use in addressing the four subject area objectives.

*Response.* No change has been made. The Secretary believes that the definition is sufficient and that the subject areas must be limited to the four which are contained in the law (Sec. 201(1)). These four subject areas are defined as specifically as they need to be.

At the same time, applicants should be free to pick and choose among the varied instructional strategies which can be used to achieve one, some, or all of the four subject area objectives. Therefore, an applicant could use the arts, for example, to reach oral communication objectives if there is evidence in the application that that is an effective way of meeting those objectives.

§ *162.4 Comment.* Three commenters said that the coordination requirement in § 162a.40 (§ 162.130) was an important one, and that a definition or examples of coordination should be given.

*Response.* No change has been made. The Secretary believes that the EDGAR (§ 100a.580–100a.581, § 100b.580–100b.581) will guide applicants in accomplishing this important objective.

§ *162.4 Comment.* Various commenters asked for definitions of the following: "preservice and in-service", "population", "child", "private", "non-profit", "State basic skills plan", "validation", "reading academy", "improvement."

*Response.* No change has been made. Definitions of these terms are provided in EDGAR or are clear from the context of the statute or rules.

§ 162.5 *Submission of applications.*

§ *162.5(a)(1) Comment.* One commenter expressed concern about applicants being given sufficient time for planning, implementing, and evaluating a project. Another commenter expressed hope that the Basic Skills Improvement Program would not be restricted to an annual, short term discretionary grant program.

*Response.* No change has been made. The Secretary intends to allow enough time between the program announcement and the date by which applications must be received to permit applicants to plan high quality projects. These regulations specifically allow applicants under the National Basic Skills Improvement component to propose multi-year projects.

§ *162.5(a)(2) Comment.* Three commenters said that applicants should be able to submit a consolidated application for the programs under the National Basic Skills Improvement component and the Educational Proficiency component. One commenter stated that an applicant should be able to submit a consolidated application for all the programs. Another commenter said that, if the Secretary reviews separately each programmatic component within a consolidated application, the coordination of project components might be lost.

*Response.* A change has been made. In accordance with EDGAR (§ 100a.125), an applicant must submit a separate application for each program under which it wants a grant. Separate reviews of the separate applications do not, in the Secretary's judgment, negatively affect coordination of basic skills activities within the project area.

§ 162a.10 (§ 162.110) *Basic Skills Improvement in the Schools Program: Requirements*

§ 162a.10(a) *(§ 162.110(a)) Comment.* Three commenters requested that the six program elements described in Sec. 205 of the law be repeated in the regulations.

*Response.* A change has been made. The six program elements in the law are repeated in the regulations.

§ 162a.10(a) *(§ 162.110(a)) Comment.* One commenter said that school leaders should be involved early in planning the six program elements described in Sec. 205 of the law. Another commenter said

that teachers should be required to be involved in all six program elements. Another commenter said that one of the six program elements (Sec. 205(5)) seemed to encourage aides to act as teachers and the commenter objected to that.

*Response.* No change has been made. The statutory language clearly fosters early involvement of teachers and other educational leaders in the development of the proposed project and it does not promote the use of aides as teachers.

§ 162a.10(a) *(§ 162.110(a)) Comment.* One commenter was concerned that the Basic Skills Improvement In The Schools Program would duplicate or replace whatever high quality basic skills activities are currently being carried out in the schools.

*Response.* No change has been made. The intent of the law clearly is not to supplant but to supplement whatever high quality basic skills activities are currently being carried out in the schools.

§ 162a.10(a) *(§ 162.110(a)) Comment.* One commenter expressed concern that the program would concentrate on existing basic skills activities and not new ones.

*Response.* No change has been made. While it is true that many schools are currently addressing reading, mathematics, and oral and written communication, not all schools place an equal emphasis upon all four subject areas. These rules require an applicant to develop its project upon the findings of a thorough needs assessment. If that is done, the program will support new as well as refined basic skills activities.

§ 162a.10(a) *(§ 162.110(a)) Comment.* One commenter said that the Federal Government should not require an applicant to repeat any of the six program elements referred to in the rule that have already been completed.

*Response.* No change has been made. It is presumed that if an applicant has, for example, already done a schoolwide assessment of the instructional needs of children in basic skills, the applicant will not do the assessment again. An applicant should report the findings of such an assessment in the application.

§ 162a.10(b) *(§ 162.110(b)) Comment.* One commenter said that applicants should be allowed to propose a project for certain grades or for one grade.

*Response.* No change has been made. An applicant may propose to carry out the project in elementary schools, in secondary schools, or both. Sec. 205(1) of the law refers to a "schoolwide" needs assessment. Sec. 205(2) of the law requires projects to establish learning goals and basic skills objectives "for each school." The intent of the rule is to have grantees address an entire project school, not isolated classrooms. The Secretary believes that addressing an entire school will make the project more cost effective and will encourage its adoption by other agencies.

§ 162a.10(b) *(§ 162.110(b)) Comment.* One commenter said that the regulations should stress the development of comprehensive programs, and that the regulations should specifically explain what a "comprehensive program" is.

*Response.* No change has been made. The Secretary believes that the statutory term "comprehensive programs" is sufficiently clear and is flexible enough to permit applicants to develop projects suited to local needs.

§ 162a.10(b) *(162.110(b)) Comment.* Five commenters stated that grantees should be able to carry out projects in preschools as well as in elementary and secondary schools.

*Response.* No change has been made. The law does not authorize preschool projects under the Basic Skills Improvement in the Schools Program. Sections 201 and 205 of the law refer only to elementary and secondary schools.

§ 162a.10(c) *(§ 162.110(c)(1)) Comment.* Three commenters stated that they approved of giving an applicant the choice of addressing one or more of the four subject areas with project funds. One commenter expressed concern that many applicants would choose not to deal with oral and written communication.

*Response.* No change has been made. The Secretary believes that the applicant is the best judge of whether the results of the needs assessment show that one, some, or all four subject areas should be supported with project funds.

§ 162a.10(c) *(§ 162.110(c)(2)(i)) Comment.* There were a large number of comments which focused upon the requirement of a schoolwide needs assessment in project schools. Two commenters wondered who would conduct the needs assessment. One commenter wondered whether an applicant could apply for a grant solely to do a needs assessment. Another stated that an applicant should be allowed to report the findings of a needs assessment if one has already been done. Another commenter said that a needs assessment is very difficult for non-local educational agency (LEA) applicants. One commenter said that there should be a requirement that applicants assess performance pattern differences between girls and boys, especially in mathematics.

One commenter requested that applicants be allowed to do a needs assessment after they have received an award. Another commenter stated that there should be a requirement that applicants relate the objectives of the program with the findings from the needs assessment. Another commenter asked whether the needs assessment has to be done throughout an entire district or only in the project schools.

*Response.* No change has been made. An applicant must do a needs assessment for each of the four subject areas in each project school. While an applicant may further assess basic skills needs after it receives a grant award, the applicant must initially assess basic skills needs before it submits an application. The applicant's analysis of the results of its needs assessment forms the foundation of a project. Without the analysis of the needs assessment, the applicant may not know what subject areas to address. If an applicant has already done a schoolwide assessment, the findings of such an assessment should be reported in the application. An applicant may not apply for a grant solely to do a needs assessment.

The Secretary encourages but does not require a needs assessment specific enough to indicate performance patterns of boys and girls within the project schools.

§ 162a.10(c) *(§ 162.110(c)(2)(i) Comment.* Several commenters remarked about the "target population" to be served under the Basic Skills Improvement in the Schools Program. One commenter said that an applicant should be allowed the choice of serving any children it wished. Another commenter said that an applicant should be allowed to target the funds for certain children. One commenter wanted to be able to use the funds for bilingual and handicapped children. Another commenter worried that, if only certain children were served, these children would be taken out of the regular classroom. Two commenters said that they did not understand which students were to be served by this program. Two commenters hoped that children in all different grades, elementary through secondary, would be served.

*Response.* No change has been made. The law restricts the target population to children in elementary schools, secondary schools, or both. A project should, as far as possible, address the needs of all the children in project schools (Sec. 201(1), Sec. 205(1), and Sec. 205(2)). The intent of the program is total school improvement. The Secretary will judge an application partly on whether the objectives of the project are based on the needs of the target population.

§ 162a.10(c) *(§ 162.110(c)(2)(i) and (ii))* *Comment.* One commenter thought that the requirement that the applicant address one or more subject areas with project funds but also address the other subject area needs was contradictory.

*Response.* A change has been made. The intent of the rule is to have grantees adequately address all four basic skills subject areas. The law authorizes balanced projects encompassing all four subject areas. The Secretary realizes, however, that with limited funds, grantees might have to address some of the subject areas with project funds and address the other areas with non-project funds. The Secretary also realizes that in multi-year projects, grantees may wish to address different subject areas in successive years. The new language clarifies the statutory requirement that all four subject areas be addressed each year by project or non-project resources.

§ 162a.11 (§ 162.111) *Parent Participation Program: Allowable activities.*

§ 162a.11 *(§ 162.111)* *Comment.* One commenter was alarmed that the program seemed restricted to the elementary level and did not address preschool children.

*Response.* No change has been made. The statute (Section 201 and 206) focuses upon the needs of elementary or secondary school children.

§ 162a.11 *(§ 162.111)* *Comment.* One commenter asked that the rules clarify whether a project is required to work with schools.

*Response.* A change has been made. Because the statute states that parents and volunteers are to work with schools, the regulations now repeat the statutory language. The program is not intended to duplicate what is done in the schools. Projects must complement whatever the schools are providing in the way of basic skills instruction.

§ 162a.11(b)(1) *(§ 162.111(1))* *Comment.* One commenter said that the regulations should require applicants and grantees to consult with publishers before developing and disseminating materials for use by parents.

*Response.* No change has been made. EDGAR establishes the rules governing consultations with publishers and others. See § 100a.190.

§ 162a.11(b)(1) *(§ 162.111(1))* *Comment.* One commenter said that parents and volunteers should be trained before they are given materials for use in the home.

*Response.* A change has been made to reflect the language of the statute.

§ 162a.11(b) *(§ 162.111)* *Comment.* Three commenters stated that the sample activities should include parents and volunteers—not just parents alone.

*Response.* A change has been made. Section 206 of the law explains that the purpose of the program is to enlist parents and volunteers to work with children in basic skills. The regulations now include "volunteers" as part of the target population in this program.

§ 162a.11(b) *(§ 162.111)* *Comment.* One commenter stated that the Secretary should stay closer to the language of the law in describing the allowable activities of this program. Another commenter said that the allowable activities should include all of the activities which form the parent projects under the State Formula Grant Program (Sec. 222(e)).

*Response.* A change has been made. The regulations now adhere more closely to the language of the law. Also, the activities described are merely illustrative and do not preclude grantees from carrying out similar activities.

§ 162a.11(b)(2) *(§ 162.111(2))* *Comment.* One commenter questioned whether "voluntary training" referred to parents and volunteers having the discretion to participate or not— rather than "voluntary" meaning "not for pay."

*Response.* No change has been made. The term "voluntary" refers to the fact that parents and volunteers are not required to participate in the training.

§ 162a.11(b)(2) *(§ 162.111(2))* *Comment.* Four commenters stated that there was no basis in the law for requiring that training be "in areas directly related to the school curriculum." One commenter said that the materials and training should correspond to some degree with activities that are going on in the classroom. Another commenter said that parents and volunteers should be trained in a wider range of activities than those directly related to the school curriculum.

*Response.* A change has been made. While the program focuses on activities which enlist parents and volunteers working with schools to improve the basic skills of children, not all activities must be restricted to those directly related to the school curriculum. Applicants should show how the proposed activities relate to the needs of the target population.

§ 162a.11(b)(2) *(§ 162.111(2))* *Comment.* One commenter said that the training should aim at bilingual classes of parents. Two commenters said that the training should aim at helping parents to motivate children to learn the basic skills.

*Response.* No change has been made. If project personnel see the need to conduct training activities in bilingual classes, there is nothing in the rules or the law to prevent it. Similarly, there is nothing which prevents the training from including methods that participants may use to motivate children to learn the basic skills.

§ 162a.11(b)(2) *(§ 162.111(2))* *Comment.* One commenter wished that an additional activity be allowed for setting up projects that would involve institutions such as volunteer organizations, labor unions, and business associations.

*Response.* No change has been made. These institutions are already eligible to apply under the current rules. (See § 162.2)

§ 162a.12 (§ 162.112) *Out-of-School Basic Skills Improvement Program: Allowable activities.*

§ 162a.12(b)(1) *§ 162.112(a)* *Comment.* One commenter questioned how much money would be reserved for lending or selling of books. Another commenter suggested that books be sold or lent to adults who were reading below a sixth grade level. Still another commenter stated that lending and selling of books should be considered under Sec. 231 of the law in the Inexpensive Book Distribution Program.

*Response.* No change has been made. The Secretary will announce annually how much money is available for the activities in this section. The statute clearly authorizes grantees under this program to give books to children and to lend or sell books to children, youths, and adults. This is not identical to the Inexpensive Book Distribution Program (See Sec. 231 of the law) which authorizes the distribution of books by gift or loan to pre-elementary, elementary, or secondary school children.

§ 162a.12(b)(2) *(§ 162.112(b))* *Comment.* Two commenters said that most of the funds for the Out-of-School Program should be focused on instructional and tutorial projects. Three commenters warned that quality control and standards are needed for out-of-school projects—particularly in connection with the hiring of staff and use of facilities. Another commenter said that these projects are a duplication of projects under the Adult Education Act.

*Response.* No change has been made. The Secretary intends to announce annually the amount of funds reserved for the allowable activities in this section (Sec. 162a.15). While applicants may propose to serve children, youth, and adults, emphasis is given in this program to projects which serve youths and adults who do not otherwise receive basic skills instruction, such as

individuals who are not performing at a sixth grade level and who are not yet ready for a high school equivalency project. Finally, the Secretary believes that there are adequate quality controls already contained in the selection criteria for the program and the requirements of § 162a.13.

§ 162a.12(b)(2) *(§ 162.112(b))* *Comment.* Several comments centered around the target population of the Out-of-School Basic Skills Improvement Program. Two commenters wanted the target population restricted to youths, 16 years of age and older, who have basic reading deficiencies. Another commenter wanted the program to serve youths who are 14 years of age and older and who presently receive no other instruction in basic skills. Two commenters questioned whether college students in need of basic skills instruction could be served by the program. One commenter suggested that no in-school children be served, but that children six years of age and older be served. One commenter wondered whether in-school children, youths, or adults were excluded from participation in this program.

*Response.* No change has been made. Section 208(a)(2) of the law authorizes instructional tutorial projects (academies) to provide individual assistance outside of the schools to children, youth and adults with instructional needs in basic skills. The Secretary does not interpret this statute as authorizing activities which duplicate basic skills programs in schools and colleges, or as authorizing activities for children, youth, and adults who have the same basic skills activities available to them in the schools and colleges.

Furthermore the Secretary does not interpret the statute to support the installation of academies within the regular instructional program of a school or college to serve regularly enrolled students. Rather, academies serve persons who participate on a voluntary basis where such basic skills projects are not available in the school or college to serve the target population. Academies also serve persons most in need of basic skills improvement (§ 162a.13(a)(1)).

A grantee may implement a project inside a school building or any other appropriate building. A grantee may work with children, youth, or adults who are or who are not currently enrolled in a school instructional program. However, the instruction given to the participants must be outside of and different from the normal school instructional program. The program aims at people who would not otherwise receive such basic skills instruction and people who are in need of tutorial or small group instruction.

§ 162a.12(b)(2) *(§ 162.112(b))* *Comment.* One commenter said that the Secretary should tell applicants whether projects could be called "academies." One commenter requested that the Secretary delete the rule that projects may be known as academies. One commenter suggested that the rule state that projects "may or may not be known as academies". One person requested that a definition of "reading academies" be given. Another commenter asked that the rule be changed to say that projects "will be known" as reading academies. Another commenter questioned why the Secretary changed the wording from "reading academies" in the law to "academies" in the rule.

*Response.* No change has been made. The law allows (but does not require) these activities to be called "reading academies"—which is appropriate when a grantee has a project which centers on the one subject area of reading. The rule amplifies the law and allows grantees to refer to these activities as "academies"—which is appropriate when a grantee has a project which centers on any of the other basic skills subject areas.

§ 162a.12(b)(3) *(§ 162.112(c))* *Comment.* One commenter wanted the regulation to include more specific examples of community organizations—"such as volunteer organizations, labor unions, and business associations"—that are eligible for funding.

*Response.* No change has been made. The list of examples of eligible applicants (§ 162.2(a)(3)) is sufficiently specific while not being all inclusive.

§ 162a.12(b)(3) *(§ 162.112(c))* *Comment.* Several commenters said the regulations should include as an allowable activity the employment of teachers as tutors of children during summers and non-school hours.

*Response.* No change has been made. The rule does not preclude a grantee from carrying out this activity.

§ 162a.13 (§ 162.113) *Out-of-School Basic Skills Improvement Program: requirements for instructional projects.*

§ 162a.13 *(§ 162.113)* *Comment.* One commenter questioned the legal authority for these requirements as they are not explicitly stated in the law.

*Response.* No change has been made. The Secretary has the authority to prescribe reasonable regulations that are required for the successful implementation of programs as authorized by Congress. Given the lack of statutory detail regarding the operation of the Out-of-School Basic Skills Program, the regulations in § 162a.13 are well within the scope of this authority.

§ 162a.13 *(§ 162.113)* *Comment.* One commenter suggested that the Secretary require each private agency that receives a grant to consult with the affected local educational agency whenever "mutual responsibility overlaps with a student."

*Response.* No change has been made. While this would be desirable in many cases, the Secretary does not have the authority to impose such a requirement upon grantees.

§ 162a.13(a)(1) *(§ 162.113(a)(1))* *Comment.* One commenter suggested that applicants be required to include in their applications procedures for diagnosing the basic skills needs of participants.

*Response.* No change has been made. Under this paragraph, an applicant is required to identify and recruit participants most in need of basic skills improvement. This cannot be done without diagnosing the needs of potential participants. The task of diagnosis is therefore implied by the other two tasks.

§ 162a.13(c) *(§ 162.113(c))* *Comment.* One commenter suggested additional examples of types of agencies with which academies should coordinate.

*Response.* No change has been made. The list of examples is not intended to be all inclusive.

§ 162a.13(c) *(§ 162.113(c))* *Comment.* One commenter said the regulation should require private agencies to be co-applicants with local educational agencies.

*Response.* No change has been made. The Secretary has no authority to impose such a requirement.

§ 162a.13(c) *(§ 162.113(c))* *Comment.* One commenter suggested that applicants send assurances that programs and materials are sex fair and nondiscriminatory.

*Response.* No chance has been made. Section 100a.500 of Education Division General Administrative Regulations (EDGAR) provides that each grantee must comply with Title IX of the Education Amendments of 1972 and its implementing regulations.

§ 162a.13(c) *(§ 162.113(c))* *Comment.* One commenter said that project managers should be required to consult with publishers.

*Response.* No change has been made. EDGAR establishes the rules for consultation with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced with dissemination. See § 100a.190.

§ 162a.14 (§ 162.114) *Duration of awards.*

§ 162a.14(a) (§ *162.114(a)*) *Comment.* Several commenters supported the provision that applicants may apply for up to 48 months. One commenter said that applicants should be able to apply for 60 months.

*Response.* A change has been made. The four year limitation on projects has been eliminated.

§ 162a.14(b)(2) (§ *162.114(b)(2)*) *Comment.* Several comments were made concerning the proposed decrease of funds for multi-year projects. Several commenters said that funds should not be decreased. One commenter said that funds to community agency grantees should not be decreased. One commenter approved decreases except for those projects for which multi-year hiring of personnel is necessary. One commenter said that only funds to State and local educational agency grantees should be decreased.

One commenter said that multi-year projects should be funded at the same level for the first two years and at 60% and 40% of the original level for the last two years. One commenter suggested that grantees be required to guarantee that they will fund the project with local funds after a certain time period. Another commenter suggested that the Secretary should set up a sliding scale based on the other funds available to grantee agencies. One commenter recommended that grantees be required to match local dollars with Federal dollars. Another commenter suggested that the Secretary should emphasize the quality of projects and not the quantity of projects or project funds. Another commenter said the Secretary should announce the percentage decrease for multi-year projects in the regulations.

*Response.* A change has been made. Most of the comments reflected fear that there might be an unreasonable percentage decrease in funds for multi-year projects. The Secretary believes, however, that grantees should be willing to commit a reasonable amount of their own resources to continuing a successful basic skills project. Therefore, the Secrtetary intends to keep the option of decreasing the amount of funds available for projects, for example, in the second, third, fourth and fifth year of the project. The Secretary will announce the percentage decrease, if any, in the **Federal Register.**

§ 162a.15 *Reservation of Funds.*

§ 162.a.15 *Comment.* Several commenters said the Secretary should fund only certain types of projects within the three programs under the National Basic Skills Improvement component.

*Response.* A change has been made. The Secretary notifies the public annually, by publishing a notice in the **Federal Register**, of the size of grants and the amount of funds reserved for various types of projects within the three programs.

§ 162a.30 (§ 162.120) *SEA review of applications affecting an LEA.*

§ 162a.30(a) (§ *162.120(a)*) *Comment.* Several commenters said that they supported coordination of local projects with the State plan. Two commenters said that the State should have the power of approving local applications, not just of commenting on them. One commenter said that it was a conflict of interest to have States commenting on local applications and applying for the same program funds. Another commenter said that States should not be allowed to give weighted points in their comments about local applications.

*Response.* No change has been made. Sec. 202(b) of the statute requires that the State educational agency be provided an opportunity to comment on LEA applications. States may use weighted points in their comments, but the use of weighted points is not required. The statute does not give the States authority to approve or disapprove an application.

§ 162a.30(a)(2)(i) and (ii) (§ *162.120(a)(2)(i) and (ii)*) *Comment.* Two commenters requested that non-LEA applicants not be required to ask the State for comments. One commenter was not sure whether the rule applies to all non-LEA applicants.

*Response.* No change has been made. All applicants (other than SEAs) are required to ask the State for comments if the applicant plans to conduct an activity in an LEA instructional program or any activity that involves training of LEA personnel. The Commissioner believes this procedure is a reasonable and necessary means of ensuring that individual projects are consistent with State basic skills plans.

§ 162a.30(b) (§ *162.120(b)*) *Comment.* One commenter asked that "State basic skills plan" be defined in the rules. One commenter said that an LEA can be penalized if the State does not have a plan prior to the LEA submitting its application.

*Response.* No change has been made. States wishing to participate in the State Formula Grant Program (Sec. 222 of the law) or the State Leadership Program (Sec. 224 of the law) are to submit a State Basic Skills plan to the Commissioner. Details of what is required to be in a State basic skills plan are contained in the law. The regulations (§ 162a.30(c)) require States to inform applicants in a timely manner of the criteria by which it intends to comment on applications.

§ 162a.30(c) (§ *162.120(c)*) *Comment.* One commenter asked that the Secretary delete the phrase "in a timely manner."

*Response.* No change has been made. A key to the success of States commenting upon project applications is that applicants must know well in advance the criteria upon which States will judge consistency of proposed projects with their State basic skills plan. If States do not inform applicants in a timely manner, effective coordination is hindered.

§ 162a.30(d) (§ *162.120(d)*) *Comment.* One commenter said that applicants should be allowed to send a general application to the State for comment and a more specific application to the Secretary at a later date. Another commenter said it was unrealistic to require applicants to send their application to the State fifteen days prior to submitting it to the Secretary. Another commenter requested that States be required to send a receipt and a copy of their comments to the applicant.

*Response.* No change has been made. Based on past experience with this procedure, the Secretary believes that it is not unduly burdensome to require applicants to send their applications to the State at least fifteen days prior to submitting them to the Secretary. The Secretary has no authority to require States to send receipts and copies of its comments to project applicants, although this would be desirable and permissible under the regulations.

§ 162a.30(e)(3) (§ *162.120(e)(3)*) *Comment.* One commenter said the Secretary's authority to fund projects which may not be consistent with a State basic skills plan goes beyond the intent of the law and negates the possibility of coordination between applicants and States.

*Response.* No change has been made. While the coordination of individual projects with the State basic skills plan is obviously important, the statute does not give the States veto power over the selection of projects under the National Basic Skills programs.

§ 162a.31(c) (§ *162.121(c)*) *Comment.* One commenter said that the Secretary should consider "geographic distribution" of grants only after the quality of the application has been reviewed. One commenter questioned how the Secretary will determine appropriate geographic distribution. Another commenter questioned whether

there was a limit to the discretion of the Secretary on geographic distribution. One commenter wanted the provision to read "the Secretary shall" rather than "The Secretary may."

*Response.* No change has been made. The Secretary judges the applications first on quality—and may then consider State by State geographic distribution to avoid an excessive concentration of awards. The Secretary needs this discretion when, for example, all of the highly ranked applications are located in three States. On the other hand, there would be no need to consider geographic distribution if all of the highly ranked applications are distributed nationally.

§ 162a.32 (§ 162.121) *What selection criteria does the Secretary use?*

§ 162a.32 *(§ 162.121) Comment.* Several commenters suggested specific priorities that the Secretary might use in funding projects under the National Programs. One commenter said that the Secretary should fund only demonstration projects with proven effectiveness. Another commenter said that the projects should be models for other agencies. One commenter said that priority should be given to projects which address all four subject areas and which propose four year activities. Another commenter said that there should be separate priorities and consideration given to new projects and to continuation projects.

*Response.* No change has been made. The Secretary selects among applications based on the selection criteria in this section of the regulations. Section 162.1(b) establishes that the National Basic Skills Improvement component consists of three programs which are demonstration in nature. It is anticipated that funded projects will eventually become models for other agencies. Section 162a.10(c) requires that applicants under the Basic Skills Improvement In the School Program assess instructional needs in all four subject areas. The Secretary does not believe that it would be appropriate to establish separate priorities or to give separate consideration to new and continuation projects. Section 100a.253 of EDGAR governs the funding of continuation projects.

§ 162a.32(b) *(§ 162.121(a)(2))* *Comment.* One commenter wanted stringent standards for hiring of personnel for the Out-of-School Basic Skills Improvement Program.

*Response.* No change has been made. The Secretary does not believe there is authority or need to subject applicants under the Out-of-School Program to different standards or criteria for hiring of personnel than applicants for any of the other basic skills programs.

§ 162a.32(d) (§ *162.121(a)(4)*) *Comment.* One commenter inquired as to the characteristics of a high quality evaluation. One commenter said that there are no standardized tests in oral or written communication.

*Response.* No change has been made. Sections 100a.590–592 of EDGAR specify what evaluation steps must be taken by a grantee. The grantee is free to use any appropriate test instruments.

§ 162a.32(f) (§ *162.121(b)(1)*) *Comment.* One commenter stated that applicants should be judged on their use of high quality research—not just any research that is available.

*Response.* A change has been made. The Secretary agrees that the applicant should ensure that the project objectives are based on high quality research and experience regarding basic skills instruction.

§ 162a.32(f) (§ *162.121(b)(1)*) *Comment.* Two commenters said that the project objectives should be based on the appropriate opinion of professional associations dealing with basic skills.

*Response.* No change has been made. The Secretary believes that professsional opinion is included within the meaning of the phrase "high quality research."

§ 162a.32(g) (§ *162.121(b)(2)*) *Comment.* One commenter said that "coordination" was such a key component of the National programs that it should receive more points.

*Response.* A change has been made. The Secretary has increased the point value for coordination to 20 points.

§ 162a.32(h) (§ *162.121(b)(3)*) *Comment.* Several commenters wanted the Secretary to specify in more detail the groups and individuals to be included in planning and implementing the project. One commenter wanted "teachers" to be specifically mentioned. Another commenter wanted "teachers' bargaining representatives" to be specified. One commenter wanted publishers to be included. Another commenter wanted parent advisory committees to be specified. Five commenters wanted this criterion to be listed first and to receive more points.

*Response.* No change has been made. The criterion reflects the principle that individuals and agencies affected by the project should have some say in developing and implementing it. In some cases it may be appropriate to involve the groups suggested, in others not.

§ 162a.32(i) (§ *162.121(b)(4)*) *Comment.* One commenter asked that the criterion regarding the incorporation of results receive more points. Another commenter questioned whether "regular instructional programs" will be interpreted broadly.

*Response.* No change has been made. The applicant should describe those procedures in the application. The Secretary believes that the criterion has sufficient points and provides detailed enough guidance to applicants. If specific questions arise regarding the interpretation of "regular instructional programs", they will be handled on a case-by-case basis.

§ 162a.32(j) (§ *162.121(b)(5)*) *Comment.* One commenter said that the word "validate" should be clarified. Another commenter supported a criterion for seeking improvement in basic skills for girls. Another commenter wanted a criterion that emphasized novel practices and innovative approaches.

*Response.* No change has been made. "Validate" means "to confirm as sound." The criteria clearly allow an applicant to try novel or innovative approaches and to emphasize seeking improvement in basic skills for girls (consistent with the requirements of Title IX of the Ed. Amendments of 1972).

§ 162a.40 (§ 162.130) *Coordination requirement.*

§ 162a.40 (§ *162.130*) *Comment.* One commenter said that examples of coordination should be provided in the rules. One commenter said that all basic skills activities of grantees should be coordinated.

*Response.* No change has been made. EDGAR contains a complete description of the coordination requirement (§ 100a.580 and 100a.581).

§ 162a.41 (§ 162.131) *Participation of non-public school children.*

§162a.41 *(§ 162.131(a) and (b))* *Comment.* One commenter stated that the applicant should assure early and continuous consultation with non-public school officials. Another commenter said that the applicant should consult with appropriate officials who are knowledgeable of the needs of non-public school children. And another commenter said that the Secretary should spell out the maximum and minimum terms of participation for non-public school children.

One commenter said that "area to be served" can be taken as a geographic area or a subject matter area. Another commenter questioned whether grantees were required to provide services to non-public school children in all school buildings or only to those children who reside in the project's attendance area. One commenter said that grantees should be required to provide a genuine

opportunity for non-public school children to participate in the project. One commenter said that the word "comparable" should be defined. And another commenter asked whether "comparable" meant "services of the same nature" or "comparable expenditures."

*Response.* A change has been made. Sections 100a.680 and 100b.650–662 of EDGAR—provide appropriate direction for participating grantees.

§ 162a.42 (§ 162.132) *Other requirements for LEAs and SEAs.*

§ 162a.42(a) *(§ 162.132(a)) Comment.* One commenter said that the Secretary should require grantees to use a wide range of assessment procedures. Another commenter said that evaluation should not consist of merely one test of participants in the project. One commenter said that grantees should be allowed to use locally developed tests, not just commercially prepared tests. One commenter said that teachers should be involved in evaluating the success of the project. One commenter said that evaluation of a writing program should focus on pre-and-post program sampling of complete pieces of writing. Another commenter said that an evaluation should include a sample of student attitudes toward the basic skills. One commenter said that the goal of project validation should be stated in this section of the rules. Another commenter said that the Secretary should aggressively prevent the use of inappropriate means of evaluating a project. Still another commenter questioned whether the testing instruments used by grantees will take into account the complexity of projects.

*Response.* No change has been made. The intent of the rule is to see that grantees evaluate their projects and report their findings to the Secretary. The Secretary believes that the regulations should provide the flexibility that grantees need to evaluate the success of their projects most effectively.

§ 162b.10 (§ 162.210) *Formula Grant Program: individualized agreement.*

§ 162b.10 *(§ 162.210) Comment.* One commenter said that the law should be included with the regulations.

*Response.* A change has been made. Major items of the law (Sec. 222(a)(1) to (11) are included.

§ 162b.10 *(§ 162.210) Comment.* One commenter said that the Secretary should divide the monies equally among the State Basic Skills Improvement Program and the programs within the National Basic Skills Improvement component. Another commenter said that more monies should be apportioned to the State programs.

*Response.* No change has been made. Sec. 242 of the law prescribes funding apportionment for the programs under the National component and the State programs.

§ 162b.10(a) *(§ 162.210(a)) Comment.* One commenter said that the Secretary should not allow a State to use Federal funds for activities which are already being conducted.

*Response.* No change has been made. An SEA wishing to participate in the Formula Grant Program must describe in its agreement recent activities in basic skills and proposed goals and activities. This section does not necessarily preclude a State from proposing to continue with these funds some of the successful basic skills activities it has conducted in the past. However, section 222(a)(11) of the law requires that these Federal funds be used to supplement the level of State and local funds available for basic skills activities and not to supplant such State and local funds.

§ 162b.10(a) *(§ 162.210(a)) Comment.* One commenter said that the consultation requirement contained in Sec. 222(a)(2) of the law should be stated more specifically in the regulations.

*Response.* A change has been made. The language of the law is included.

§ 162b.11 (§ 162.211) *State Leadership Program: individualized agreement.*

§ 162b.11 *(§ 162.211) Comment.* One commenter asked whether planning grant monies are available under this program.

*Response.* No change has been made. Sec. 224 of the law lists five allowable project activities of which planning activities is one. The statute does not, however, permit grants merely to plan a project.

§ 162b.20 (§ 162.220) *Formula Grant Program: Apportionment of Funds.*

§ 162b.20(b) *(§ 162.220(b)) Comment.* One commenter requested that SEAs be able to hire personnel with Formula grant funds set aside for the administration of the agreement. The same commenter said that the 5% allowance of funds for administration is not enough money.

*Response.* No change has been made. The 5% limitation on funds to administer the agreement is statutory (Section 222(a)(9)). States are allowed to hire personnel with the 5% allowance if the personnel are administering the Formula Grant Program.

§ 162b.20(c) *(§ 162.220(c)) Comment.* One commenter said that no funds should be subgranted to LEAs. Another commenter said that the Secretary should change the requirement to say that 70% of the funds should "directly benefit" LEAs.

*Response.* No change has been made. Section 222(b) of the law provides that not less than 70% of the amount of the grant for any fiscal year must be made available for subgrants to LEAs.

§ 162b.20(c) *(§ 162.220(c)) Comment.* One commenter asked what could be done with the remaining 25% of the State allotment Formula Grant Program funds. Another commenter said that SEAs should be allowed to describe in their State plans what they will do with the remaining 25%. Another commenter questioned whether the SEA could retain the remaining 25% for their own program purposes.

*Response.* No change has been made. Section 222 requires that all of the State's grant for any fiscal year (with the exception of the 5% maximum for administering the State plan) is to be subgranted by the State to LEAs or other eligible applicants. At least 70% of the grant award must be subgranted to LEAs. SEAs are expected to describe in their State plan what they will do with all of the grant funds.

§ 162b.21 (§ 162.221) *State Leadership Program: apportionment of funds.*

§ 162b.21(a) *(§ 162.221) Comment.* One commenter said that the apportionment of funds according to a formula was a good decision. Another commenter said that no such apportionment formula is suggested in the law.

*Response.* No change has been made. While no such formula is provided in the law, some means of allocating the funds is necessary, and the Secretary believes that such a formula assures that funds are distributed equitably among the SEAs whose State plans meet all statutory and regulatory requirements.

§ 162b.21 *(§ 162.221) Comment.* One commenter said that the Secretary should clarify that no funds have to be subgranted under the State Leadership Program.

*Response.* No change has been made. Section 224 of the Act clearly does not authorize the award of subgrants. Therefore, a State may not award them.

§ 162b.30 (§ 162.230) *Eligibility for a subgrant.*

§ 162b.30(b) *(§ 162.230(b)) Comment.* One commenter said that allowing institutions of higher education to apply is not authorized by the law.

*Response.* No change has been made. Section 222(b) of the statute clearly states that institutions of higher education are eligible to apply for a subgrant.

§ 162b.30(b) *(§ 162.232) Comment.* One commenter said that non-LEA applicants should be able to conduct a preschool project. One commenter said that non-LEA applicants should be able to conduct an out of school basic skills improvement project.

*Response.* No change has been made. Section 222(b), (d) and (e) of the law limits the types of activities which may be supported by subgrant funds by applicants other than LEAs. Under the Formula Grant program, non-LEA applicants are limited to activities involving parents working with schools in basic skills improvement projects.

§ 162b.30(b)(3) *(§ 162.230(c)) Comment.* One commenter said that allowing private nonprofit agencies to apply for a subgrant is not authorized by the law.

*Response.* No change has been made. Section 222(b) of the law authorizes the award of subgrants to "public and nonprofit agencies and institutions." This would include private nonprofit agencies. However, section 222(b) does not require a State to award subgrants to private, nonprofit agencies.

§ 162b.30 *(§ 162.230(c)) Comment.* One commenter asked that consortia be allowed to apply for subgrant funds.

*Response.* No change has been made. Under the EDGAR (§ 100b.303), two or more eligible entities may submit a joint application for a subgrant.

§ 162b.31 (§ 162.231) *What kinds of projects may a State assist under subgrants to LEAs?*

§ 162b.31 *(§ 162.231(a)) Comment.* One commenter said that LEAs should be able to conduct a preschool project or an in-school project.

*Response.* A change has been made. Section 222(a)(4)(A) and Section 222(d)(6) clearly establish that Congress intended preschool populations to be served by the Formula Grant Program. Accordingly, the new language makes it clear that a local educational agency applicant is allowed to serve preschool children in an in-school project. The LEA shall meet the six requirements described in Section 222(d) of the law.

§ 162b.33 *(§ 162.231(b)) Comment.* One commenter said that applicants should be able to apply for a project involving volunteers.

*Response.* No change has been made. Section 222(e)(3) of the law mentions volunteers only as a resource at project centers, not as part of the target population.

§ 162b.40 (§ 162.233) *Condition of award: Participation of private school children.*

§ 162b.40 *(§ 162.233) Comment.* One commenter said that the title to this section should be changed so that applicants are clear that this grant condition is not optional.

*Response.* A change has been made. The Secretary has changed the title to parallel the format used elsewhere in these rules for "grant conditions" and to make it clear that providing equitably for children attending private schools is required.

§ 162b.40 *(§ 162.233) Comment.* One commenter said that children attending private elementary and secondary schools should be permitted to participate in the Formula Grant Program only if the staff in those schools satisfies the same "requirements for personnel" imposed upon the staff of the public schools.

*Response.* No change has been made. The Secretary has no authority to regulate with respect to the "requirements for personnel" in public or private schools.

§ 162b.40 *(§ 162.233) Comment.* One commenter recommended that children attending private elementary and secondary schools be permitted to participate in the Formula Grant Program only if those schools practice "open enrollment."

*Response.* No change has been made. Although children enrolled in private schools may participate, the private elementary or secondary schools are themselves not recipients of and do not benefit from the Federal funds subgranted by SEAs under this program. Subgrantees are subject to the anti-discrimination requirements referred to by § 100b.500 (EDGAR).

§ 162b.40 *(§ 162.233(b)) Comment.* Several comments were received regarding equal expenditures for private school children. One commenter said that the Secretary should not overburden SEAs and LEAs by requiring them to serve private school children. One commenter said that the concept of "equal" should be clarified. Another commenter said that the Secretary should require that services to private school children should be "comparable in quality, scope and opportunity" to those provided to the public school children. Another commenter wanted the Secretary to refer to the Title I (ESEA) regulations in this section.

*Response.* No change has been made. The right of private school children to participate in the program is statutory. Sections 100b.650 to 100b.662 of EDGAR establish the rules regarding participation of private school children.

§ 162c.10 (§ 162.310) *Proficiency Standards Program.*

§ 162c.10 *(§ 162.310) Comment.* One commenter said that the Proficiency Standards Program funds should be distributed equally among the applicants.

*Response.* No change has been made. This program is a direct grant program, not a State administered program. Under a direct grant program, the Secretary makes competitive grants directly to eligible applicants whose applications are judged to be of high quality. Applicants will develop different plans and will require funds in varying amounts.

§ 162c.10(b)(1) *(§ 162.310(a)) Comment.* One commenter said that "proficiency standards" should be defined.

*Response.* No change has been made. The term "proficiency standard" means, for example, a minimum goal of educational achievement.

§ 162c.10(b)(1) *(§ 162.310(a)) Comment.* One commenter said that applicants should show evidence of coordination with the State basic skills plan.

*Response.* No change has been made. Section 162c.30 of the regulations requires some applicants to submit their application to the SEA for its comments.

§ 162c.10(b)(1) *(§ 162.310(a)) Comment.* One commenter hoped that projects could work with bilingual and handicapped children.

*Response.* No change has been made. These rules do not preclude grantees from working with bilingual or handicapped students.

§ 162c.10(b)(1) *(§ 162.310(a)) Comment.* One commenter asked whether the applicant's staff members should be involved in the development of proficiency standards. Another commenter said that the grantee should assure that the proficiency standards are sex fair and nondiscriminatory.

*Response.* No change has been made. The Secretary has no authority to prescribe how the grantee develops the educational proficiency standards. The Secretary agrees that the proficiency standards should be sex fair and nondiscriminatory and believes that the selection criteria in § 162c.32 of the regulations embody this view.

§ 162c.10(b)(3) *(§ 162.310(c)) Comment.* One commenter said that the word "additional" does not carry the same meaning as the word "supplementary" used in the law (Sec. 921).

*Response.* A change has been made. The Secretary has changed the wording to be closer to the language of the law.

§ 162c.10(b)(3) *(§ 162.310(c))*
*Comment.* One commenter questioned whether the supplementary instruction can be provided by local or State funds.

*Response.* No change has been made. The rule does not preclude grantees from providing the required supplementary instruction with State or local funds.

§ 162c.10(b)(3) *(§ 162.310(c))*
*Comment.* One commenter said that teachers should judge which students need supplementary instruction. Another commenter said that students and parents should have an opportunity to review any proficiency standards test and the complete teaching record of the student.

*Response.* No change has been made. The regulation does not preclude these possibilities. Rather, the regulation requires that grantees provide supplementary instruction in the appropriate subject to students who fail any test described in the educational proficiency plan.

§ 162c.10(b)(3) *(§ 162.310(c))*
*Comment.* One commenter did not support judging student performance by a single test.

*Response.* No change has been made. The intent of the rule is not to require the grantee to judge a student's performance by a single test. Rather, the intent of the rule is to require grantees to offer supplementary instruction to any student who fails a proficiency standards test. The Secretary encourages grantees to follow current, sound research regarding the types and frequency of tests for students.

§ 162c.10(b)(3) *(§ 162.310(c))*
*Comment.* One commenter said that the Secretary should prohibit recipients from using proficiency standard or "minimum competency" test results as a requirement for a high school diploma.

*Response.* No change has been made. The Secretary has no authority to prohibit use of test results as a requirement for a diploma.

§ 162c.11 (§ 162.311) *Achievement Testing Program.*

§ 162c.11 *(§ 162.311) Comment.* One commenter said that the name of the program connotes "standardized pen and paper tests" and disapproved of this connotation.

*Response.* No change has been made. Section 922 of the law refers to "achievement testing" and "programs of testing the achievement in the basic skills." However, these terms do not connote only standardized, norm referenced achievement tests. There are different types of achievement tests in the four basic skills subject areas. Applicants have the responsibility of choosing the most appropriate type to meet the needs of their students and staff members.

§ 162c.11(b)(1) *(§ 162.311(a))*
*Comment.* Six commenters supported the use of the phrase "different measures of achievement." One commenter, however, objected because "test" is used in the law.

*Response.* A change has been made. The statutory term, "test" is used.

§ 162c.11(b)(1) *(§ 162.311(a))*
*Comment.* One commenter said that grantees should provide SEAs and LEAs with information about the availability of achievement tests as well as about the uses of achievement tests.

*Response.* A change has been made. Section 922 (a)(1) of the Act allows, but does not require, the grantee to provide this information.

§ 162c.11(b)(2) *(§ 162.311(b))*
*Comment.* One commenter said that grantees should be required to consult teacher organizations in planning training programs.

*Response.* No change has been made. There is no authority to require this consultation. However, the desirability of this practice is reflected in the selection criterion (§ 162c.32(g)).

§ 162c.11(b)(3) *(§ 162.311(c))*
*Comment.* One commenter said that evaluation should be one of the allowable activities. Three commenters said that the purpose of the research and evaluation activities should be stated in the rule.

*Response.* A change has been made. The requested language has been included.

§ 162c.11(b)(3) *(§ 162.311(c))*
*Comment.* One commenter said that the Secretary should include opportunities for teachers to improve their diagnosis of student needs.

*Response.* No change has been made. Such an opportunity is not precluded by the rule.

§ 162c.11(b)(3) *(§ 162.311(c))*
*Comment.* One commenter said that assessment techniques should include more than paper and pencil activities. Another commenter said that funds should be withheld from those who use tests and test results inappropriately. Another commenter said that students and parents should be allowed to review tests and test responses.

*Response.* No change has been made. The rules describe the type of activities that a grantee is allowed to conduct. The Secretary has no authority to regulate further with respect to the appropriate design or use of tests.

§ 162c.11(b)(3) *(§ 162.311(c))*
*Comment.* Once commenter said that the Secretary should require that grantees coordinate with projects conducted by the National Institute of Education.

*Response.* No change has been made. Sections 100a.580 and 581 of EDGAR establish the coordination requirement.

§ 162c.11(b)(3) *(§ 162.311(c))*
*Comment.* One commenter said that conducting research on girls' performance in basic skills should be an allowable activity.

*Response.* No change has been made. The regulations do not preclude an applicant from proposing to do research in this area.

§ 162c.30 (§ 162.320) *State review of applications affecting an LEA.*

§ 162c.30 *(§ 162.320) Comment.* One commenter said that there is no basis in the law for this provision.

*Response.* A change has been made. Certain applicants will be required to seek comments from the SEA, and those comments will carry considerable weight with the Secretary. The Secretary may refuse to consider an application for funding if the SEA concludes that the application is inconsistent with the State's basic skills plan. However, the Secretary is not required to do this.

These modified procedures are firmly based in law. Section 921(b)(1) of the law gives the Secretary authority to prescribe a reasonable format and procedures for submitting an application. Section 210 of the law gives the Secretary the authority to "establish effective and efficient procedures" for coordinating programs relating to improvement of the Basic Skills. In addition the Secretary has the authority to prescribe reasonable regulations needed to operate programs effectively.

§ 162c.32 (§ 162.321) *What selection criteria does the Secretary use for the Proficiency Standards Program?*

§ 162c.32(f) *(§ 162.321(b)(1)(i))*
*Comment.* One commenter said that this criterion should include the idea that proficiency standards are sex fair and nondiscriminatory.

*Response.* No change has been made. The criterion is broad enough to allow consideration of the findings of high quality research—including research as to nondiscrimination or other important variables.

§ 162c.32(g) *(§ 162.321(b)(1)(ii))*
*Comment.* One commenter said that teachers and their bargaining agents should be involved in the planning and implementation of any training programs affecting them.

*Response.* No change has been made. The criterion does not preclude such input from teachers and bargaining agents.

§ 162c.33(h) *(§ 162.321(b)(1)(iii))* *Comment.* One commenter said that the criterion on the use of tests should receive 25 points. Another commenter said that this was not a very appropriate criterion.

*Response.* No change has been made. The Secretary believes that the criterion is an appropriate one because one of the most important aspects of a quality testing program is the practical use of test result information. Points ascribed to all criteria have been lowered because a new criterion (§ 162c.33(i)) has been added.

§ 162.33 (§ 162.321) *What selection criteria does the Secretary use for the Achievement Testing Program?*

§ 162c.33(h) *(§ 162.321(b)(2)(iii))* *Comment.* One commenter said that a criterion should be added to include the idea that tests and test practices should be sex fair and nondiscriminatory.

*Response.* No change has been made. The Secretary believes that the criterion in § 162c.33(f) allows consideration of the findings of high quality research—including research as to nondiscrimination. Of course, the non-discrimination provisions of EDGAR also apply (100a.500).

§ 162c.33(i) *Comment.* One commenter said that a criterion should be added dealing with the overall purposes of the program—to improve the uses of tests and to find other means of more accurately assessing achievement.

*Response.* A change has been made. The Secretary has added a new criterion on procedures for improvement (162c.33(1)).

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Part IV

# Department of the Interior

## Bureau of Land Management

## Carey Act Grants; Segregating and Patenting Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2610

[Circular No. 2463]

## Carey Act Grants; Segregating and Patenting Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** Regulations under provisions of the Act of August 18, 1894, as amended (43 U.S.C. 641 et seq.), the Carey Act, are revised and reinstated. Regulations were removed from Title 43 in 1970 because there was then no active interest in grants under the Act by the States. Applications have since been filed under the Act. Regulations are needed to guide the processing of applications by the States for desert lands for reclamation and settlement for agricultural purposes.

**DATE:** Effective date June 20, 1980.

**ADDRESS:** Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

**FOR FURTHER INFORMATION, CONTACT:** Mr. Keith Corrigall, 202–343–8693, or Mr. Robert C. Bruce, 202–343–8735.

**SUPPLEMENTARY INFORMATION:** The principal author of this rulemaking is Mathew Millenbach of the Bureau of Land Management, Division of Lands and Realty, Washington Office.

Proposed rulemaking was published on pages 18100–18102 of the **Federal Register** of April 5, 1977, to revise and reinstate regulations under the law of August 18, 1894, as amended (43 U.S.C. 641, et seq.), commonly known as the Carey Act. Comments were invited through May 31, 1977.

The comments received are grouped below for discussion. General comments not addressing a specific section of the proposed rulemaking are followed by specific comments grouped by the section of the proposed rulemaking commented upon.

### General Comments

1. It was suggested that persons such as grazing lessees or permittees, recreationists, and prospectors who are now using public lands have no protection if a State wants the land they are using for a Carey Act project. This may be true for lands which are determined to be suitable for agricultural development under the Act and where adequate water can be made available for irrigation of the lands. However, there is protection from unreasonable actions in the decisionmaking processes in 43 CFR 2400, in the multiple use provisions of the planning system, and in the appeals provisions in 43 CFR 4.

2. One comment suggests that the proposed rulemaking be set aside until the multiple land use planning and public participation provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) are fully implemented. In many respects, the Federal Land Policy and Management Act is enabling legislation addressing already established programs. Multiple land use planning with public participation has been in progress for some time in many areas. The rulemaking should be finalized to handle applications where data gathering and planning are advanced.

3. It was stated that an applicant should have knowledge of Bureau of Land Management classifications and long-range plans on lands that are being considered for a reclamation project. This information is available at the District or State Bureau of Land Management Office having jurisdiction over the land.

4. It was suggested that the Carey Act program be set up as an agency motion program. The Bureau of Land Management would evaluate, make the necessary determinations, and publish notice of all lands suitable and available for Carey Act projects. Since there is a statutory limit on the amount of land that can be patented in any one State, and interest in the program varies from State to State, it is considered more practical and economical to run the program on a project by project basis.

5. It was suggested that economics should not be a factor in the consideration of the suitability of lands for a project. The Act is an agricultural settlement act. Experience with other settlement acts has shown that agricultural entries that are not economically sound have failed and the land returned to the Federal Government in a degraded condition.

6. It was pointed out that water is regulated by State government and the Federal Government would be unable to stipulate the amount or kinds of uses for water on the lands after patent is issued. The Federal Government's responsibility is to assure that the lands are cultivated and settled after reclamation.

7. The off-site effect of water table drawdown because of agricultural practices was questioned. This is a factor which must be considered in the primary evaluation and determination of suitability of lands for a project.

8. Several comments stated that the Secretary does not have the discretionary authority to determine whether lands applied for are suitable for Carey Act development nor to determine whether such projects are feasible. The U.S. Supreme Court recently upheld the Department of the Interior's view that the Carey Act is discretionary. This final rulemaking is consistent with that court decision.

9. It was pointed out that the Secretary has no authority in the Carey Act to impose conditions upon grants. The Carey Act gives the Secretary and the President discretionary authority to make grants and therefore, the Secretary can impose conditions on such grants.

10. It was pointed out that the States need to see the Federal forms required to initiate a Carey Act project. The forms are not properly a part of the regulations. These will be made available within the Manual system and can be acquired at the appropriate field office.

11. Several of the comments suggested the regulations provide for a temporary withdrawal procedure such as that authorized by the repealed Act of August 18, 1894 (43 U.S.C. 643). In order to avoid the problem of applicants investing substantial funds in feasibility and engineering studies without a high degree of assurance that the application will be approved, we have adopted a two step application process.

### Comments on Specific Sections

*Re § 2610.0–3 Authority.*

1. It was suggested that the authority section contain a statement that the planning procedures in the Federal Land Policy and Management Act will be adhered to in the evaluation of project lands applied for. The planning system is a basic tool in the decisionmaking process and need not be included in the authority section of this rulemaking. All actions will be made pursuant to part 2400 of this title as required in this rulemaking.

2. It was suggested that a provision regarding water rights be included. The availability of water is addressed very specifically in section 2611.1.

3. A suggestion was made that the authority section contain a statement that a husband and wife are both entitled to 160 acres. The Act specifies that no more than 160 acres shall be patented to any one actual settler. The rulemaking contains that same wording.

4. The absence of any reference to the Act of August 13, 1954 was questioned. That Act has expired.

5. It was suggested that the words "an adequate irrigation system to be

constructed" be deleted. The suggested change is made.

*Re § 2610.0–4 Responsibilities.*

It was stated that it is unconstitutional for an officer authorized by the Secretary of the Interior to act for the Secretary. The Secretary may lawfully delegate certain authorities to lower level officials in the Department of the Interior and in the Bureaus of the Department unless specifically prohibited from so doing.

*Re § 2610.0–5 Definitions.*

1. One comment stated that the definition of "actual settler" negates congressional authority granted in 43 U.S.C. 644 by not including the words "or had substantial and permanent improvements." 43 U.S.C. 644 is a provision to protect the investment of persons who have entered in a project that failed so that the lands were restored to public domain. The provision appears in section 2613.0–3 of this rulemaking.

2. It was suggested that definitions for "planning" and "feasibility" be added to the rulemaking. "Planning," in the context of the agency planning system, is fully defined in the planning regulations that have been issued by the Bureau of Land Management, 43 CFR Part 1601. "Feasibility" is defined in the final rulemaking.

3. A change suggested in the definition of the term "reclamation" is made in the final rulemaking.

4. It was suggested that the definition of "desert land" be changed to (a) include pinon-juniper woodland as desert land and (b) exclude any reference to economics. The intent of the definition is to exclude lands that are not desert in character and that are capable of producing valuable products without irrigation. Pinon-juniper is a woodland vegetative type normally growing where rainfall exceeds 10 inches per year on the average. Such woodland is intentionally excluded. As explained in the general comment section, economics is a practical measure of whether an entry will be permanently settled and used for agricultural purposes.

5. Several comments addressed the definition of an "actual settler." Suggestions included:

(a) Delete the requirement for a home. The Act specifically requires settlement on the land. The wording is changed to specify that the claimed land must be the primary place of residence of the settler.

(b) The settler should have to prove an ability to manage irrigated land and show evidence of financial responsibility before entering the land. If such showings were considered necessary, it would be up to the State government to require them.

(c) Adjacent landowners legitimately engaged in agriculture should be considered as actual settlers. Again, the Act specifically requires settlement on the land, giving us no latitude on this point. However, it may be possible for those engaged in agriculture to expand their existing operations under an authority other than the Carey Act.

6. Comments requesting clarification and expansion of the terms "cultivation" and "ordinary agricultural crops" were adopted and incorporated in the final rulemaking.

*Re § 2610.0–7 Background.*

1. One comment referred to different acreages allowable because of a 1954 amendment. That amendment expired; therefore, the acreages are correct in the rulemaking.

2. It was suggested that the provision for cultivation of not less than 20 acres of each 160 acre tract be changed to "not less than 5 acres of each legal subdivision." Cultivation of 20 acres of each 160 acre tract is a statutory requirement and is properly retained in the background section.

3. A question was asked about allowing development companies to file. Under the law, only certain State governments can apply to the Federal Government for project lands. Individuals who wish to participate do so through the State government.

4. It was asked if a grazing lessee or permittee would be allowed to file on public land within his lease or allotment. Under the Carey Act, the State applies for the grant; State law will determine which individuals shall be participants in the project.

*Re § 2610.0–8 Character of lands subject to application.*

A provision was added to this section in response to a question regarding contiguous lands.

*Re § 2610.1 Segregation of lands.*

It was suggested that a provision be added to protect the State's investment in lands prior to signing of the grant contract. Provisions are added in §§ 2611.1–1 and 2611.1–2 for a determination of suitability and availability of lands before the States make a substantial investment in a project.

*Re § 2611.1 Applications for segregation.*

1. Section 2611.1 of the proposed rulemaking was amended in response to the following suggestions.

(a) Delete paragraph (d) "Petition for classification."

(b) Map location of facilities need not depict minor pipelines that are less than 8 inches in diameter.

(c) Clarify mapping procedures where public survey corners do not exist.

2. A question was asked regarding the possible two year delay where a grazing lease or allotment is involved. Where a grazing privilege is involved and must be cancelled, section 402(g) of the Federal Land Policy and Management Act (43 U.S.C. 1752(g)) will apply. However, a negotiated relinquishment of a grazing privilege is not precluded as a possibility.

3. One comment objected to the inclusion of a provision that additional data be supplied upon request by the authorized officer. Another objection was expressed concerning the inclusion of environmental considerations, mitigation measures, and rehabilitation measures in the plan. The Act that provides the basic authority for this rulemaking was enacted when settlement of public lands in the West was of prime importance. More recent legislation has charged the Secretary with the responsibility of managing and conserving the public lands and resources. The requirements in this rulemaking to carry out that responsibility are lawful and necessary.

4. It was suggested that a time limit for processing applications and issuing patents be included in the rulemaking. This is not done because manpower and funding to process cases are variable. For example (1) the presence or absence of grazing privileges and how this might be resolved in a project area may vary, and (2) the specific resource values which may be involved in a proposed project area are unpredictable.

5. It was suggested that the filing of a Carey Act application by a State should give the application priority over any subsequent proposals for the use of the lands whether initiated by BLM, other agencies or the public. We did not incorporate this suggestion because it is within the discretionary authority of the Secretary to determine the best use of

lands. Carey Act applications do have priority over subsequently filed agricultural applications.

*Re § 2611.2 Approval of map and plan and contract.*

1. This section is renumbered 2611.1–4 and amended in response to the following suggestions:

(a) The Secretary should not be allowed to impose conditions in the patents.

(b) It should be clear what must be done to obtain a patent and what land is suitable and available before too much money has been invested.

The terms and conditions apply to the contract and not to the patents. Sections 2611.1–1 and 2611.1–2 provide protection from over investment in an unsuitable area.

2. The requirement that State laws and regulations be consistent with the Carey Act was questioned in the comments. This is an adjudicative requirement designed to avoid placing settlers in the position of not being able to comply with either a State law or regulation or a Federal law or regulation. We have retained this requirement in the rulemaking.

*Re § 2611.3 Period of segregation.*

1. This section is renumbered 2611.2.

2. The requirement for the State to justify applications for time extensions is repeated from the Act and therefore, properly retained in the rulemaking.

*Re § 2612.1 Lists for patents.*

It was suggested that the section be revised to include the possibility of patenting certain nonirrigable tracts of land provided that those tracts are essential for the reclamation of the total unit. This provision is included.

*Re § 2613.3 Allowance of preference right.*

It was suggested that preference rights should not be allowed. The statute authorizes the Secretary to allow a preference right. The decision to allow such a preference right shall be made on a case-by-case basis.

The Department of the Interior has determined that this document does not contain a significant regulatory action requiring the preparation of a regulatory impact statement under Executive Order 12044 and 43 CFR 14.

Under the authority of the Act of August 18, 1894, as amended (43 U.S.C. 641, et seq.), Group 2600, Subchapter B, Chapter II, Title 43 of the Code of Federal Regulations is hereby amended by adding Part 2610 as set forth below.

**Guy R. Martin,**

*Assistant Secretary of the Interior.*

May 15, 1980.

## PART 2610—CAREY ACT GRANTS

### Subpart 2610—Carey Act Grants, General



### Subpart 2611—Segregation Under the Carey Act—Procedures



### Subpart 2612—Issuance of Patents



### Subpart 2613—Preference Right of Entry Upon Restoration



**Authority:** Sec. 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641), known as the Carey Act.

## Subpart 2610—Carey Act Grants, General

### § 2610.0–2 Objectives.

The objective of section 4 of the Act of August 18, 1894 (28 Stat. 422), as amended (43 U.S.C. 641 et seq.), known as the Carey Act, is to aid public land States in the reclamation of the desert lands therein, and the settlement, cultivation, and sale thereof in small tracts to actual settlers.

### § 2610.0–3 Authority.

(a) The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not to exceed 1,000,000 acres of such lands to each State, under the conditions specified in the act. The Secretary is authorized to contract and agree to grant and patent additional lands to certain States. After a State's application for a grant has been approved by the Secretary, the lands are segregated from the public domain for a period of from 3 to 15 years, the State undertaking within that time to cause the reclamation of the lands by irrigation. The lands, when reclaimed, are patented to the States or to actual settlers who are its assignees. If the lands are patented to the State, the State transfers title to the settler. Entries are limited to 160 acres to each actual settler.

(b) The Act of June 11, 1896 (29 Stat. 434; 43 U.S.C. 642), authorizes liens on the land for the cost of construction of the irrigation works, and permits the issuance of patents to States for particular tracts actually reclaimed without regard to settlement or cultivation.

(c) The Act of March 1, 1907 (34 Stat. 1056), extends the provisions of the Carey Act to the former Southern Ute Indian Reservation in Colorado.

(d) The Joint Resolution approved May 25, 1908 (35 Stat. 577), authorizes grants to the State of Idaho of an additional 1,000,000 acres.

(e) The Act of May 27, 1908 (35 Stat. 347; 43 U.S.C. 645), authorizes grants of an additional 1,000,000 acres to the State of Idaho and the State of Wyoming.

(f) The Act of February 24, 1909 (35 Stat. 644; 43 U.S.C. 647), extends the provisions of the Carey Act to the former Ute Indian Reservation in Colorado.

(g) The Act of February 16, 1911 (36 Stat. 913), extends the Carey Act to the former Fort Bridger Military Reservation in Wyoming.

(h) The Act of February 21, 1911 (36 Stat. 925; 43 U.S.C. 523–524), permits the sale of surplus water by the United States Bureau of Reclamation for use upon Carey Act lands.

(i) The Act of March 4, 1911 (36 Stat. 1417; 43 U.S.C. 645), authorizes grants to the State of Nevada of an additional 1,000,000 acres.

(j) The Joint Resolution of August 21, 1911 (37 Stat. 38; 43 U.S.C. 645), authorizes grants to the State of Colorado of an additional 1,000,000 acres.

### § 2610.0–4 Responsibilities.

(a) The authority of the Secretary of the Interior to approve the applications provided for in this Part, has been delegated to the Director of the Bureau of Land Management and redelegated to State Directors of the Bureau of Land Management.

(b) The grant contact must be signed by the Secretary of the Interior, or an

officer authorized by him, and approved by the President.

**§ 2610.0-5 Definitions.**

As used in the regulations of this part:

(a) "Actual settler" means a person who establishes a primary residence on the land.

(b) "Cultivation" means tilling or otherwise preparing the land and keeping the ground in a state favorable for the growth of ordinary agricultural crops, and requires irrigation as an attendant act.

(c) "Desert lands" means unreclaimed lands which will not, without irrigation, produce any reasonably remunerative agricultural crop by usual means or methods of cultivation. This includes lands which will not, without irrigation, produce paying crops during a series of years, but on which crops can be successfully grown in alternate years by means of the so-called dry-farming system. Lands which produce native grasses sufficient in quantity, if ungrazed by grazing animals, to make an ordinary crop of hay in usual seasons, are not desert lands. Lands which will produce an agricultural crop of any kind without irrigation in amount sufficient to make the cultivation reasonably remunerative are not desert. Lands containing sufficient moisture to produce a natural growth of trees are not to be classed as desert lands.

(d) "Economic feasibility" means the capability of an entry to provide an economic return to the settler sufficient to provide a viable farm enterprise and assure continued use of the land for farming purposes. Factors considered in determining feasibility may include the cost of developing or acquiring water, land reclamation costs, land treatment costs, the cost of construction or acquisition of a habitable residence, acquisition of farm equipment, fencing and other costs associated with a farm enterprise, such as water delivery, seed, planting, fertilization, harvest, etc.

(e) "Grant contract" means the contract between a State and the United States which sets the terms and conditions which the State or its assignees shall comply with before lands shall be patented.

(f) "Irrigation" means the application of water to the land for the purpose of growing crops.

(g) "Ordinary agricultural crops" means any agricultural product to which the land under consideration is generally adapted, and which would return a fair reward for the expense of producing them. Ordinary agricultural crops do not include forest products, but may include orchards and other plants which cannot be grown on the land without irrigation and from which a profitable crop may be harvested.

(h) "Reclamation" means the establishment of works for conducting water in adequate volume and quantity to the land so as to render it available for distribution when needed for irrigation and cultivation.

(i) "Segregation" means the action under the Act of August 19, 1894 (39 Stat. 422), as amended (43 U.S.C. 641), by which the lands are reserved from the public domain and closed to application or entry under the public land laws, including location under the mining laws.

(j) "Smallest legal subdivision" means a quarter quarter section (40 acres).

**§ 2610.0-7 Background.**

The Carey Act authorizes the Secretary of the Interior, with the approval of the President, to contract and agree to grant and patent to States, in which there are desert lands, not exceeding 1 million acres of such lands to each State, as the State may cause to be reclaimed. The State shall also cause not less than 20 acres of each 160 acre tract to be cultivated by actual settlers. A number of amendments allowed additional acreages for certain States. Colorado, Nevada and Wyoming were allowed up to 2 million acres. Idaho was allowed up to 3 million acres.

**§ 2610.0-8 Lands subject to application.**

(a) The lands shall be unreclaimed desert lands capable of producing ordinary agricultural crops by irrigation.

(b) The lands shall be nonmineral, except that lands withdrawn, classified or valuable for coal, phosphate, nitrate, potash, sodium, sulphur, oil, gas or asphaltic minerals may be applied for subject to a reservation of such deposit, as explained in subchapter 2093 of this title.

(c) Lands embraced in mineral permits of leases, or in applications for such permits or leases, or classified, withdrawn or reported as valuable for any leasable mineral, or lying within the geologic structure of a field are subject to the provisions of §§ 2093.0-3 through 2093.0-7 of this title.

(d) A project or individual entry may consist of 2 or more noncontiguous parcels. However, noncontiguous lands should be in a pattern compact enough to be managed as an efficient, economic unit.

## Subpart 2611—Segregation Under the Carey Act—Procedures

**§ 2611.1 Applications.**

**§ 2611.1-1 Applications for determination of suitability and availability of lands.**

The first step in obtaining segregation of lands for Carey act development shall be the filing of an application in the appropriate State office of the Bureau of Land Management requesting that the authorized officer make a determination regarding the suitability and availability of lands for a Carey Act Project. The application shall consist of a map of lands proposed to be reclaimed, containing sufficient detail to clearly show which lands are included in the Project, the mode of irrigation and the source of water. The map shall bear a certification by the State official authorized to file the application that the lands are applied for subject to the provisions of subpart 2093 of this title.

**§ 2611.1-2 Determination of suitability and availability of lands.**

The authorized officer shall evaluate the suitability and availability of the lands for agricultural development under the Carey Act utilizing the criteria and procedures in Part 2400 of this title.

**§ 2611.1-3 Application for grant contract.**

If it is determined that lands are suitable and available for agricultural development under the Carey Act, the State shall submit the following, in duplicate, to the appropriate Bureau of Land Management office (43 CFR 1821):

(a) A plan of development that includes:

(1) A report on the economic feasibility of the project and the availability of an adequate supply of water to thoroughly irrigate and reclaim the lands to raise ordinary agricultural crops.

(2) Procedures for avoiding or mitigating adverse environmental impacts and for rehabilitation of the lands if all or part of the project fails.

(3) A map in sufficient detail to show the proposed major irrigation works and the lands to be irrigated. Map material and dimensions shall be as prescribed by the authorized officer and shall be drawn to a scale not greater than 1,000 feet to 1 inch. The map shall connect canals, pipelines larger than 8 inches in diameter, reservoirs and other major facilities in relationship to public survey lines or corners, where present. The map shall show other data as needed to enable retracement of the proposed major irrigation works on the ground. The engineer who prepared the map shall certify that the system depicted therein is accurately and fully

represented and that the system proposed is sufficient to fully reclaim the lands.

(4) Additional data concerning the specifics of the plan and its feasibility as required by the authorized officer.

(b) A grant contract in a form prescribed by the Director, Bureau of Land Management, in duplicate, signed by the authorized State official, shall also be filed. A carbon copy of the contract shall not be accepted. The person who signs the contract on behalf of the State shall furnish evidence of his/her authority to do so. The contract shall obligate the State to all terms and conditions of the Act and all specifications of the approved plan, and shall obligate the United States to issue patents to the State upon actual reclamation of the lands according to the plan or to settlers who are its assignees, as provided in subpart 2093 of this title.

**§ 2611.1–4 Approval of plan and contract.**

(a) After making a determination that the proposed project is economically feasible, that sufficient water can be furnished to thoroughly irrigate and reclaim the lands, that measures to avoid or mitigate adverse environmental impacts and to rehabilitate the lands if the project fails are adequate, and that State laws and regulations concerning the disposal of the lands to actual settlers are not contrary to the provisions and restrictions of the Act, the authorized officer may approve the plan. Before making this determination and approving the plan, the authorized officer may, in agreement with the State, modify the plan.

(b) Upon approval of the plan, the grant contract may be signed by the Secretary of the Interior, or an officer in the Office of the Secretary who has been appointed by the President, by and with the advice and consent of the Senate. A notice that the contract has been signed and the lands are segregated shall be published in the **Federal Register**. As a condition to entering into the contract, the Secretary or his delegate may require additional terms and conditions. If such is done, the new contract form shall be returned to the State for signing.

(c) The contract is not final and binding until approved by the President.

(d) After the plan has been approved, and the contract signed and approved, the lands may be entered by the State and its agents for reclamation and for residency, if appropriate.

**§ 2611.1–5 Priority of Carey Act applications.**

Properly filed applications under § 2611.1–1. or § 2611.1–3 of this title shall have priority over any subsequently filed agricultural applications for lands within the project boundaries. However, the rejection of a Carey Act application will not preclude subsequent agricultural development under another authority.

**§ 2611.1–5 Priority of Carey Act applications.**

Properly filed applications under § 2611.1–1 or § 2611.1–3 of this title shall have priority over any subsequently filed agricultural applications for lands within the project boundaries. However, the rejection of a Carey Act application will not preclude subsequent agricultural development under another authority.

**§ 2611.2 Period of segregation.**

(a) The States are allowed 10 years from the date of the signing of the contract by the Secretary in which to cause the lands to be reclaimed. If the State fails in this, the State Director may, in his discretion, extend the period for up to 5 years, or may restore the lands to the public domain at the end of the 10 years or any extension thereof. If actual construction of the reclamation works has not been commenced within 3 years after the segregation of the land or within such further period not exceeding 3 years as may be allowed for that purpose by the State Director, the State Director may, in his discretion, restore the lands to the public domain.

(b) All applications for extensions of the period of segregation must be submitted to the State Director. Such applications will be entertained only upon the showing of circumstances which prevent compliance by the State with the requirements within the time allowed, which, in the judgment of the State Director, could not have been reasonably anticipated or guarded against, such as the distruction of irrigation works by storms, floods, or other unavoidable casualties, unforeseen structural or physical difficulties encountered in the operations or errors in surveying and locating needed ditches, canals, or pipelines.

**§ 2611.3 Rights-of-way over other public lands.**

When the canals, ditches, pipelines, reservoirs or other facilities required by the plan of development will be located on public lands not applied for by the State under the Carey Act, an application for right-of-way over such lands under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 et seq.), shall be filed separately by the proposed constructor. Rights-of-way shall be approved simultaneously with the approval of the plan, but shall be conditioned on approval of the contract.

## Subpart 2612—Issuance of Patents

**§ 2612.1 Lists for patents.**

When patents are desired for any lands that have been segregated, the State shall file in the BLM State Office a list of lands to be patented, with a certificate of the presiding officer of the State land board, or other officer of the State who may be charged with the duty of disposing of the lands which the State may obtain under the law, that the lands have been reclaimed according to the plan of development, so that a permanent supply of water has been made available for each tract in the list, sufficient to thoroughly reclaim each 160-acre tract for the raising of ordinary agricultural crops. If patents are to be issued directly to assignees, the list shall include their names, the particular lands each claims, and a certification by the State that each is an actual settler and has cultivated at least 20 acres of each 160-acre tract. If there are portions which cannot be reclaimed, the nature, extent, location, and area of such portions should be fully stated. If less than 5 acres of a smallest legal subdivision can be reclaimed and the subdivision is not essential for the reclamation, cultivation, or settlement of the lands; such legal subdivision must be relinquished, and shall be restored to the public domain as provided in a notice published in the **Federal Register**.

**§ 2612.2 Publication of lists for patents.**

(a) *Notice of lists.* When a list for patents is filed in the State Office, it shall be acompanied by a notice of the filing, in duplicate, prepared for the signature of the State Director, or his delegate, fully incorporating the list. The State shall cause this notice to be published once a week for 5 consecutive weeks, in a newspaper of established character and general circulation in the vicinity of the lands, to be designated by the State Director, as provided in Subpart 1824 of this chapter.

(b) *Proof of publication.* At the expiration of the period of publication, the State shall file in the State Office proof of publication and of payment for the same.

**§ 2612.3 Issuance of patents.**

Upon the receipt of proof of publication such action shall be taken in each case as the showing may require, and all tracts that are free from valid protest, and respecting which the law and regulations and grant contract have

been complied with, shall be patented to the State, or to its assignees if the lands have been settled and cultivated. If patent issues to the State, it is the responsibility of the State to assure that the lands are cultivated and settled. If the State does not dispose of the patented lands within 5 years to actual settlers who have cultivated at least 20 acres of each 160 acre tract, or if the State disposes of the patented lands to any person who is not an actual settler or has not cultivated 20 acres of the 160 acre tract, action may be taken to revest title in the United States.

## Subpart 2613—Preference Right Upon Restoration

### § 2613.0-3 Authority.

The Act approved February 14, 1920 (41 Stat. 407; 43 U.S.C. 644), provides that upon restoration of Carey Act lands from segregation, the Secretary is authorized, in his discretion, to allow a preference right of entry under other applicable land laws to any Carey Act entryman on any such lands which such person had entered under and pursuant to the State laws providing for the administration of the grant and upon which such person had established actual, bona fide residence or had made substantial and permanent improvements.

### § 2613.1 Allowance of filing of applications.

(a) *Status of lands under State laws.* Prior to the restoration of lands segregated under the Carey Act, the Bureau of Land Management shall ascertain from the proper State officials whether any entries have been allowed under the State Carey Act laws on any such lands, and if any such entries have been allowed, the status thereof and action taken by the State with reference thereto.

(b) *No entries under State laws.* If it is shown with reasonable certainty, either from the report of the State officers or by other available information, that there are no entries under State law, then the Act of February 14, 1920, shall not be considered applicable to the restoration of the lands. Lands shall be restored as provided in a notice published in the **Federal Register.**

(c) *Entries under State laws.* If it appears from the report of the State officials or otherwise that there are entries under the State law which may properly be the basis for preference rights under this act, in the order restoring the lands the authorized officer may, in his discretion, allow only the filing of applications to obtain a preference right under the Act of February 14, 1920.

### § 2613.2 Applications.

(a) Applications for preference rights under the Act of February 14, 1920, shall be filed within 90 days of the publication of the restoration order.

(b) Applications shall be on a form approved by the Director and shall set forth sufficient facts to show that the applicant is qualified under the act and these regulations. The application must be subscribed and sworn to before a notary public.

(c) Persons qualified. The Act of February 14, 1920, applies only to cases of entries in good faith in compliance with the requirements of State law, with a view to reclaiming the land and procuring title pursuant to the provisions of the Carey Act; the act does not apply to cases where persons have settled on or improved the segregated land, either with the approval of the State authorities or otherwise, not pursuant to State law or not in anticipation of reclaiming the lands and procuring title under the Carey Act but in anticipation of initiating some kind of a claim to the land on its restoration because of failure of the project or cancellation of the segregation.

(d) Persons not qualified. The Act of February 14, 1920, does not apply to cases where the applicant's entry has been canceled by the State or forfeited for failure to perfect the entry according to State law, unless the failure is the result of conditions which culminated in the elimination of the lands from the project if the State has allowed a subsequent entry for the same lands, this shall be conclusive evidence that the default was the fault of the State entryman whose entry was forfeited or canceled.

### § 2613.3 Allowance of preference right.

If a person's application is approved, such person shall have 90 days to submit an application for entry under another land law, and shall be entitled to a preference right of entry under other law if and when the lands are determined to be suitable for entry under such law pursuant to the regulations found in Part 2400 of this chapter.

[FR Doc. 80-15553 Filed 5-20-80; 8:45 am]

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federal register

Wednesday
May 21, 1980

Part V

# Department of Energy

## Inclusion of Electric and Hybrid Vehicles in Corporate Average Fuel Economy Standards

# Part V

# Department of Energy

DEPARTMENT OF ENERGY

## Inclusion of Electric and Hybrid Vehicles in Corporate Average Fuel Economy Standards

**AGENCY:** Department of Energy.

**ACTION:** Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

**SUMMARY:** The Department of Energy (DOE) announces the availability of its environmental assessment (EA) of a Program on Inclusion of Electric and Hybrid Vehicles (EHV) in Corporate Average Fuel Economy (CAFE) Standards (DOE/EA-0108). DOE has determined, based on the EA, that this Program does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* Therefore, a finding of no significant impact, pursuant to 40 CFR 1501.4(e), is hereby issued to notify the public that an environmental impact statement is not required for this action.

**FOR COPIES OF THE EA AND FURTHER INFORMATION CONTACT:**

Dr. Robert S. Kirk, Department of Energy, Office of Conservation and Solar Energy, Office of Transportation Programs, Room 5H-063, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone: 202-252-8032.

Ms. Verlette Gatlin, Department of Energy, Freedom of Information Reading Room, Forrestal Building, Room 5B-180, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Phone: 202-252-5969.

**SUPPLEMENTAL INFORMATION:**

### I. Background

In an effort to conserve energy through improvements in the energy efficiency of motor vehicles, Congress, in 1975, passed the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163. Title III of EPCA amended the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et. seq.*) (the Motor Vehicle Act) by mandating fuel economy standards for automobiles produced in, or imported into, the United States. This legislation, as amended, requires that every manufacturer or importer meet a specified corporate average fuel economy (CAFE) standard for the fleet of vehicles which the manufacturer produces or imports in any model year. Administrative responsibilities for the CAFE program are assigned to the Department of Transportation and the Environmental Protection Agency (EPA) under the Motor Vehicle Act. The Secretary of Transportation is responsible for prescribing the CAFE standard through model year 1984 (the CAFE standard for model year 1985 and subsequent model years is prescribed in the Motor Vehicle Act) and enforcing the penalties for failure to meet these standards. The Administrator of EPA is responsible for calculating a manufacturer's CAFE value.

Because electric vehicles do not consume fuel (as defined in section 501(5) of the Motor Vehicle Act) for propulsive power, they are not included in the Motor Vehicle Act definition of an automobile and, accordingly, are not included in the calculation of a manufacturer's CAFE value.

On January 7, 1980, the President signed the Chrysler Corporation Loan Guarantee Act of 1979 (Pub. L. 96-185). Section 18 of this act amended section 13(c) of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 (Pub. L. 94-413) (the EHV Act) and directed the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of EPA, to conduct a 7-year evaluation program of the inclusion of electric vehicles in the calculation of average fuel economy to determine the value and implications of such inclusion as an incentive for the early initiation of industrial engineering development and initial commercialization of electric vehicles in the United States. The evaluation program is to be conducted in parallel with DOE's existing electric vehicle research, development, and demonstration activities under the EHV Act.

The proposed rulemaking includes a statement that DOE, in accordance with the requirements of NEPA, has prepared an environmental assessment of this proposed rule. The assessment found that potential air, water and solid waste impacts are not significant nationwide as a result of implementing the proposed Program and that any potential site-specific impacts will be mitigated by application of applicable regulatory controls. Potential public occupational health and safety impacts (such as battery shock, vehicle fire, and hydrogen gas explosion) have been mitigated by currently existing standards developed as a result of the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 (Pub. L. 94-413) or will be mitigated, if required, by additional standards developed by appropriate regulatory agencies as commercialization proceeds. Additional direct or indirect demand for materials resulting from electric vehicle manufacture were found to have no significant impact. Finally, the analysis of energy impacts indicates that even though a higher total energy requirement is expected for the manufacture and operation of EHVs, a significantly lower demand (about 55% less) for petroleum-based fuels would be generated than by an equivalent number of conventional vehicles. Accordingly DOE has determined, based on the results of the environmental assessment, that this Program does not represent a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA.

### II. Public Access to Information

Single copies of the EA may be obtained from the Office of Transportation Programs, Office of Conservation and Solar Energy, Department of Energy, Room 5H-063, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-252-8032. Copies of the EA are also available for public review in the DOE Freedom of Information Reading Room, at the address listed above, between the hours of 8:00 a.m., and 4:00 p.m., Monday through Friday, except Federal holidays. Interested parties should be aware that a public hearing will be held on the Notice of Proposed Rulemaking on June 10, 1980. Dr. Robert S. Kirk at the address indicated previously, can provide any additional information desired.

Any information or data submitted in response to this notice considered by the person furnishing it to be confidential must be so identified and submitted in writing, in one copy only in accordance with procedures set forth in 10 CFR 1004.11. Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C., May 14, 1980.

**Ruth C. Clusen,**

*Assistant Secretary for Environment.*

[FR Doc. 80-15477 Filed 5-20-80; 8:45 am]

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federal register

Wednesday
May 21, 1980

Part VI

# Department of Agriculture

## Federal Grain Inspection Service

## Official Grain Inspection Service; Assignment of Geographic Areas

## DEPARTMENT OF AGRICULTURE

### Federal Grain Inspection Service

### Assignment of Geographic Area to the Central Iowa Grain Inspection Service, Inc., Des Moines, Iowa

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the Central Iowa Grain Inspection Service, Inc., Des Moines, Iowa, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S. C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

The Central Iowa Grain Inspection Service, Inc. (the "Agency"), 125 S.E. 18th Street, P.O. Box 1562, Des Moines, Iowa 50306, was designated as an offical agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on November 5, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each offical agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the September 13, 1979, issue of the **Federal Register** (44 FR 53261). No comments were received. Accordingly, after due consideration of all relevant matters and information available to the United States Department of Agriculture, the geograhic area shall remain as originally proposed:

The geograhic area assigned to the Agency is:

Bounded: on the North by U.S. Route 30 east to N44; N44 south to E53; E53 east to U.S. Route 30; U.S. Route 30 east to the Boone County line; the western Boone County line north to E18; E18 east to U.S. Route 169; U.S. Route 169 north to the Boone County line; the northern Boone County line; the western Hamilton County line north to U.S. Route 20; U.S. Route 20 east to R38; R38 north to the Hamilton County line; the northern Hamilton County line east to Interstate 35; Interstate 35 northeast to C55; C55 east to S41; S41 north to State Route 3; State Route 3 east to U.S. Route 65; U.S. Route 65 north to C25; C25 east to S56; S56 north to C23; C23 east fo T47; T47 south to C33; C33 east to T64; T64 north to B60 east to U.S. Route 218; U.S. Route 218 south to State Route 3; State Route 3 west to the Butler County line; the eastern Butler County line; the northern Blackhawk County line east to V49;

Bounded: on the East by V49 south to State Route 297; State Route 297 south to D38; D38 west to State Route 21; State Route 21 south to State Route 8; State Route 8 west to U.S. Route 63; U.S. Route 63 south to Interstate 80; Interstate 80 east to the Poweshiek County line; the eastern Poweshiek, Mahaska, Monroe and Appanoose County lines;

Bounded: on the south by the southern Appanoose, Wayne, Decatur, Ringgold, and Taylor County lines; and

Bounded: on the West by the western Taylor County line; the southern Montgomery County line west to State Route 48; State Route 48 north to M47; M47 north to the Montgomery County line; the northern Montgomery County line; the western Cass and Audubon County lines; the northern Audubon County line east to U.S. Route 71; U.S. Route 71 north to U.S. Route 30. In addition, the following locations which are outside of the foregoing contiguous geographic area and are to be serviced by the Agency shall be considered as part of the Agency's geographic area: Farmers Coop Elevator Company, Chapin, Iowa, in Franklin County; Hampton Farmers Coop Company, Hampton, Iowa, in Franklin County; Nashua Equity Coop, Nashua, Iowa, in Clinton County; Plainfield Coop, Plainfield, Iowa, in Bremer County; and Farmers Community Coop. Inc., Rockwell, Iowa, in Cerro Gordo County.

Exceptions to this geographic area are the following locations situated inside the Agency's area which have been and will continue to be serviced by:

A. V. Tischer and Son, Inc., Fort Dodge, Iowa: Farmers Coop Elevator, Boxholm, Iowa, in Bonne County;

Fremont Grain Inspection Department, Inc., Fremont, Nebraska: Juergens Produce and Seed and Farmers Grain and Lumber Company, Carroll, Iowa, in Carroll County; and

Omaha Grain Inspection Service, Inc., Omaha, Nebraska: Murren Grain, Elliot, Iowa, in Mongomery County; and Hemphill Feed & Grain and Hensen Feed & Grain, Griswold, Iowa, in Cass County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79))

Done in Washington, D.C., on: May 15, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15574 Filed 5–20–80; 8:45 am]

BILLING CODE 3410–02–M

### Assignment of Geographic Area to the McGregor Grain Inspection and Weighing; McGregor, Iowa

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the McGregor Grain Inspection and Weighing, McGregor, Iowa, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

The McGregor Grain Inspection and Weighing (the "Agency"), Farmers Grain Dealers Building West, 125 B Street, P.O. Box 201, McGregor, Iowa 52157, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on September 25, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the September 13, 1979, issue of the **Federal Register** (44 FR 53265). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is:

Bounded: on the North by the Iowa-Minnesota State line from the western Howard County line east to the Mississippi River;

Bounded: on the East by the Mississippi River south-southeast to the southern Clayton County line;

Bounded: on the South by the southern Clayton County, Fayette County, and Bremer County lines; and

Bounded: on the West by the western Bremer County line north to State Route 3; State Route 3 east to U.S. Route 218; U.S. Route 218 north to the western Chickasaw County line; the western Chickasaw line north to Howard County; the western Howard County line north to the Iowa-Minnesota State line.

In addition, the following location which is outside of the foregoing contiguous geographic area and is to be serviced by the Agency shall be considered as part of the Agency's geographic area: Paris and Sons Grain Elevator, Masonville, Iowa, in Delaware County.

Exceptions to this geographic area are the following locations situated inside the Agency's area which have been and will continue to be serviced by Central Iowa Grain Inspection Service, Inc., Des Moines, Iowa: Nashua Equity Coop, Nashua, Iowa, in Chickasaw County; and Plainfield Coop, Plainfield, Iowa, in Bremer County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79))

Done in Washington, D.C., on: May 15, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15575 Filed 5–20–80; 8:45 am]

**BILLING CODE 3410–02–M**

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## Assignment of Geographic Area to the Keokuk Grain Inspection Service, Inc.; Keokuk, Iowa

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the Keokuk Grain Inspection Service, Inc., Keokuk, Iowa, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

The Keokuk Grain Inspection Service, Inc. (the "Agency"), 5th and G Street, 1003 South Fifth Street, Keokuk, Iowa 52632, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.)* (the "Act"), for the performance of official grain inspection functions on September 25, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the September 13, 1979, issue of the **Federal Register** (44 FR 53264). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is: Davis, Lee, and Van Buren Counties in Iowa; and Hancock and McDonough Counties in Illinois.

In addition, the following locations which are outside of the foregoing contiguous geographic area and are to be serviced by the Agency shall be

considered as part of the Agency's geographic area: Central Soya, Inc., Dallas City, Illinois, and Lomax Grain Elevator, Illinois, in Henderson County; and Ursa Farmers Coop, Meyer, Illinois, and Ursa Farmers Coop, Ursa, Illinois, in Adams County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79))

Done in Washington, D.C., on: May 15, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15576 Filed 5–20–80; 8:45 am]

**BILLING CODE 3410–02–M**

## Assignment of Geographic Area to John R. McCrea, Clinton, Iowa

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to John R. McCrea, Clinton, Iowa, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

John R. McCrea (the "Agency"), 96 18th Place, P.O. Box 166, Clinton, Iowa 52732, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on October 15, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the September 13, 1979, issue of the **Federal Register** (44 FR 53265). No comments were received. Accordingly, after due consideration of all relevant matters and information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographc area assigned to the Agency is: The counties of Clinton and Jackson in Iowa; and the counties of Carroll and Whiteside in Illinois.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79))

Done in Washington, D.C., on: May 15, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15577 Filed 5–20–80; 8:45 am]

**BILLING CODE 3410–02–M**

## Assigment of Geographic Area to D. R. Schaal, Belmond, Iowa

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assigment of geographic area to D. R. Schaal, Belmond, Iowa, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTRACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not signifiant."

D. R. Schaal (the "Agency"), Highway 69 South, P.O. Box 213, Belmond, Iowa 50421, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on November 13, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the

Agency was announced in the September 13, 1979, issue of the **Federal Register** (44 FR 53262). One comment was received. A letter received from Mr. D. R. Schaal requested that FGIS reevaluate the area proposed for assigment to this Agency. Mr. Schaal requested that seven points located within the Agency's area, but listed as exceptions be assigned to the Agency. Information from this Agency, neighboring agencies, as well as the FGIS Des Moines Field Office, Indicated that service to these seven points was provided by agencies other than Mr. Schaal. After careful evaluation of this information, it was determined that these seven points should continue to be serviced by the agencies that have been providing service on a regular basis. After due consideration of the comment received and all other information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is:

Bounded: on the North by the northern Kossuth County line from U.S. Route 169; the northern Winnebago, Worth, and Mitchell County lines;

Bounded: on the eastern Mitchell County line; the eastern Floyd County line south to B60; B60 west to T64 south to State route 188; State Route 188 south to C33;

Bounded: on the South by C33 west to T47; T47 north to C23; C23 west to S56; S56 south to C25; C25 west to U.S. Route 65; U.S. Route 65 south to State Route 3; State Route 3; west to S41; south to C55; C55 west to Interstate 35; Interstate 35 southwest to the southern Wright County line; west to U.S. Route 69; U.S. Route 69 north to C54; C54 west to State Route 17; and

Bounded: on the West by State Route 17 north to the southern Kossuth County line; the Kossuth County line west to U.S. Route 169; Route 169 north to the northern Kossuth County line.

In addition, the following location which is outside of the foregoing contiguous geographic area and is to be serviced by the Agency shall be considered as part of the Agency's geographic area: Farmers Co-op Company, Eagle Grove, Iowa, in Wright County.

Exceptions to this geographic area are the following locations situated inside the Agency's area which have been and will continue to be serviced by:

Central Iowa Grain Inspection Service, Inc., Des Moines, Iowa: Farmers Co-op Elevator Company, Chapin, Iowa, in Franklin County; Hampton Farmers Co-op Company, Hampton, Iowa, in Franklin County; and Farmers Community Co-op, Inc., Rockwell, Iowa, in Cerro Gordo County; and

A. V. Tischer and Son, Inc., Fort Dodge, Iowa: Cargill, Inc., Algona, Iowa, in Kossuth County; Big Six Elevator, Burt, Iowa, in Kossuth County; Farmers Elevator, Goldfield, Iowa, in Wright County; and Farmers Co-op Elevator, Holmes, Iowa, in Wright County.

A specified service point for the purpose of this notice is a city, town, or other location specfied by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requring a licensed inspector to all other areas within its geograpic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency; or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79))

Done in Washington, D.C., on: May 15, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80-15578 Filed 5-20-80; 8:45 am]

**BILLING CODE 3410-02-M**

## Assignment of Geographic Area to A. E. Herron, Pittsford, NY.

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to A. E. Herron, Pittsford, New York, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this notice. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

A. E. Herron (the "Agency"), 34 East Park Road, Pittsford, New York 14534, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on August 31, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the July 30, 1979, issue of the **Federal Register** (44 FR 44579–44580). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is:

The area within the Pittsford Township, New York.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79))

Done in Washington, D.C., on May 16, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15579 Filed 5–20–80; 8:45 am]

BILLING CODE 3410–02–M

## Assignment of Geographic Area to the Farwell Grain Inspection Co., Inc., Farwell, Tex.

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the Farwell Grain Inspection Company, Inc., Farwell, Texas, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this notice. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Farwell Grain Inspection Company, Inc. (the "Agency"), 112 9th Street, P.O. Box 488, Farwell, Texas 79325, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on September 28, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the July 30, 1979, issue of the **Federal Register** (44 FR 44582–44583). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is:

The following counties in Texas: Bailey County; Deaf Smith County west of State Route 214; Lamb County south of U.S. Route 70 and west of Farm to Market 303; and Parmer County.

The following counties in New Mexico: Chaves County; Curry County; DeBaca County; Eddy County; Lea County; Quay County; Roosevelt County; and Union County.

An exception to this geographic area is the following location situated inside the Agency's area which has been and will continue to be serviced by Lubbock Grain Inspection and Weighing, Inc., Lubbock, Texas: Sudan Elevator, Sudan, Texas.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79)).

Done in Washington, D.C. on: May 16, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15580 Filed 5–20–80; 8:45 am]

BILLING CODE 3410–02–M

## Assignment of Geographic Area to the Chattanooga Grain Inspection Department, Chattanooga, Tenn.

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the Chattanooga Grain Inspection Department, Chattanooga, Tennessee, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Chattanooga Grain Inspection Department (the "Agency"), P.O. Box 5113, Chattanooga, Tennessee 37406, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on October 15, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursaunt to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the July 30, 1979, issue of the **Federal Register** (44 FR 44580–44581). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is:

Bounded: on the North by the Kentucky-Tennessee State line from Robertson County east to Virginia; the Virginia-Tennessee State line east to North Carolina;

Bounded: on the East by the North Carolina-Tennessee State line southwest to Georgia;

Bounded: on the South by the Georgia-Tennessee State line west to Alabama; the Alabama-Tennessee State line west to Interstate 65; and

Bounded: on the West by Interstate 65 north to Davidson County; the southern Davidson County line east then north to Robertson County; the eastern Robertson County line north to the State line.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79)).

Done in Washington, D.C. on: May 16, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80-15581 Filed 5-20-80; 8:45 am]

BILLING CODE 3410-02-M

## Assignment of Geographic Area to R. A. Gray, Owensboro, Ky.

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to R. A. Gray, Owensboro, Kentucky, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this notice. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

R. A. Gray (the "Agency"), 903 Triplett Street, P.O. Box 91, Owensboro, Kentucky, 42301, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on October 20, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the July 30, 1979, issue of the **Federal Register** (44 FR 44581–44582). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is:

In Indiana, the following counties: Perry and Spencer Counties;

In Kentucky, the area shall be:

Bounded: on the North by the Ohio River from Henderson County east to Breckinridge County;

Bounded: on the East by the eastern Hancock County line south to Ohio County; the Eastern Ohio County line south-southwest to Muhlenberg County;

Bounded: on the South by the Muhlenburg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; and

Bounded: on the West by the State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to Henderson County; the southern Henderson County line east-northeast to the Ohio River.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or a Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79)).

Done in Washington, D.C. on: May 16, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80-15582 Filed 5-20-80; 8:45 am]

BILLING CODE 3410-02-M

## Assignment of Geographic Area to the Agricultural Seed Laboratories, Phoenix, Ariz.

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the Agricultural Seed Laboratories, Phoenix, Arizona, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal

Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Agricultural Seed Laboratories (the "Agency"), 212 S. 25th Avenue, P.O. Box 6363, Phoenix, Arizona 85005, was designated as an official agency under the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on November 20, 1978. The designation also included as assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the July 30, 1979, issue of the **Federal Register** (44 FR 44580). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency consists of the following counties: Maricopa, Pinal, and Yuma.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875 (7 U.S.C. 79)).

Done in Washington, D.C. on: May 16, 1980.

**L. E. Bartelt,**

*Administrator.*

[FR Doc. 80–15583 Filed 5–20–80; 8:45 am]

BILLING CODE 3410–02–M

## Assignment of Geographic Area to the Lewiston Grain Inspection Service, Lewiston, Idaho

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice.

**SUMMARY:** This notice announces assignment of geographic area to the Lewiston Grain Inspection Service, Lewiston, Idaho, for the performance of official grain inspection functions under the authority of the United States Grain Standards Act, as amended.

**EFFECTIVE DATE:** June 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8262. Actions of this kind were anticipated under the provisions of Section 7 of the United States Grain Standards Act as amended (7 U.S.C. 79) and are specifically considered in the Final Impact Statement prepared for this action. Thus, the Final Impact Statement describing the options considered in developing this notice and the impact of implementing each option is available on request from the Issuance and Coordination Staff, United States Department of Agriculture, Federal Grain Inspection Service, Washington, D.C. 20250.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

Lewiston Grain Inspection Service (the "Agency"), 1450 3rd Avenue North, Lewiston, Idaho 83501, was designated as an official agency under the United State Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), for the performance of official grain inspection functions on July 24, 1978. The designation also included an assignment of geographic area, on an interim basis, within which this Agency would operate. Geographic areas are assigned to each official agency pursuant to Section 7(f)(2) of the Act.

The Act provides that not more than one official agency shall be operating at one time within an assigned geographic area.

The proposed geographic area assigned on an interim basis to the Agency was announced in the October 19, 1978, issue of the **Federal Register** (43 FR 48670). No comments were received. Accordingly, after due consideration of all information available to the United States Department of Agriculture, the geographic area shall remain as originally proposed.

The geographic area assigned to the Agency is: The State of Idaho north of the counties of Adams, Valley, and Lemhi.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the assigned geographic area and a list of specified service points by contacting the Agency or the delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447–8525.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2870, 2875, (7 U.S.C. 79)).

Done in Washington, D.C. on: May 16, 1980.

**L.E. Bartelt,**

*Administrator.*

[FR Doc. 80–15584 Filed 5–20–80; 8:45 am]

BILLING CODE 3410–02–M

federal register

Wednesday
May 21, 1980

Part VII

# Department of Health and Human Services

## Office of the Assistant Secretary for Planning and Evaluation

## National Channeling Demonstration Program: Announcement for Long-Term Care System Development Grants

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Assistant Secretary for Planning and Evaluation

[Program Announcement No. 13638-802]

### National Channeling Demonstration Program: Announcement for Long-Term Care System Development Grants

The Assistant Secretary for Planning and Evaluation, in his capacity as Chair of the HHS intradepartmental long-term care Channeling Demonstration Steering Committee, is seeking applications from states in support of the National Channeling Demonstration Program. In addition to the Assistant Secretary for Planning and Evaluation, Steering Committee membership includes representation from the Administration on Aging, Office of Human Development Services; the Health Care Financing Administration; and the Public Health Service.

Long-term care system development grants will be made to state-level program agencies or administrative units of state government for the purpose of assisting states to more effectively plan for and manage institutional and community based long-term care services. This announcement specifically seeks applications for projects which will:

—Identify a long-term care planning group at the state level to serve as the locus for planning and coordinating a comprehensive long-term care program for the state;

—Develop an information base with respect to the long-term care needs of the functionally impaired population, with particular emphasis on the elderly; and the current status of long-term care services within the state, including an analysis of existing barriers to designing and implementing an effective statewide long-term care program;

—Develop a state plan for long-term care which maximizes current state authority and available long-term care resources and supports the maximum coordination of existing long-term care services and mechanisms of service delivery; and

—Prepare a final report to the Department which includes the state plan for long-term care and recommendations for improving legislative and administrative initiatives at all levels with respect to the development of comprehensive, program-effective, cost-efficient and humane long-term care policies.

#### The National Channeling Demonstration Program

In Fiscal Year 1980, the Department is planning to implement several related components of the National Channeling Demonstration Program. For purposes of the program, the term channeling is defined as the organizational structures and operating systems required to link people who need long-term care to the appropriate services. Long-term care is concerned with the sources of support and types of services required by people who need persistant help from others to compensate for functional limitations that result from chronic health conditions or the deterioration which often accompanies old age.

In addition to the system development grants to be awarded in response to this announcement, the Department is requesting proposals from state-level program agencies and administrative units of state government to develop and implement channeling demonstration projects at the community level. Up to fourteen (14) channeling demonstration project contracts will be funded in Fiscal Year 1980 in response to a separate Request for Proposals (RFP) issued for this purpose.

States may submit one proposal for a state level system development grant and one proposal for a community-level channeling demonstration project contract award. However, since the activities to be funded under the system development grant announcement are essentially the same as the initial tasks of the channeling demonstration project contract, system development grants will not be awarded to states which receive a channeling demonstration contract.

The Department also is issuing the following solicitations in FY 1980 for work to be performed in support of the National Channeling Program:

- An evaluation RFP to obtain a contractor to design and implement a national evaluation to determine the costs and benefits of channeling projects;
- A technical assistance RFP to obtain a contractor to provide assistance in the development and implementation of channeling projects at the community level; and
- Two RFPs related to the development of an integrated national long-term care data base.

#### Purpose of Grant Awards

The principal purpose of the long-term care system development grants is to stimulate changes in the way long-term care resources are distributed and in the way the long-term care services delivery system is organized and managed.

Realistic approaches must be found for solving the multiple and increasingly severe problems regarding long-term care services—what is available currently, and how they are financed, organized and administered. Current and projected long-term care costs alone, not to speak of the availability and appropriateness of services from the client's perspective, demand examination. Federal and state governments must take a hard look at the decisions they make with respect to long-term care, how and why they are made and what can be done to improve the process. Solutions that require major increases in either federal or state resources currently directed at supporting long-term care are not realistically feasible, at least in the near future.

Given the urgency of the problems and the budgetary constraints of the economy, the federal government is seeking a partnership with state governments to streamline current policies and practices with respect to long-term care. States receiving system development grants will:

- Identify and analyze the components that make up their long-term care system;
- Develop a comprehensive state strategy for improving its cost-efficiency and program-effectiveness; and
- Recommend changes in those policies which currently serve as barriers to efficient and effective long-term care programs.

#### Availability of Funds

In Fiscal Year 1980, $20.5 million is expected to be available for the entire National Channeling Demonstration Program. Of this amount, approximately $1.5 million will be used to award up to fifteen (15) system development grants. Grant awards will be made to support staff and related administrative costs necessary to implement system development projects. The Department expects that grant budgets will range from $75,000 to $125,000 for the one year project period, depending on the size of the state, the complexity of its current long-term care services system and the intensity and complexity of the project implementation plan submitted in the proposal application.

The authority under which the system development grants will be awarded is the Comprehensive Older Act Amendments of 1978, Title IV, Part C, Section 421.

**Eligible Applicants**

Applications for long-term care system development grants will be accepted only from state level units or agencies of state government. For purposes of the National Channeling Demonstration Program, references to state government include the governing structures of the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands and the Mariana Islands. Each state may submit only only one application under this announcement.

The Governor (or chief official) of any state wishing to submit an application must designate a program agency or administrative unit of state government to assume lead responsibility for preparing the grant application and, it successful, for administering the grant award. The designated lead agency or unit will establish a working group which includes, at a minimum, the principal official (or his/her designee) of the single organizational unit having responsibility for preparing and administering state plans for Medical Assistance (title XIX, Social Security Act), Social Services (title XX, Social Security Act) and Aging (title, Older Americans Act). If one of these is designated as the lead agency, the remaining two will constitute the core of the working group.

In addition to providing active support to proposal efforts, the working group will approve the system development grant application prior to transmital to the Department.

**Target Population**

The principal target population for the National Channeling Demonstration Program is functionally impaired individuals 65 and older who, because of chronic physical, mental or emotional conditions, are unable to care for themselves and need persistent help from others over an extended period of time. Applications for system development grants are expected to focus principally on the needs of and services for this population group. However, this focus may be expanded to address the long-term care needs of functionally impaired adults below the age of 65.

**Duration of Grant Awards**

The Department expects to make grant awards for this announcement by the end of Fiscal Year 1980 for a period not to exceed 12 months.

**Application Review**

Grant applications will be reviewed by a panel, including specialists knowledgeable about long-term care planning, service delivery, federal programs currently supporting long/term care services and state government operations. Applications should be written concisely and clearly, and should adhere to the guidelines and format prescribed in the Application Kit.

Applications will reviewed according to the following four criteria, weighted as indicated:

Criterion I: Understanding of Project Objectives.....15%

The proposal application should clearly indicate the offeror's understanding of the purposes and objectives of the national channeling program and the system development grant, and shall clearly identify expected outcomes of the grant effort that are feasible and appropriate.

Criterion II: Knowledge of and Commitment to Long-Term Care Reform.....30%

The proposal application shall clearly indicate the offeror's understanding of the critical characteristics of the current system of long-term care within the state; identify the issues and problems at the federal, state and local levels which impede the development of a more program-effective and cost-efficient long-term care system; and system; and specify the range of options for improving long-term care delivery within the state. The application should also demonstrate the state's commitment to affecting long-term care system change as reflected in its past and current activities with respect to long-term care issues and problems; the composition, location and responsibility/authority delegated to the working group; the commitment of state resources and provision of administrative support to the project; and the proposed utilization of project activities and outcomes for statewide system change.

Criterion III: Approach to Project Implementation.....40%

The proposal application shall clearly indicate how the tasks specified in the guidelines will be carried out, including: the principal issues to be considered in a comprehensive policy and planning review; and the manner by which relevant data will be collected, analyzed, synthesized and used to develop the state plan for long-term care and the report to the government.

Criterion IV: Project Manageemnt, Staffing and Budget.....15%

The proposal application indicates how the proposed project will be administered, including management and supervision of project staff. The application should also describe the responsibilities of project staff and include resumes of proposed staff reflecting appropriate qualifications to carry out these responsibilities. The application should indicate that the applicant organization has adequate facilities and resources available to carry out the tasks of the proposed project, and that the proposed budget is reasonable in relation to the anticipated results of the project.

**Application Processing**

1. *Application Forms.* Grant applications are to be submitted according to the format prescribed in the Grant Application Kit prepared for the long-term care system development grant announcement. Application kits, including guidelines, forms and instructions, may be requested by writing to: Division of Grants and Contracts Management, Office of Human Development Services/DHEW, Room 345F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, *Attention:* National Channeling Demonstration Program: Long-Term Care System Development Projects.

2. *Closing Date and Time.* All applications for this solicitation must be received by no later than 5:30 p.m., July 11th at the above address. Applications sent by mail to the above address will be considered to be received on time if the application was sent by registered or certified mail and mailed no later than July 8th, 1980 as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or the original receipt from the U.S. Postal Service, unless the application arrives too late to be considered by the review panel.

All questions will respect to this announcement are to be directed to: Ms. Brina B. Melemed, Division of Long-Term Care Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 439–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 426–7363.

**John L. Palmer,**

*Assistant Secretary for Planning & Evaluation.*

[FR Doc. 80–15600 Filed 5–20–80; 8:45 am]

BILLING CODE 4110–12–M

federal register

Wednesday
May 21, 1980

Part VIII

# Environmental Protection Agency

## Hazardous Waste Management System

## Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Correction

NOTE: Page 33154 was omitted from Part VII of certain issues of Monday, May 19, 1980. It is reprinted on the following page.

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 264 and 265**

**[FRL 1446-8]**

## Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final Rule and Interim Final Rule.

**SUMMARY:** Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (RCRA), directs the Environmental Protection Agency to promulgate regulations establishing a Federal hazardous waste management system. These Parts 264 and 265 regulations are the first phase of EPA's requirements under Section 3004 of RCRA for owners and operators of facilities that treat, store, and dispose of wastes which are identified or listed as hazardous under Part 261 of this Chapter.

The regulations under Part 265 establish requirements applicable during the interim status period (the period after an owner or operator has applied for a permit, but prior to final disposition of the application) respecting preparedness for and prevention of hazards, contingency planning and emergency procedures, the manifest system, recordkeeping and reporting, ground-water monitoring, facility closure and post-closure care, financial requirements, the use and management of containers, and the design and operation of tanks, surface impoundments, waste piles, land treatment facilities, landfills, incinerators, thermal, physical, chemical, and biological treatment units, and injection wells. In addition, there are included some general requirements respecting identification numbers, required notices, waste analysis, security at facilities, inspection of facilities, and personnel training.

The Part 264 regulations include the first phase of the standards which will be used to issue permits for hazardous waste treatment, storage, and disposal facilities. Included are requirements respecting preparedness for and prevention of hazards, contingency planning and emergency procedures, the manifest system, and recordkeeping and reporting. Also included are general requirements respecting identification numbers, required notices, waste analysis, security at facilities, inspection of facilities, and personnel training. Additional Part 264 regulations will be promulgated later this year.

**DATES:**

*Effective Date:* These regulations, in the form published today, complete EPA's initial rulemaking on the subjects covered and are final Agency action. They become effective on November 19, 1980, which is six months from the date of promulgation as Section 3010 requires. Today's promulgation begins the various schedules provided by RCRA for filing notifications and permit applications, and for States to apply for interim authorization.

*Comment dates:* EPA will accept public comments on these regulations as follows:

*Deadline for Submission of Comments*

Final regulations—technical errors only (e.g., typographical errors, inaccurate cross references)—July 18, 1980.
Interim final regulations—July 18, 1980.
Starred (*) Part 265 regulations—comments only on the propriety of making the standard applicable during interim status—July 18, 1980.

**ADDRESSES:** Comments on Interim Final portions should be sent to Docket Clerk [Docket No. 3004], Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

*Public Docket:* The public docket for these regulations is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Among other things, the docket contains background documents which explain, in more detail than the preamble to this regulation, the basis for many of the provisions in this regulation.

*Copies of Regulations:* Single copies of these regulations will be available approximately 30 days after publication from Ed Cox, Solid Waste Information, U.S. Environmental Protection Agency, 26 West St. Clair Street, Cincinnati, Ohio 45268 (513) 684-5362. Multiple copies will be available from the Superintendent of Documents, Washington, D.C. 20402.

**FOR FURTHER INFORMATION CONTACT:**

For general information, contact Alfred Lindsey, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

For information on implementation of these regulations, contact the EPA regional offices below:

*Region I*

Dennis Huebner, Chief, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777.

*Region II*

Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5.

*Region III*

Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980.

*Region IV*

James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street N.E., Atlanta, Georgia 30365, (404) 881-3016.

*Region V*

Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148.

*Region VI*

R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 767-2645.

*Region VII*

Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307.

*Region VIII*

Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221.

*Region IX*

Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606.

*Region X*

Kenneth D. Feigner, Chief, Waste Management Branch, 1200 6th Avenue, Seattle, Washington 98101, (206) 442-1260.

**SUPPLEMENTARY INFORMATION:**

**Preamble Outline**

The outline of this preamble is as follows:

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## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

| Monday | Tuesday | Wednesday | Thursday | Friday |
|---|---|---|---|---|
| DOT/SECRETARY | USDA/ASCS | | DOT/SECRETARY | USDA/ASCS |
| DOT/COAST GUARD | USDA/APHIS | | DOT/COAST GUARD | USDA/APHIS |
| DOT/FAA | USDA/FNS | | DOT/FAA | USDA/FNS |
| DOT/FHWA | USDA/FSQS | | DOT/FHWA | USDA/FSQS |
| DOT/FRA | USDA/REA | | DOT/FRA | USDA/REA |
| DOT/NHTSA | MSPB/OPM | | DOT/NHTSA | MSPB/OPM |
| DOT/RSPA | LABOR | | DOT/RSPA | LABOR |
| DOT/SLSDC | HEW/FDA | | DOT/SLSDC | HEW/FDA |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

## REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

### Rules Going Into Effect Today

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

Health Care Financing Administration—

**26699** 4–21–80 / Medicare reimbursement; prohibition of reassignment of claims by providers and suppliers

**TRANSPORTATION DEPARTMENT**

Coast Guard—

**26711** 4–21–80 / Tank vent piping for Great Lakes vessels

### Deadlines for Comments on Proposed Rules for the Week of May 25 through May 31, 1980

**AGRICULTURE DEPARTMENT**

Agricultural Marketing Service—

**30638** 5–9–80 / Establishment of eligibility requirements for nominating public members on the Interior Grapefruit Marketing Committee; comments by 5–27–80

**30446** 5–8–80 / Hops of domestic production; administrative regulations; comments by 5–28–80

**21168** 3–31–80 / Packers and Stockyards Act; plan for review of existing regulations and policy statements; comments by 5–30–80

Commodity Credit Corporation—

**27944** 4–25–80 / Proposed price support levels and program methods for 1980 crop tobacco; comments by 5–27–80

Food and Nutrition Service—

**20704** 3–28–80 / Food Stamp Program operations in Alaska; comments by 5–27–80

Food Safety and Quality Service—

**19258** 3–25–80 / Change in reporting frequency from weekly to annually of processing operations of processing operations at official establishments; comments by 5–26–80

Office of the Secretary—

**20898** 3–31–80 / Natural Gas Policy Act; amendment regarding certification of essential of agricultural uses and requirements; comments by 5–30–80

**CIVIL AERONAUTICS BOARD**

**20116** 3–27–80 / Schedule listings and delays in discontinuing service; comments by 5–27–80

**COMMERCE DEPARTMENT**

International Trade Administration—

**27948** 4–25–80 / Consideration of monitoring of ferrous scrap; comments by 5–27–80

**21612** 4–2–80 / Controls on the export to the U.S.S.R. of goods and technology for use related to the 1980 Summer Olympics and on related payments and transactions; comments by 5–27–80

**25034** 4–11–80 / Receipt of petition requesting monitoring of exports of ferrous scrap; comments by 5–27–80

National Oceanic and Atmospheric Administration—

**21307** 4–1–80 / Atlantic Butterfish Fishery management plan; approval of amendment; comments by 5–31–80

**22121** 4–3–80 / Atlantic squid fishery management plan; comments by 5–26–80

**20107** 3–27–80 / Commercial Tanner Crab Fishery off coast of Alaska; Fishery Management Plan and rules; comments by 5–27–80

**20907** 3–31–80 / Marine Sanctuary; proposed designation of the Point Reyes/Farron Islands; comments by 5–30–80

**ENERGY DEPARTMENT**

**25097** 4–14–80 / Energy performance standards for new buildings; draft environmental impact statement supplement; comments by 5–26–80

Conservation and Solar Energy Office—

**26717** 4–21–80 / Technical assistance and energy conservation measures for school hospitals, buildings owned by units of local governments, and public care institutions; third grant program cycle; comments by 5–30–80

## Deadlines for Comments On Proposed Rules for the Week June 1 through June 7, 1980

Federal Highway Administration—

15188 3–10–80 / Maximum weight of trucks on interstate system highways; variable load suspension axles; dummy axles; interpretation and application of bridge formula; comments by 6–2–80
[Originally published at 44 FR 69586, 12–3–79]

Research and Special Programs Administration—

13153 2–28–80 / Transportation of wet electric storage batteries on passenger-carrying aircraft; comments by 6–1–80

Urban Mass Transportation Administration—

26298 4–17–80 / Service changes and fare changes; public hearing requirements; comments by 6–1–80
[Corrected at 45 FR 30444, 5–8–80]

**TREASURY DEPARTMENT**

Alcohol, Tobacco, and Firearms Bureau—

16201 3–13–80 / Grape brandy; standards of identity; extension of comment period to 6–2–80
[Originally published at 45 FR 50, 1–2–80]

Customs Service—

29247 5–1–80 / Entry and clearance of aircraft between U.S. and Cuba to Fort Lauderdale—Hollywood International Airport; interim regulations; comments by 6–2–80

Internal Revenue Service—

23400 4–4–80 / Crude Oil Windfall Profit Tax provisions; comments by 6–3–80

26092 4–17–80 / Income tax; shareholder requirements relating to electing small business corporations; comments by 6–13–80

**VETERANS ADMINISTRATION**

21653 4–2–80 / Veterans education; independent study; comments by 6–2–80

## Next Week's Meetings

**AGRICULTURE DEPARTMENT**

Forest Service—

28385 4–29–80 / Caribou National Forest Grazing Advisory Board, Curlew National Grasslands, Wash. (open), 5–27–80

Science and Education Administration—

25103 4–14–80 / Committee on Nine, Washington, D.C. (open), 5–28 and 5–29–80

**ARTS AND HUMANITIES, NATIONAL FOUNDATION**

27075 4–22–80 / Museum Panel (challenge), Washington, D.C. (closed), 5–28 through 5–30–80

30572 5–8–80 / Music Panel (Composers Section), Washington, D.C. (partially open), 5–27 through 5–30–80

**CIVIL RIGHTS COMMISSION**

31147 5–12–80 / Connecticut Advisory Committee, Bridgeport, Conn. (open), 5–28–80

29111 5–1–80 / Kansas Advisory Committee, Wichita, Kansas (open), 5–27–80

31148 5–12–80 / West Virginia Advisory Committee, Beckley, West Virginia, (open), 5–30–80

**COMMERCE DEPARTMENT**

30468 5–8–80 / Coastal Zone Management Advisory Committee, Washington, D.C. (open), 5–23–80

International Trade Administration—

30466 5–8–80 / Exporters' Textile Advisory Committee, Washington, D.C. (open), 5–29–80

National Oceanic and Atmospheric Administration—

26410 4–18–80 / South Atlantic Fishery Management Council, Raleigh, N.C. (open), 5–27–80

**DEFENSE DEPARTMENT**

Air Force Department—

26116 4–17–80 / USAF Scientific Advisory Board, Kirtland Air Force Base, N.M. (closed), 5–29 and 5–30–80

Navy Department—

28794 4–30–80 / Navy Resale System Advisory Committee, Seattle, Wash. (partially open), 5–26–80

Office of the Secretary—

19296 3–25–80 / Wage Committee, Washington, D.C. (partially open), 5–27–80

**EDUCATION DEPARTMENT**

31460 5–13–80 / Commission on the Review of the Federal Impact Aid Program, Washington, D.C. (open), 5–30–80

**ENERGY DEPARTMENT**

30668 5–9–80 / National Petroleum Council's, Coordinating Subcommittee of the Committee on Refinery Flexibility, Washington, D.C. (open), 5–27–80

**ENVIRONMENTAL PROTECTION AGENCY**

31200 5–12–80 / Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel, Arlington, Va., (open), 5–28 through 5–30–80

30095 5–7–80 / Pre-proposal draft regulation for distribution and marketing of sledge-derived fertilizers and soil conditioners, Los Angeles, Calif. (open), 5–27–80

30095 5–7–80 / Pre-proposal draft regulation for distribution and marketing of sledge.derived fertilizers and soil conditioners, Seattle, Wash. (open), 5–30–80

30688 5–9–80 / State-Fifra Issues Research and Evaluation Group, Working Committee on Enforcement, New Orleans, La. (open), 5–28 and 5–29–80

**FEDERAL PREVAILING RATE ADVISORY COMMITTEE**

27987 4–25–80 / Meeting, Washington, D.C. (open), 5–29–80

**HEALTH, EDUCATION, AND WELFARE DEPARTMENT**

25149 4–14–80 / National Advisory Environmental Health Sciences, Bethesda, Md. (partially open), 5–27 and 5–28–80

Alcohol, Drug Abuse, and Mental Health Administration—

25948 4–16–80 / Alcohol Abuse and Alcoholism Advisory Council, Bethesda, Md. (partially open), 5–28 and 5–29–80

25948 4–16–80 / Drug Abuse Advisory Council, Rockville, Md. (partially open), 5–29 and 5–30–80

Center for Disease Control—

30540 5–8–80 / Editorial Group to Review Draft Proposed Operational Guidelines for Infectious Disease Laboratories, Atlanta, Ga. (open), 5–28–80

Education Office—

29638 5–5–80 / National Advisory Council on the Education of Disadvantaged Children, Washington, D.C. (open and closed), 5–28 and 5–29–80

National Institutes of Health—

28505 4–29–80 / National Advisory Research Resources Council, Bethesda, Md. (partially open), 5–29 and 5–30–80

28503 4–29–80 / General Research Support Review Committee, Bethesda, Md. (partially open), 5–27–80

21042 3–31–80 / National Advisory Council on Aging, Bethesda, Md. (open), 5–29 and 5–30–80

27526 4–23–80 / National Advisory Eye Council, Bethesda, Md. (open), 5–28 through 5–30–80

Office of the Secretary—

23525 4–7–80 / Board of Advisors to the Fund for the Improvement of Post Secondary Education, Elkridge, Md. (closed), 5–29 through 5–31–80

**HEALTH AND HUMAN SERVICES DEPARTMENT**

Office of the Assistant Secretary for Health—

32120 5–15–80 / Select Panel for the Promotion of Child Health, Alexandia, Va. (open), 5–31 and 6–1–80

National Institutes of Health—

31780 5–14–80 / Sickle Cell Disease Advisory Committee, Bethesda, Md. (open), 5–29 and 5–30–80

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary—

28506 4–29–80 / National Mobile Home Advisory Council, Atlanta, Ga. (open), 5–28 through 5–30–80

**INTERIOR DEPARTMENT**

Land Management Bureau—

30703 5–9–80 / Outer Continental Shelf Advisory Board, Mid-Atlantic Technical Working Groups Committee, New York, N.Y. (open), 5–28 and 5–29–80

31143 5–12–80 / Draft environmental impact, surface management of public lands under the U.S. Mining Laws (open), 5–28–80, Denver, Colorado and 5–30–80, Reno, Nevada

27997 4–25–80 / Powder Rise Regional Coal Team, Gillette, Wyoming (open), 5–29–80

27533 4–23–80 / Vernal District Grazing Management Advisory Board, Vernal, Utah (open), 5–28–80

National Park Service—

31752 5–14–80 / Grand Teton National Park; Snowmobile use, Golden, Colo. (open), 5–28–80

31752 5–14–80 / Grand Teton National Park; Snowmobile use, Jackson, Wyo. (open), 5–30–80

Office of the Assistant Secretary, Land and Water Resources—

30553 5–8–80 / Oil Shale Environmental Advisory Committee, Meeker, Colo. (open), 5–29 and 5–30–80

Surface Mining Reclamation and Enforcement Office—

27955 4–25–80 / Review of substance of proposed Louisiana regulatory program under the Surface Mining Control and Reclamation Act of 1977, Baton Rouge, La., 5–28–80

**INTERNATIONAL CONVENTION ADVISORY COMMISSION**

27568 4–23–80 / Meeting, Washington, D.C., 5–30–80

**JUSTICE DEPARTMENT**

31835 5–14–80 / United States Circuit Judge Nominating Commission, Second Circuit Panel, New York, N.Y. (closed), 5–30–80

**LABOR DEPARTMENT**

Occupational Safety and Health Administration—

22977 4–4–80 / Consideration of entry and work in confined spaces in general industry, and construction, Washington, D.C. (open), 5–28 and 5–29–80

**NATIONAL SCIENCE FOUNDATION**

29445 5–2–80 / Advisory Committee for PCM Subcommittee on Human Cell Biology, Washington, D.C. (closed), 5–27 and 5–28–80

29449 5–2–80 / Advisory Committee for Physiology, Cellular and Molecular Biology, Subcommittee on Metabolic Biology, New Orleans, La. (closed), 5–31 and 6–1–80

30197 5–7–80 / Policy Research and Analysis and Science Resources Studies Advisory Committee, Scientific and Technical Personnel Subcommittee, Wash., D.C. (open), 5–30–80

29447 5–2–80 / Subcommittee for Computer Science of the Advisory Committee for Mathematical and Computer Sciences, Washington, D.C. (closed), 5–28, 5–29 and 5–30–80

29447 5–2–80 / Subcommittee on Developmental Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology, Washington, D.C. (closed), 5–26 through 5–29–80

29448 5–2–80 / Subcommittee on Memory and Cognitive Processes of the Advisory Committee for Behavorial and Neural Sciences, Washington, D.C. (closed), 5–27 and 5–28–80

29448 5–2–80 / Subcommittee on Metabolic Biology of the Advisory Committee for Physiology, Cellular, and Metabolic Biology, Washington, D.C. (closed), 5–29 and 5–30–80

29449 5–2–80 / Subcommittee on Social and Developmental Psychology of the Advisory Committee for Behavioral and Neural Sciences, Washington, D.C. (closed), 5–29 and 5–30–80

**NUCLEAR REGULATORY COMMISSION**

31554 5–13–80 / Advisory Committee for Screening of Licensing Board Candidates, Bethesda, Md. (closed), 5–30–80

31118 5–12–80 / Personnel dosimetry performance testing, Washington, D.C., (open) 5–28–80

29147 5–1–80 / Reactor Safeguards Advisory Committee, Fontenay–Aut–Roses, France, (closed), 5–28 and 5–29–80

**SMALL BUSINESS ADMINISTRATION**

30200 5–7–80 / Region III Advisory Council, Clarksburg, W.Va., (open) 5–29–80

**SOCIAL SECURITY NATIONAL COMMISSION**

30573 5–8–80 / Tentative Recommendations Relating to Disability Insurance Program and Supplemental Security Income Program, Washington, D.C. (open), 5–23 and 5–24–80

**STATE DEPARTMENT**

30588 5–8–80 / International Investment, Technology, and Development Advisory Committee, Washington, D.C. (open), 5–30–80

29964 5–6–80 / Shipping Coordinating Committee, National Committee for the Prevention of Marine Pollution, Washington, D.C. (open), 5–28–80

29965 5–6–80 / Shipping Coordinating Committee, Safety of Life at Sea Subcommittee, Washington, D.C. (open), 5–29–80

**TRANSPORTATION DEPARTMENT**

Coast Guard—

22322 4–3–80 / Seminar on New Tanker Equipment and Construction Standards, Washington, D.C. (open), 5–30–80

Federal Aviation Administration—

17019 3–17–80 / New York Terminal Control Area, proposed alteration, Farmingdale, N.Y. (open), 5–28–80

**VETERANS ADMINISTRATION**

30201 5–7–80 / Special Medical Advisory Group, Washington, D.C. (open), 5–28 and 5–29–80

28850 4–30–80 / Station Committee on Educational Allowances, Muskogee, Okla., 5–28–80

17714 3–19–80 / Wage Committee, Washington, D.C. (closed), 5–29–80

## Next Week's Public Hearings

**CIVIL AERONAUTICS BOARD**

27460 4–23–80 / Trans World Airlines, Inc., Discount Fare Advertising Enforcement Proceeding, Washington, D.C., 5–28–80

**EDUCATION DEPARTMENT**

31460 5–13–80 / Commission on the Review of the Federal Impact Aid Program, Washington, D.C., 5–28 and 5–29–80

**ENVIRONMENTAL PROTECTION AGENCY**

15592 3–11–80 / Tetrachlorodibenzo-p-dioxin (TCDD); prohibition of disposal of contaminated waste, Washington, D.C., 5–28–80

**INTERIOR DEPARTMENT**

Bureau of Land Management—

27532 4–23–80 / Grazing Management Program for the McGregor Range Environmental Impact Statement Area, Otero County, New Mexico, 5–28–80

29893 5–6–80 / Livestock Grazing Management Program, Tonopah Resource Area, Battle Mountain District, Nev.:

Battle Mountain, Nev.; 5–28–80

Tonopah, Nev.; 5–29–80

27529 4–23–80 / New Mexico, Hearing on proposed withdrawal of public lands, Alamogordo, 5–28–80

30141 5–7–80 / Proposed Wilderness Designations: Powderhorn Instant Study Area and Contiguous Areas With Wilderness Character, Montrose, Colo. 5–27–80; Gunnison, Colo. 5–28–80; Lake City, Colo. 5–29–80

27533 4–23–80 / White River Resource Area Grazing Management Program, Meeker, Colo., 5–29–80

Surface Mining Reclamation and Enforcement Office—

28765 4–30–80 / Abandoned mine lands reclamation program; receipt of plan from Texas, Arlington, Tex., 5–29–80

**SMALL BUSINESS ADMINISTRATION**

28242 4–28–80 / Productivity and small business innovation, Boston, Mass., 5–28 and 5–29–80

[*See also* 45 FR 25564, 4–15–80]

**TRANSPORTATION DEPARTMENT**

Federal Aviation Administration—

27775 4–24–80 / Crewmember clothing: flammability standards, Washington, D.C., 5–28 and 5–29–80

## List of Public Laws

**Last Listing May 8, 1980**

This is a continuing listing of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–275–3030).

**H.J. Res. 545 / Pub. L. 96–243** Making an urgent appropriation for the food stamp program for the fiscal year ending September 30, 1980, for the Department of Agriculture. (May 16, 1980; 94 Stat. 345) Price $1.00.

**H.R. 126 / Pub. L. 96–244** To permit the Secretary of the Interior to accept privately donated funds and, to expend such funds on property on the National Register of Historic Places. (May 19, 1980; 94 Stat. 346) Price $1.00.

## Documents Relating to Federal Grants Programs

This is a list of documents relating to Federal grant programs which were published in the **Federal Register** during the previous week.

**RULES GOING INTO EFFECT**

32586 5–16–80 / Provisions for awards to State and local educational agencies under the Emergency School Aid Act; no definite effective date

31880 5–14–80 / HUD/Office of the Assistant Secretary for Fair Housing and Equal Opportunity—Fair housing assistance program; eligibility criteria and funding standards; effective 6–7–80

**DEADLINES FOR COMMENTS ON PROPOSED RULES**

31262 5–12–80 / HUD/CPD—Community development block grants; requirements governing urban development action grants; comments by 7–11–80

31880 5–14–80 / HUD/Office of the Assistant Secretary for Fair Housing and Equal Opportunity—Fair housing assistance program; eligibility criteria and funding standards; comments by 7–28–80

**APPLICATIONS DEADLINES**

32035 5–15–80 / Commerce/MBDA—Financial Assistance Application; Standard Metropolitan Statistical Area (SMSA) of Washington, D.C., apply by 5–30–80

31457 5–13–80 / Commerce/NOAA—Acceptance of Competitive Applications for Assistance with Marine Pollution Research, Development and Monitoring; applications by 5–16–80

31876 5–14–80 / HHS/HDSO—Youth research and development grants program; apply 6–30–80

32121 5–15–80 / HHS/HRA—Financial Distress; apply by 6–30–80

31801 5–14–80 / HHS/PHS—Cooperative agreement demonstration program to conduct workplace health hazard evaluations; apply by 6–16–80

31924 5–14–80 / HHS/SSA—Income maintenance research and demonstration grants; apply by 6–13–80

32144 5–15–80 / Justice/NIJ—Employment Services for Ex-Offenders; apply by 6–30–80

**MEETINGS**

32144 5–15–80 / NFAH—Dance Panel, Washington, D.C. (partially open), 6–2 through 6–4–80

31241 5–12–80 / NFAH—Humanities Panel (Review Elementary and Secondary Projects applications for projects beginning 9–1–80), Washington, D.C. (closed), 6–12, 6–13 and 6–16–80

31241 5–12–80 / NFAH—Humanities Panel (Review of Pilot Grant applications for projects beginning after 10–1–80), Washington, D.C. (closed), 6–5 and 6–6–80

31241 5–12–80 / NFAH—Humanities Panel, (review of applications in State, Local and Regional Studies for projects beginning after 9–1–80), Washington, D.C. (closed), 6–5 and 6–6–80

32145 5–15–80 / NFAH—Special Projects Panel (challenge), Washington, D.C. (closed), 6–6–80

32145 5–15–80 / NFAH—Special Projects Panel, Washington, D.C. (closed), 6–5–80

32145 5–15–80 / NFAH—Theater Panel (Theater for Youth), Washington, D.C. (closed), 6–6–80

31857 5–14–80 / NSF—Board Meeting, Washington, D.C. (partially open), 5–15 and 5–16–80

**OTHER ITEMS OF INTEREST**

31483 5–13–80 / DOE/Sec—Geothermal Demonstration Program; Record of Decision

32224 5–15–80 / DOT/UMTA—Procurement of rolling stock with Urban Discretionary Grants or Urban Formula Grants (FY 1980 funds); effective 5–15–80; comments by 7–8–80

31888 5–14–80 / Justice/LEAAA—National priority program and discretionary program announcement

31544 5–13–80 / Justice/LEAA—Violent Juvenile Offender Research and Development Program; Response to Public Comment and Issuance of Program Announcement

32438 5–16–80 / Labor/ETA—List of organizations applying to Secretary of Agriculture for financial assistance including grants

31836 5–14–80 / LSC—Grants and Contracts; Kentucky; Soliciting comments or recommendations

31836 5–14–80 / LSC—Grants and Contracts; California; Soliciting comments or recommendations (2 documents)

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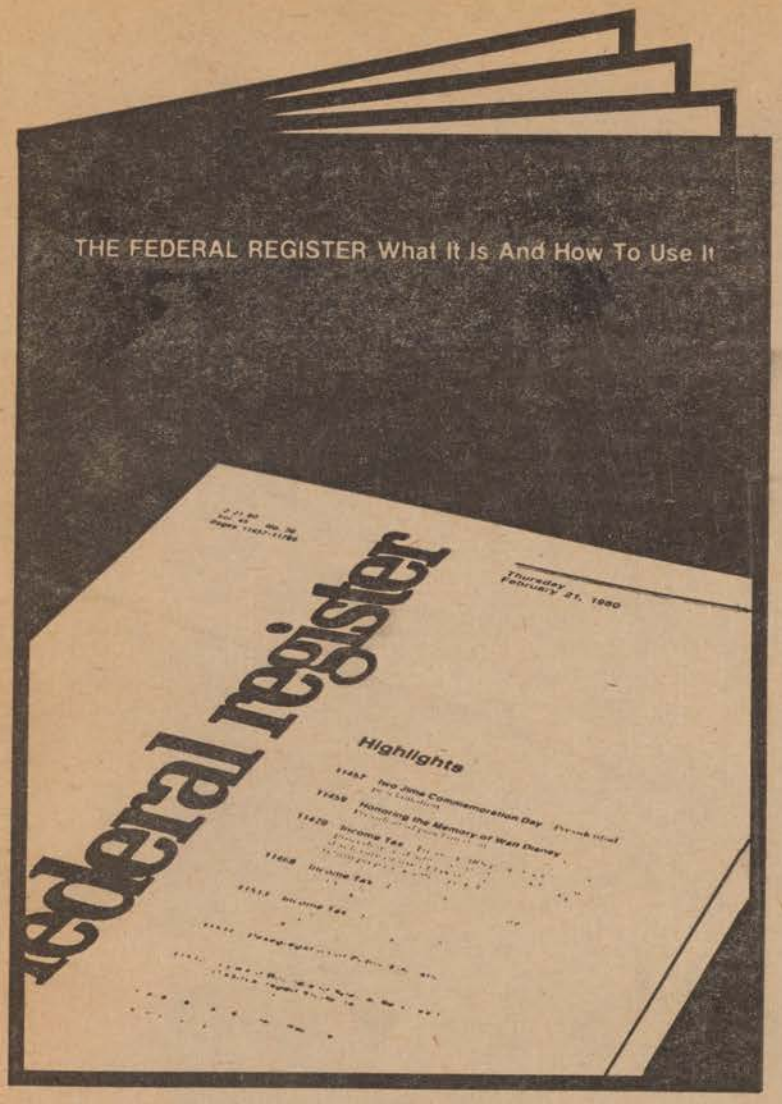


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