8-31-82
Vol. 47 No. 169
Pages 38255-38492

federal register

Tuesday
August 31, 1982

Selected Subjects

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Presidential Documents

Title 3—

The President

Proclamation 4959 of August 26, 1982

Nordic-America Week, 1982

By the President of the United States of America

A Proclamation

From the Viking voyages a millennium ago to the myriad Scandinavians who have come here in more recent times, the Nordic people have made an indelible contribution to the greatness that is America. Danes, Finns, Icelanders, Norwegians and Swedes landed on our East coast and went West, expanded our frontier, tamed the prairie and helped make America the great Nation it is today.

To give recognition to those Scandinavians who had a part in the making of America, a nation-wide series of events will begin in September, called "Scandinavia Today." These events will describe the Nordic gift to the American heritage and will underscore the achievements of those nations in science, art and government.

We have received much from Scandinavia: The Icelandic sagas are monuments of literature; Niels Bohr was a vital link in modern science; Jan Sibelius was one of the giants of music; and Edvard Munch gave the world the visual beauty of his art. They offered us much. Yet, for America, there is more still. The immigrants from Nordic countries infused us with their cultural and intellectual wealth and balanced their traditions with those of immigrants from other countries to help give America its enormous strength and unique resilience. It is fitting that we honor all of their contributions during this special week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate September five through September eleven, 1982, as Nordic-America Week.

I invite the people of the United States to honor these Nordic nations during that week by holding appropriate ceremonies throughout the land and in participating in the many events of the "Scandinavia Today" program through the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 82-24081
Filed 8-30-82; 10:23 am]
Billing code 3195-01-M

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 752

Schedule B Appointment Authority for Professional and Administrative Career Positions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: These regulations establish a new appointing authority in the excepted service which agencies may use during a period when the Office of Personnel Management does not have a register of competitive eligibles for use in filling professional and administrative career (PAC) positions subject to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271. This new authority is applicable only when agencies must utilize external recruiting and hiring procedures to fill such positions. The regulations extend adverse action protections to individuals appointed under this new authority.

EFFECTIVE DATE: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Litigation: Joseph A. Morris, General Counsel—(202) 632–4632; Part 213: William Bohling—(202) 632–6000; Part 752: Cynthia Field—(202) 254–5527.

SUPPLEMENTARY INFORMATION: At 47 FR 20264 dated May 11, 1982, the Office of Personnel Management published proposed regulations to amend 5 CFR Parts 213 and 752, with a 30-day comment period. These proposed regulations were republished in their entirety with corrections at 47 FR 21055 dated May 17, 1982. The comment period was extended from June 10, 1982, to June 16, 1982.

Pursuant to the decree entered on November 19, 1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, the Office of Personnel Management (OPM) must eliminate the use of the Professional and Administrative Career Examination (PACE) and registers of competitive eligibles derived therefrom. At the present time, OPM has no equivalent register of eligible applicants for entry-level professional and administrative career positions and, pending further notice, will not establish such a register. Pursuant to its authority under Civil Service Rule VI, OPM has therefore determined that entry level professional and administrative career positions at the GS–5 and GS–7 grade levels should be excepted from the competitive service when it is necessary for an agency to fill these positions through external hiring. Excepting these positions from the competitive service and placing them in Schedule B is appropriate because (1) there are no alternative written tests and other merit selection procedures, other than the PACE, currently available, (2) restrictions in federal employment will result in substantially reduced external hires in many former PACE occupations, and (3) the cost of developing validated competitive examinations consistent with the decree would be prohibitive, especially for the occupations where relatively few hires are expected. Thus, it is not practicable to hold competitive examinations for those positions. OPM will, of course, continue to explore the development of competitive selection procedures where appropriate.

Comments were received from over 50 Federal agencies, Federal employees, private citizens, labor unions, and private organizations. The following serves as a summary of the most frequent comments made and OPM's action with regard to them.

The commenting Federal agencies were generally supportive of the proposed regulation establishing a Schedule B authority; however, nearly all cited similar concerns with several portions of the regulation dealing with the implementation of this new authority.

Agencies were not in favor of the proposed requirement to obtain prior case-by-case, position-by-position approval from OPM whenever they sought to make an external hire under the Schedule B authority. They argued that such an approach would be unnecessarily burdensome and would often prolong the filling of vacancies to an unwarranted extent. While OPM did not agree, as some agencies suggested, that we should grant a blanket delegation authority to all agencies to make appointments under the Schedule B authority, we did agree that a case-by-case, position-by-position approval requirement would be unnecessary in cases where an agency had a group, i.e., more than one, of like entry-level PAC positions to fill and where it could satisfactorily demonstrate the unavailability of qualified, available status candidates from other sources. This approach is consistent with the language of the final regulation which indicates that an appointment authority agreement will be executed for each position excepted from the competitive service pursuant to this authority, thereby defining the word "position" in terms of kind rather than in terms of number. Specific information on the criteria that agencies must meet to obtain Schedule B approval for one or more such PAC positions as well as a typical appointment authority agreement which agencies must submit are being incorporated into guidance and instructional material issued through the Federal Personnel Manual system.

Most agencies were unclear as to the extent to which they would be required by the regulation to undertake recruitment of current status Federal employees under their merit promotion plans before the Schedule B authority could be requested. To clarify this point, the final regulatory language has been modified to remove the apparent absolute consideration requirement and to replace it with a requirement to give appropriate consideration to available, qualified status candidates. This change in the regulatory language continues to remind agencies of their obligation to consider qualified status candidates through their merit promotion plans without mandating an unrealistic requirement to exhaust totally all possible internal recruitment sources or to appoint marginally qualified candidates before seeking Schedule B

authority. Further clarification is being provided to agencies in the Federal Personnel Manual system instructions.

A number of agencies misinterpreted the provision in the proposed regulation concerning appointment of Schedule B employees to competitive positions, assuming incorrectly that such employees could subsequently be noncompetitively converted to competitive appointments. Other agencies, understanding that provisions for competitive conversion were included in the proposed regulation, voiced opposition to having to seek a competitive appointing authority for those Schedule B employees who had satisfactorily performed at the GS–5 and/or GS–7 grade levels. In the latter instance, several agencies recommended that OPM seek an Executive order permitting noncompetitive conversion.

To the extent that agencies make cooperative education, Federal Junior Fellowship, and Veterans Readjustment appointments to such positions under existing authorities, noncompetitive conversions to competitive status are permitted. In addition, existing civil service rules and regulations provide means by which other Schedule B employees may be converted to the competitive service. OPM therefore finds no justification for substantively amending the language of the proposed regulation in this particular instance. Agencies will receive more specific instructions on the application of competitive appointing authorities under this regulation in the implementing guidance issued through the Federal Personnel Manual system.

Many commenting labor unions and private organizations objected to the proposed Schedule B regulation on the theory that the regulation, which will require maximum consideration of current status employees as a prerequisite to seeking authority to appoint external candidates, might result in the underrepresentation of Hispanics and persons of other minorities in the Federal work force.

The regulatory requirement for consideration of current status candidates merely reinforces and recognizes a long-standing Government practice. Traditionally, agencies have sought to fill GS–5 and 7 vacancies in PAC occupations through their merit promotion plans, giving first consideration to current Federal employees for positions which have career advancement opportunities. In the absence of such employees, or simultaneously with considering current status candidates, agencies have sought the names of external candidates through the PACE competitive inventories. With the termination of PACE, agencies will seek Schedule B authority instead of using a register of eligibles. Therefore, OPM believes that the implementation of this part of the Schedule B regulation will have no adverse impact upon Hispanics and persons of other minorities. To the contrary, the Schedule B regulation is intended and expected to enhance Federal employment opportunities for individuals who belong to minority groups. This is so with respect to persons who are hired from outside the Government as well as those who are promoted or reassigned within the Government or are appointed through priority placement programs following reductions in force and other reorganizations.

The majority of commenting Federal employees and private citizens together with at least one major civil rights organization, objected to the proposed regulation on the grounds that the abolition of PACE and the implementation of a Schedule B authority with race-conscious emphasis on affirmative action elements would undermine merit system integrity, would impede an agency's ability to hire the best qualified candidates for entry level professional and administrative career positions, and would thereby significantly reduce the quality of the Federal work force.

OPM is fully committed to merit principles in hiring. OPM is also committed and obliged by law to give full effect to the program of the decree in *Luevano* v. *Devine*. The decree requires the elimination of the use of PACE, reserving to the Government some flexibility in effecting the termination of the use of that examination. OPM has structured the procedures for use of the Schedule B authority in a way that is consistent with the decree, and conforms, to the extent practicable, with merit-based Federal hiring practices. Additionally, it is important to note that the development of PACE alternative competitive examinations will be both extremely costly and time-consuming. OPM therefore views this regulation establishing Schedule B authority for such entry level professional and administrative career positions as the most workable and acceptable alternative at the present time.

A specific statement has been included in the final rule to indicate more clearly that the Schedule B authority for professional and administrative career positions at the GS–5 or GS–7 grade level will apply to positions not removed from coverage of PACE prior to the effective date of the consent decree (January 18, 1982).

It was noted by some Federal agencies that current PACE registers throughout the country already were, or soon would be, inadequate for staffing needs, and that certain urgent staffing requirements exist or are immediately foreseeable. These agencies advised that they eagerly await the availability of the Schedule B authority, which they state will meet their needs in a practicable manner.

Other comments received were less substantive in nature and therefore do not necessitate discussion or inclusion in this regulatory document. Such comments will, as appropriate, be addressed in the instructional material issued through the Federal Personnel Manual system.

The Director of the Office of Personnel Management has determined, pursuant to 5 U.S.C. 553(d), 1103(b), and 1105, that because of the urgent, current needs of agencies to utilize this new Schedule B authority to meet critical staffing requirements immediately, and because this rule relieves restrictions, good cause exists for making this final rule effective immediately upon its publication.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains solely to procedures for appointment of employees by Federal agencies.

List of Subjects

5 CFR Part 213

Government employees.

5 CFR Part 752

Administrative practice and procedures. Government employees.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, Title 5, Code of Federal Regulations, is amended as follows:

PART 213—EXCEPTED SERVICE

(1) 5 CFR 213.3202 is amended by adding paragraph (l) to read as follows:

§ 213.3202 Entire Executive Civil Service.

* * * * *

(l) Professional and administrative career (PAC) positions at the GS–5 or GS–7 grade level which are subject to the decree entered on November 19,

1981, by the United States District Court for the District of Columbia in the civil action known as *Luevano* v. *Devine* and numbered as No. 79–271, which were not removed from coverage of the Professional and Administrative Career Examination (PACE) prior to the effective date of the consent decree, and which are to be filled, under the conditions described below, by appointment of individuals other than those who at the time of such appointment already have competitive status in the Federal civil service. When a Federal agency needs to fill a PAC position that was not removed from PACE coverage before the consent decree became effective, and the agency has made maximum use of priority placement sources and has given appropriate consideration to available and qualified status applicants, then OPM may authorize the agency to make a new appointment under this paragraph. Such appointments shall be authorized and made pursuant to such Schedule B requirements for PAC positions as shall be prescribed in the Federal Personnel Manual. Terms of use of this appointment authority shall be established by an appointment authority agreement to be executed for each position excepted from the competitive service pursuant to this authority. An incumbent of a Schedule B PAC position may be appointed to a competitive position upon a demonstration that the employee has met qualifications on the basis of an examination of the employee's experience and such other measures as may be prescribed for such position in civil service laws, rules, and regulations, including the Federal Personnel Manual.

PART 752—ADVERSE ACTIONS

(2) 5 CFR 752.401(b) is amended by adding paragraph (4) to read as follows:

§ 752.401 Coverage

* * * * *

(b) *Employees covered.* The following employees are covered by this subpart:

* * *

(4) An employee who occupies a professional and administrative career (PAC) position in Schedule B of Part 213 of this title, provided that the employee has completed a trial period of one year after initial appointment in such a position.

(5 U.S.C. 3301, 3302; E.O. 10577)

[FR Doc. 82–23913 Filed 8–30–82; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 82–322]

Mediterranean Fruit Fly

Correction

In FR Doc. 82–18071 appearing on page 28909 in the issue for Friday, July 2, 1982, third column, under "DATES", the effective date now reading "July 7, 1982" should read "July 2, 1982".

BILLING CODE 1505–01–M

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations for the 1982 Crop of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth the regulations governing the assessment of marketing penalties, identification of marketings, procedures for handling marketing violations, registration of peanut handlers, and the responsibilities of handlers to maintain records and reports. This rule is necessary to implement changes in the peanut program which are mandated by the Agriculture and Food Act of 1981.

DATES: Effective August 31, 1982.

Comments must be received before November 1, 1982 in order to be assured of consideration.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Paul P. Kume (ASCS) 202–382–0153. The Final Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures, Executive Order 12291, and Secretary's Memorandum No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance. This rule will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Department of Agriculture is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The regulations currently applicable to the 1979 and subsequent crops of peanuts do not set forth a number of provisions which are required by the Agricultural Adjustment Act of 1938, as amended, by the Agriculture and Food Act of 1981 (the "Act"), and other related policy changes which are necessary to properly and effectively administer the peanut program. Since the marketing of 1982 crop peanuts is already underway, it is important that these regulations be published immediately.

Accordingly, it has been determined that this interim rule shall become effective upon date of publication in the **Federal Register**. However, comments are requested on all aspects of this interim rule for 60 days after publication of this document in the **Federal Register**. This interim rule will be scheduled for review at the end of that period so that a final document discussing comments received, and any amendment of this interim rule which may be required, may be published in the **Federal Register** as soon as possible.

These regulations are basically the same as the regulations governing the marketing of peanuts which were in effect for 1981 and prior crop years, and which are presently codified at 7 CFR §§ 729.46 through 729.72. Therefore, the administration of the marketing process will change relatively little from previous programs. However, a number of modifications have been made in order to reflect changes required by the Agriculture and Food Act of 1981.

The most significant changes in the marketing regulations for the 1982 crop of peanuts are as follows:

(1) *Seed Peanuts.* By statutory definition, peanuts marketed as green peanuts are not considered peanuts. However, as required by statute and in accordance with the regulations governing the peanut program for prior years, any peanuts retained on the farm or purchased to plant green peanut acreage were considered quota peanuts. The Agriculture and Food Act of 1981 permits the Secretary to exclude from the definition of quota peanuts unique strains of seed peanuts which are retained on the farm from 1982 and subsequent crop plantings, which are not commercially available, and which are used to plant green peanut acreage. This rule adopts that exclusion.

(2) *Marketing Penalties.* The Act (7 U.S.C. 1359(f)(1)) provides that marketing penalties equal to 140 percent of the basic quota support rate times the amount of peanuts involved shall be assessed against producers for the following violations:

1. Marketings of peanuts for domestic edible use in excess of the effective farm poundage quota;
2. Failure to certify planted acreage;
3. Failure to account for the disposition of peanuts; and
4. False identification of peanuts.

The Act also provides that:

> The Secretary shall authorize, under such regulations as the Secretary shall prescribe, the county committees established under Section 8(b) of the Soil Conservation and Domestic Allotment Act to waive or reduce marketing penalties provided for under this subsection in cases in which such committees determine that the violations that were the basis of the penalties were unintentional or without knowledge on the part of the parties concerned. Errors in weight that do not exceed one-tenth of 1 per centum in the case of any one marketing document shall not be considered marketing violations except in cases of fraud or conspiracy (7 U.S.C. 1359(f)(2)).

In addition, the Act provides that:

> Notwithstanding any other provision of law, the liability for the amount of any penalty assessed under this section shall be determined in accordance with such procedures as the Secretary by regulations may prescribe * * * (7 U.S.C. 1359 (l)(4)).

This rule implements these provisions of the Act in the following manner. First, the county committees are authorized to waive or reduce penalties in appropriate circumstances in accordance with guidelines issued by the Deputy Administrator, State and County Operations, ASCS. However, the Deputy Administrator may require that waivers or reductions be reviewed by the State committee or the Deputy Administrator in order to assure a reasonable degree of uniformity in the implementation of this authority throughout all the peanut producing areas. The reviewing authority may require the county committee to redetermine the amount of the waiver or reduction of penalties if the reviewing authority determines the action of the county committee was not in conformity with the guidelines and instructions issued by the Deputy Administrator.

Second, the rule provides that no penalty shall be due for errors in net weight as reported on each ASCS-1007 (Inspection Certificate and Sales Memorandum) that do not exceed one-tenth of one percent. This exemption is not applicable to cases involving fraud or conspiracy.

Third, the rule sets forth procedures under which a producer may appeal the assessment of a penalty or to request a reduction in a penalty. Initially, a penalty is assessed by the the county committee. If the producer wishes to contest liability for the penalty, or to request a reduction in the penalty, or both, the producer must file a request for reconsideration with the county committee. The appeal will then be heard by the county committee in accordance with the appeal procedures set forth at 7 CFR Part 780. Adverse decisions of the county committee may be appealed to the State committee, and subsequently, to the Deputy Administrator, as provided in 7 CFR Part 780.

(3) *Failure To Certify Planted Acres.* The Act provides that: "If any producer falsely identifies or fails to certify planted acres or fails to account for the disposition of any peanuts produced on such planted acres, an amount of peanuts equal to the farm's average yield, as determined under Section 358(n) of this Act, times the planted acres, shall be deemed to have been marketed in violation of permissible uses of quota and additional peanuts and the penalty in respect thereof shall be paid and remitted by the producer." (7 U.S.C. 1359(f)(1)).

This provision of law was enacted in recognition of the fact that accurate certifications of planted acres are essential for the proper administration of the peanut program. Such certifications are normally made under the provisions of 7 CFR Part 718. Accordingly, this rule requires that a penalty be assessed against a producer if the certified acreage differs from the measured acreage by more than the tolerance provided in Part 718.

The amount of the penalty will be based on the percentage by which the acreage was incorrectly certified, and will be assessed against all peanuts marketed or considered marketed from the farm on a pro rate basis through the use of a "converted" basic penalty rate. The converted basic penalty rate is calculated by multiplying the percentage of incorrect certification by the basic penalty rate of 140 percent of the national average support level for quota peanuts. This procedure is consistent with the manner in which penalties were assessed for the planting of acreage in excess of the farm acreage allotment in prior crop years.

List of Subjects in 7 CFR Part 729

Poundage quotas, Penalties, Reporting requirements.

Interim Rule

PART 729—PEANUTS

Accordingly, 7 CFR Part 729 is amended as follows:

1. Paragraph (ee) is added to § 729.113 to read as follows:

§ 729.113 Definitions.

* * * * *

(ee) *Loan additional peanuts.* Peanuts which are not eligible for marketings as quota peanuts, which are not subject to delivery to fulfill a contract for additional peanuts, and which are pledged as collateral for price support loan at the additional loan rate.

2. The Table of Contents for Part 729—Peanuts, Subpart—Poundage Quota Regulations for the 1982 Crop of Peanuts, is amended by adding at the end thereof the following §§ 729.165 through 729.202:

* * * * *

3. The following is added at the end of Part 729—Peanuts, Subpart—Poundage Quota Regulations for the 1982 Crop of Peanuts:

Marketing Cards and Producer Identification Cards

§ 729.165 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (ASCS–1002) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced, except that: (1) A card issued for experimental peanuts shall be issued in the name of the experiment station; and (2) a card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The face of the marketing card may show the names of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm, shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data on marketing card and supplemental card.* (1) Before issuance, the following data and information must be entered on the marketing card in the spaces provided: (i) Effective farm poundage quota; (ii) if applicable, the pounds of additional peanuts contracted and the handler number of the contracting handler; and (iii) if applicable, the converted basic penalty rate determined in accordance with § 729.172(b).

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm upon return to the county office of an original marketing card or a supplemental marketing card. The balance of the poundage quota from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the poundage quota (not to exceed the balance of poundage quota available) to be assigned to each card.

(4) The face of the marketing card shall show the entry "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase as provided in Part 1446 of this Chapter. Two or more marketing cards may be issued for a farm if the producer wishes to obtain an additional card for purposes of indicating or not indicating "Eligible for Buyback."

(5) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the: (i) name and address of the farm operator; and (ii) State, county code, and farm serial number. If an embossed identification card is not available, the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such time as the peanuts are inspected and an ASCS–1007 has been executed by the inspection service.

(3) After the identification card is returned to the operator, it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen: *Provided,* that the farm operator gives immediate written notice of such fact and furnishes a satisfactory report of the quantity of peanuts which was marketed using the marketing card prior to the time such card was lost, stolen, or destroyed.

§ 729.166 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county office claim record, any marketing card issued for the farm on which the person has an interest as a producer shall bear the notation "U.S. Claim" or "PPQ" (peanut poundage quota) followed by the amount of the indebtedness. The name of the indebted producer, if different from the farm operator, shall be recorded directly under the notation. A notation showing "PPQ" as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of penalty and accrued interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota liens shall be collected and paid to the Agricultural Stabilization and Conservation Service prior to making collection for any other lien or claim. A notation showing "U.S. Claim" shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan or purchase settlement due the debtor must be paid to the Agricultural Stabilization and Conservation Service. The acceptance and use of a marketing card bearing a notation concerning indebtedness to the United States shall not constitute a waiver by the indebted producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A lien-free or claim-free marketing card shall be issued by the county ASCS office when the lien or claim has been paid.

§ 729.167 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure or alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of the converted basic penalty rate determined in accordance with § 729.172(b), the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall initial each correction made on the marketing card. An invalid card, if not validated, shall be cancelled and a replacement card shall be issued.

§ 729.168–729.170 [Reserved]

Marketing Penalties

§ 729.171 Basic penalty rate.

The basic penalty rate is 140 percent of the national average support level for quota peanuts, as determined for the marketing year in which the peanuts were produced.

§ 729.172 Peanuts on which penalties are due.

Penalty is due at the basic penalty rate on:

(a) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(b) All peanuts marketed from the farm, if the certified acreage differs from the measured acreage by more than the tolerance provided in Part 718 of this Chapter: *Provided,* that such penalty shall be paid on each lot of peanuts marketed from a farm based on a converted basic penalty rate as shown on the marketing card. The converted basic penalty rate shall be determined by:

(1) Calculating the percentage of incorrect certification; and

(2) Multiplying the percentage by the basic penalty rate per pound.

(c) All peanuts produced on a farm for which the producer:

(1) Failed to certify peanut acreage as provided in Part 718 of this Chapter; or

(2) Refused to permit entry to authorized representatives of the Secretary on the farm for the purpose of determining the acreage of peanuts on the farm.

(d) The quantity of peanuts marketed without identification by a valid marketing card.

(e) The quantity of peanuts falsely identified, as determined by the county committee with State committee concurrence.

(f) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm for domestic edible use in excess of the effective farm poundage quota for that farm.

(g) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted on CCC–1005 between the producer and handler as provided in Part 1446 of this title. Any penalty collected pursuant to this paragraph may be refunded to the extent that the total of all marketings for domestic edible use from the farm for such marketing year do not exceed the farm's effective farm poundage quota.

§ 729.173 Peanuts on which penalties are not to be assessed.

(a) *Error in weight.* Penalty is not due and shall not be collected if the error in net weight as reported on each ASCS–1007, Inspection Certificate and Sales Memorandum, does not exceed one-tenth of 1 percent. However, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size of the error.

(b) *Peanuts grown on State prison farms.* No penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system.

(c) *Peanuts grown for experimental purposes.* (1) No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experiment station and produced at public expense by employees of the experiment station, or peanuts produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station: *Provided,* That the director of the publicly-owned agricultural experiment station must furnish the State Executive Director a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(i) Name and address of the publicly-owned experiment station,

(ii) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only,

(iii) The acreage of peanuts grown on each farm for experimental purposes only, and

(iv) A signed statement that such acreage of peanuts was grown on each farm only for experimental purposes and was necessary for carrying out experimentation, and that the peanuts were produced under the direction of representatives of the publicly-owned experiment station.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts shall not be subject to penalty if the county committee determines, based upon guidelines furnished by the Deputy Administrator, that such peanuts are unique strains, are not commercially available, and are used to plant green peanut acreage.

§ 729.174 Persons to pay penalty.

(a) *Marketings to handlers.* The handler is liable for the penalty due on peanuts which the handler buys or otherwise acquires from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm, the handler and each of the producers on the farm shall be held jointly and severally liable for the amount of the penalty. If the peanuts on which penalty is due were inspected by the Federal-State Inspection Service, the handler's liability for penalty is limited to the value of the lot of peanuts.

(b) *Other marketings.* The producer is liable for the penalty due on any peanuts marketed to persons who are not peanut handlers.

(c) *Penalty for error on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in the effective poundage quota or the pounds contracted in accordance with Part 1446 of this Chapter to be exceeded. If the peanuts on which the penalty was due were inspected by the Federal-State Inspection Service, the handler's liability for penalty is limited to the value of the lot of peanuts unless the error ultimately resulted in the total marketings of quota peanuts exceeding the farm's effective farm poundage quota.

(d) *Notice to affected parties.* Penalties shown on a farm marketing card shall be deemed to be notice to all affected parties of such penalties. In addition, all affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card.

§ 729.175 Payment of penalty.

(a) A draft, money order, or check made payable to the Agricultural Stabilization and Conservation Service, may be used to pay any penalty, other indebtedness, or interest thereon. A draft or check shall be received subject to collection and payment at face value. The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(b) The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. Interest shall accrue from the date the penalty was due if the penalty is not remitted by Monday of the third calendar week following the week in which the penalty is assessed under § 729.177. For cases of false identification or failure to account, if the penalty is not paid within 15 days after receipt of written notice by the person liable for such penalty, interest shall accrue from the date of receipt of the written notice by such person.

§ 729.176 Lien for penalty.

A lien on the crop of peanuts on which the penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States until the penalty is paid. The lien on a subsequent crop takes precedence over all other claims as of the time the debt is entered on a county claim record in the county ASCS office for the county in which the subsequent crop is grown. Each county ASCS office shall maintain a list of peanut marketing penalty liens on subsequent crops which have been entered on the county claim record. The list shall be available for examination upon written request by an interested person.

§ 729.177 Assessment of penalties.

Any producer, farm operator, or handler against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed has the right to appeal the assessment of the penalty in accordance with §§ 729.178, 729.179.

§ 729.178 Reduction or waiver of penalty.

(a) *General.* The county committee may, in accordance with instructions and guidelines issued by the Deputy Administrator, reduce or waive any penalty required to be assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(b) *Time of reduction or waiver.* The county committee may reduce or waive a penalty either before or after it has been assessed in accordance with § 729.177. In those instances where the county committee makes the reduction or waiver prior to assessment, the notice of assessment issued under § 729.177 shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(c) *Appeal procedure.* Any person against whom a penalty is assessed under this subpart may request that the penalty be reduced or waived in accordance with guidelines issued by the Deputy Administrator and the procedures set forth under § 729.179.

(d) *Review authority.* The Deputy Administrator may, either upon his own motion or in response to appeals which are being taken under § 729.179, require that any determination of a county committee with regard to the reduction or waiver of penalties be reviewed by the State committee or the Deputy Administrator for the purpose of maintaining consistency between different counties in the application of this authority. The Deputy Administrator or the State committee may require a county committee to reverse or otherwise modify its previous determination if the Deputy Administrator or State committee determines that the county committee's previous determination was not made in accordance with the instructions and guidelines issued by the Deputy Administrator. Any person who is adversely affected by any action of the Deputy Administrator or State committee taken under this paragraph may appeal such action by filing a request for reconsideration (or an appeal, if the action was taken by the State committee) with the Deputy Administrator in accordance with Part 780 of this Chapter.

§ 729.179 Appeals.

(a) *General.* Any person who is dissatisfied with the penalties assessed by the county committee may file a request for reconsideration with the county committee in accordance with Part 780 of this chapter. Such request must be filed no later than 15 days after the producer receives the notice of assessment issued pursuant to § 729.177. If the producer is dissatisfied with the determination, the producer may appeal such determination to the State committee in accordance with Part 780 of this chapter. If the producer is dissatisfied with the State committee's determination, the producer may request a review of the determination by the Deputy Administrator by filing an appeal with the Deputy Administrator in accordance with Part 780 of this Chapter.

(b) *Scope.* In any request for reconsideration or appeal, any adversely affected party may both contest liability for the penalty and, in the alternative, request a reduction or waiver of the penalty.

(c) *Waiver of procedural requirements and delegation of authority.*

(1) Nothing herein shall be construed as limiting the authority conferred upon the reviewing authority by Part 780 of this Chapter to waive compliance with the procedural requirements for making a request for reconsideration or an appeal.

(2) Nothing contained herein shall preclude the Administrator, ASCS, or his designee, on his own motion, from determining any question arising under the programs to which the regulations in this part apply or from reversing or modifying any determinations made by a State or county committee or the Deputy Administrator.

§ 729.180–§ 729.185 [Reserved]

Producer Identification and Designation of Peanuts Marketed

§ 729.186 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card (MQ–76–P or ASCS–1003) and the peanut marketing card (ASCS–1002) which was issued for the farm on which the peanuts were produced.

§ 729.187 Designation of peanuts.

Any marketing of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota, loan additional, or contract additional as defined in Part 1446 of this Chapter. The designation must be made within the time allowed by the handler but not later than the close of inspection on the first workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected. In the absence of a designation, any segregation 1 peanuts shall be marketed in the following order of priority:

(a) As quota peanuts to extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

Producer Records and Reports

§ 729.188 Report of marketing green peanuts.

(a) The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form ASCS–1011 at the county ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The number of acres on the farm planted from seed stocks of peanuts;

(2) The acreage on the farm from which peanuts were marketed as green peanuts; and

(3) The name and address of the buyer to or through whom each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed: *Provided,* however, that if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the name and address of each buyer need not be shown but in lieu thereof the place of marketing shall be shown.

(b) Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts produced on the farm which will subject the producer to marketing penalties as set forth in § 729.172.

§ 729.189 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were aquired by purchase or gift, the farm operator shall file a report with the county ASCS office of the acquisition(s) of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made under Part 718 of this title. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmer's stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquision.

(b) Unique strains of peanuts that are not commercially available and retained on a farm to plant 1982 and subsequent crops of green peanuts shall also be reported to the county ASCS office.

§ 729.190 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form ASCS–1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The ASCS–1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an ASCS–1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in § 729.172.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

§ 729.191 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute the certification on the marketing card as to the pounds of peanuts retained for seed or other uses. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for disposition of peanuts marketed from the farm for which marketing penalties may be assessed as provided in § 729.172, unless a satisfactory report of disposition is furnished to the county committee.

§729.192 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report of production and disposition of the peanuts grown on the farm to the State committee. The report must be filed on ASCS–1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show:

(1) The final acreage of peanuts on the farm;

(2) The total production of peanuts on the farm; and

(3) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed: *Provided,* however, that where peanuts are marketed in small lots to persons who are not established buyers, the report may be made as either a daily or weekly summary of the number of pounds marketed and while the name and address of the buyer(s) need not be shown, the place of marketing shall be shown; and

(4) The quantity and disposition of peanuts not marketed.

(b) Failure to file the ASCS–1010 as requested or the filing of an ASCS–1010 which is found by the State committee to be incomplete or incorrect, shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm for which marketing penalties may be assessed, as provided in §729.172.

§§ 729.193–729.195 [Reserved]

Handler's Registration, Responsibilities and Records

§729.196 Registration of handlers.

(a) *Registration requirements.* Each persons who plans to acquire peanuts for processing or resale shall register as a handler in accordance with the provisions of this section prior to the acquisition of any peanuts.

(b) *Persons acquiring noninspected peanuts.* A person who has not registered under the provisions of paragraph (c) of this section and who plans to buy or otherwise acquire peanuts for processing or resale prior to the peanuts being inspected by a duly authorized inspector of the Federal-State Inspection Service must register with the State ASCS office of the State in which the person will operate as a handler, or if operating in more than one State, the State of residence or principal business location. A person may register by completing an MQ-96, Application for Peanut Handler Card, and submitting it to the appropriate State ASCS office.

(c) *Persons acquiring inspected peanuts.* A person who plans to acquire peanuts that have been inspected by a duly authorized inspector of the Federal-State Inspection Service must register as a handler by completing and MQ-96, Application for Peanut Handler Card, and submitting it to the Virginia, Georgia, or Texas State ASCS Office in the marketing area in which the handler is located.

(d) *Peanut buyer card and buying point card.* The office through which a handler registers will issue an embossed peanut buyer card on which will be entered the handler's registration number, name and address. The buyer card will be used by the handler for identification when the handler buys or sells peanuts. A buying point indentification card will be issued by ASCS to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will be embossed with a number and used to identify the physical location of the buying point at which the peanuts are inspected.

§ 729.197 Records and reports required of handlers.

Each handler shall keep records and make reports as required by this section.

(a) *Marketing records.* The handler shall maintain the following records with respect to each lot of farmer's stock peanuts which the handler acquires for his own account.

(1) Farm number (including State and county code) of the farm on which peanuts were produced (obtained from producer's identification card or marketing card), or if purchased from a handler, the handler's number;

(2) Name of seller;

(3) Date of marketing;

(4) Pounds of peanuts marketed as commercial quota or contract additional;

(5) Type of peanuts; and

(6) Amount of penalty due and amount collected from the producer.

(b) *Resales.* Each handler who resells farmer's stock peanuts shall keep records of:

(1) The name and address of the buyer;

(2) The handler number of the buyer if the peanuts are sold to a handler;

(3) The date of the sale;

(4) The type of peanuts sold; and

(5) The pounds (net weight) of peanuts sold.

(c) *Inspected peanuts.* If a lot of peanuts was inspected by the Federal-State Inspection Service, the handler shall complete ASCS–1007, Inspection Certificate and Sales Memorandum, on which the following information must be entered:

(1) Name and address of the farm operator and the State and county code and farm number of the farm on which the peanuts were produced if the peanuts are marketed by the producer, or the handler number if the peanuts are marketed by a handler;

(2) Buying point number assigned to identify the physical location of the buying point at which the peanuts were marketed;

(3) Name, address, and handler number of the handler, or the association number, name and address if the peanuts are accepted for loan through the association;

(4) Net weight of the peanuts;

(5) Quantity of peanuts marketed as either loan quota, loan additional, commercial quota or contract additional;

(6) Date of purchase; and

(7) Amount of penalty collected.

(d) *Noninspected peanuts.* A handler who purchases farmer's stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete ASCS–1030, Report of Purchase of Noninspected Peanuts, for each lot of farmer's stock peanuts purchased. The handler shall complete the ASCS–1030 to show the following:

(1) The name and address of the seller;

(2) Name and address of farm operator and the State and county code and farm number if the peanuts are purchased from the producer of the peanuts, or if the peanuts are purchased from a handler, the ASCS–1030 shall show the handler's name, address, and registration number;

(3) The type of peanut purchased;

(4) The date of purchase;

(5) Quantity purchased; and

(6) Method of determining the weight.

After the required information has been recorded, the Seller shall sign and date the ASCS–1030. The handler shall use ASCS–1030–P, Handler's Report of Purchases of Noninspected Peanuts, to transmit the ASCS–1030 to the State ASC committee in the State in which the handler's business is located. The ASCS–1030's shall be transmitted weekly.

(e) *Marketing Card Entries.* Immediately after each lot of peanuts is marketed, the handler shall make the following entries on the marketing card from the ASCS–1007 or ASCS–1030:

(1) The ASCS–1007 serial number which identifies the lot of peanuts, or the date of marketing if the peanuts were not inspected;

(2) The net pounds marketed;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number or, for loan peanuts, the association number;

(6) For inspected peanuts, the Buying point number;

(7) Type of peanuts marketed; and

(8) Any penalties or claims collected.

(f) *Transmittal of penalties.* Form ASCS–1012 Peanuts, "buyer's Transmittal of Claims and/or Marketing Penalty", shall be used by a handler to transmit a collection of a penalty or a claim. Each collection shall be sent to the county ASCS office which issued the marketing card. The transmittal shall be made within two weeks after the end of the week in which the collection is made.

(g) *Peanuts shelled for a producer.* The handler shall maintain records of peanuts shelled for a producer as follows:

(1) Date of shelling;

(2) Name and address of the producer for whom the peanuts were shelled;

(3) State and county code and farm number of the farm on which the peanuts were produced;

(4) Quantity of peanuts (farmer's stock basis) shelled;

(5) Quantity of shelled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(h) *Peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer as follows:

(1) State and county code and farm number of the farm on which the peanuts were produced;

(2) Name and address of the producer for whom peanuts were dried; and

(3) Quantity dried (weight after drying, farmer's stock basis) and date drying is completed.

(i) *Green peanuts purchased from producer.* Each buyer of green peanuts shall certify on Form ASCS–1011 to the purchase of green peanuts, except small lot purchases such as street sales, local market sales, and grocery store sales. The certification by the buyer to the purchases shall subject the buyer to a review of the purchase and sales records. Any buyer of green peanuts who fails to keep records as required by this section shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500. Each buyer shall keep the following records of green peanuts purchased:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county code) on the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

§ 729.198 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each business.

§ 729.199 Penalty for failure to keep records and make reports.

Any person, who dries farmer's stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacuturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record as required under this subpart or who makes any false report or record shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500.

§ 729.200 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the State Executive Director, or any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General, is authorized to examine any records pertinent to the peanut poundage quota program. Upon request from any such person, any person who dries farmer's stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under his control which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

§ 729.201 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be requested in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.

§ 729.202 Information confidential.

All data requested and obtained by the Secretary which are required in accordance with the provisions of this subpart shall be kept confidential by all employees of the U.S. Department of Agriculture. Such data shall be released only at the discretion of the Deputy Administrator and then only in a suit or administrative hearing under Title III of the Agricultural Adjustment Act of 1938, as amended.

(Agriculture and Food Act of 1981, Pub. L. 97–98, (7 U.S.C. 1281 note))

Signed at Washington, D.C. on August 26, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82–23952 Filed 8–30–82; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

Proceedings To Determine Deportability of Aliens in the United States; Apprehension, Custody, Hearing, and Appeal; Order To Show Cause

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds the Officer in Charge at Memphis, Tennessee to the listing of Service officers who may issue orders to show cause to aliens for the purpose of determining their deportability. The rule improves the Immigration and Naturalization Service's organization and efficiency.

EFFECTIVE DATE: August 30, 1982.

FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3048

For Specific Information: Lawrence Paretta, Acting Assistant Commissioner Investigations, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3050

SUPPLEMENTARY INFORMATION: This rule adds the Officer in Charge at Memphis, Tennessee to the listing of Service officers who may issue orders to show cause to aliens for the purpose of determining their deportability. Previously, it was necessary to forward an alien's Service file from the Memphis Service office to the Service's New Orleans district office to obtain an order to show cause so that a hearing to determine an alien's deportability could be initiated. This rule eliminates the delay which was inherent in the former procedure, thus, improving the overall efficiency of the Memphis office.

Compliance with 5 U.S.C. 583 as to proposed rulemaking and delayed effective date is not required because the rule affects only Service organization and procedure and has no adverse impact on the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant economic impact on a substantial number of small entities because it deals solely with authority and procedures of Service offices.

This rule is exempt from the requirement of E.O. 12291 as provided for by section 1(a)(3) of the Executive Order because it relates solely to agency organization.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Authority delegation.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES; APPREHENSION, CUSTODY, HEARING, AND APPEAL

In § 242.1, paragraph (a) is revised to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien to the United States is commenced by the issuance and service of an order to show cause by the Service. In the proceeding the alien shall be known as the respondent. Orders to show cause may be issued by district directors, acting district directors, deputy district directors, assistant district directors for investigations, and officers in charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Memphis, TN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA; Providence, RI; Salt Lake City, UT; St. Louis, MO; Spokane, WA.

* * * * *

(Secs. 103, 242 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103, 1252)

Dated: August 24, 1982.

Joseph F. Salgado,

Associate Commissioner Enforcement, Immigration and Naturalization Service.

[FR Doc. 81-23767 Filed 8-30-82; 8:45 am]

BILLING CODE 4410-10-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Administrative Actions, Adjudicative Hearings, and Rules of Practice and Procedure; Equal Access to Justice Regulation

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is adopting final rules to implement the Equal Access to Justice Act ("the Act"). The Act provides for the award of attorneys fees and expenses to certain small entities when they prevail against NCUA in administrative and court actions if the position of NCUA in the proceeding was not substantially justified. The Act directs all agencies conducting these proceedings to adopt regulations establishing procedures for making fee awards.

EFFECTIVE DATE: September 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Senior Attorney at the above address. Telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Access to Justice Act ("Act"), Pub. L. 96-481, which went into effect on October 1, 1981, provides for the award of reasonable attorneys fee and expenses to certain eligible parties that prevail over agencies of the Federal government in certain administrative and court adjudications when the government's action was not substantially justified. The Act directs Federal agencies, after consultation with Administrative Conference of the United States, to establish uniform procedures for the submission and consideration of applications for fees in their own covered proceedings. In order to facilitate this process, the Administrative Conference has developed model regulations to provide a workable guideline and to encourage uniform procedures. On October 1, 1981, NCUA issued an interim rule and invited public comment.

II. Summary

General Provisions

The procedures of 12 CFR Part 747, Subpart I, will apply to formal administrative adjudications conducted by NCUA pursuant to Section 554 of the Administrative Procedures Act (5 U.S.C. 554). These proceedings pertain to the issuance of cease-and-desist orders; the assessment of civil money penalties; the removal or suspension from office, and/or prohibition from participation in the affairs of a credit union, of directors, officers and other persons; suspension or revocation of the charter of a solvent Federal credit union (involuntary liquidation); involuntary termination of the insured status of an insured credit union; and involuntary termination of membership in the Central Liquidity Facility. After an eligible party has prevailed in one of these proceedings, it may file an application for certain of its fees and expenses if it believes that the position of NCUA in the proceeding was not substantially justified. The NCUA Board will issue a Final Decision and Order, based upon the criteria set forth in the Act and Subpart I, either to approve or deny the fee award sought in the application. If the Board approves an application for a fee award, NCUA will pay the award unless judicial review of the award or the underlying action has been sought.

Eligible Parties

Section 747.902 sets forth those categories of prevailing parties who are eligible to recover their fees and expenses, which is limited to individuals with net worths of less than $1 million, business and other entities (that are not individuals) with net worths of less than $5 million and fewer than 500 employees, tax exempt organizations under 26 U.S.C. 501(c)(3), and agricultural cooperatives regardless of net worth.

Standards for Awards

Under the Act, the Board may only award allowable fees and expenses to a prevailing eligible party if NCUA's position in the proceeding, or on a significant, separate issue, was not substantially justified as being reasonable in law and in fact. Where a party prevails on a portion of the entire proceeding, his award shall be prorated accordingly. The burden of proof is on NCUA to demonstrate that its position was justified. The Board may reduce or deny an award when it determines that special circumstances make the award unjust.

Allowable Fees and Expenses

Section 747.904 establishes guidelines for recoverable fees and expenses, which include reasonable attorneys fees, expenses for expert witnesses, and reasonable costs of any study, analysis,

report, test, or project found necessary for the preparation of the party's case. The Act specifically provides for awards at "prevailing market rates" customarily charged by attorneys and experts, subject to the statutory ceilings imposed.

Awards Against Other Agencies

NCUA had proposed to adopt the provision in the model rules which allows for the award of fees and expenses against other agencies which have participated with NCUA and have taken unreasonable positions in proceedings before the NCUA Board. The likelihood of another agency participating in a proceeding before the NCUA Board is minimal. Further, the Department of Justice objected to this provision, stating that the Act refers only to the agency conducting the adjudication as the agency which is considered to be the party to the proceeding, 5 U.S.C. 504(a)(1). Accordingly, NCUA has dropped the provision from the final rule.

Application Procedures

Sections 747.906 through 747.908 identify the information to be included in an application made for an award of fees and expenses. No special form is required. To avoid burdensome paperwork requirements, applicants can submit information on their net worth in a format of their own choice, provided that full disclosure of all facts necessary to determine the applicant's eligibility under the applicable net worth criteria is made. Records of expenses are required to be kept in accordance with the Internal Revenue Service's requirements for documentation of business expenses. Federal credit unions or qualified state credit unions shall submit, as a statement of its net worth, its last Statement of Financial Condition dated prior to the initiation of the underlying proceeding. Two commenters raised the issue of the treatment of shares, share drafts, and share certificates in the calculation of net worth. The use of the credit union's Statement of Financial Condition as its statement of net worth implies that shares are not considered to be liabilities for purposes of calculating net worth. Rather, credit union shares are considered to be equity. NCUA has traditionally treated shares as representing the member's equity in the cooperative financial institution. For example, NCUA has taken the position that the return paid on shares be considered as dividends and, unlike interest received on deposit accounts, cannot be guaranteed or paid in excess of available earnings. While changes in the characteristics of these accounts in the past few years were made to reflect the structure of liability type deposit accounts offered by other financial institutions, NCUA had not abandoned the basic concept of shares as equity. We believe that it would be inappropriate to change this traditional approach for the purposes of implementing the Equal Access to Justice Act because this change would have a wide ranging effect on a variety of issues. Therefore, shares, share drafts, and share certificates are not treated as liabilities for the purpose of determining net worth.

NCUA is not adopting the model rules' special procedures for guaranteeing confidential treatment of net worth information. Since such information may be traditionally exempt under FOIA and is to be used in proceedings not open to the public, such a section is unnecessary in light of NCUA's present regulations under FOIA, 12 CFR Part 720.

Filing and Service of Applications

Applications for an award of fees and expenses must be filed by an eligible prevailing party within 30 days after the Board issues its final decision and order or at any earlier time if the party believes it has prevailed with respect to a significant and separate substantive issue which has become "final." This would include settlements between the party and the NCUA Board, or when a party wins an intermediate appeal of a sufficiently significant issue and still loses the principal case. This should not be interpreted to mean, however, that a party has "prevailed" in all cases when the Board administers fewer sanctions or less severe sanctions than called for in the Notice of Charges. If a party seeks judicial review either of an issue for which it seeks an award or of the underlying proceeding, award proceedings will be stayed pending final disposition.

Answer, Reply, and Comments to Applications

Section 747.910 sets forth the procedures to be followed by NCUA and the applicant following the submission of an application for an award. This section is intended to keep the procedures simple and streamlined and to promote prompt disposition of the fee-award request. NCUA's Department of Legal Services is required to file an answer to an application for an award against the NCUA Board within 30 calendar days after service of the application, unless the Department seeks an extension of time or the parties manifest an intent to settle. Failure to answer will be treated as consent to the application. Applicants will have 15 days to reply to the answer but only in response to answers that raise affirmative defenses.

Section 747.911 grants non-applicant parties a 30-day period in which to comment on the application and a 15-day comment period on NCUA's answer. This time period provides non-applicants who have a stake in the outcome with a reasonable opportunity to comment upon the application.

Settlement

Section 747.912 permits a settlement of an award, either in connection with a settlement of the underlying issues or after the underlying proceeding has been concluded. In addition, the rules provide that a proposed settlement of an award that is agreed upon before an application has been filed must be accompanied by an application because: (1) The Act appears to require the filing of an application; (2) the information in the application will permit the Board to review the reasonableness of the terms contained therein; and (3) the information in the application will provide a data base for the Administrative Conference's annual report to Congress.

Decision

Section 747.913 states that after all applications, answers, and replies have been filed, the Administrative Law Judge or the Board may order further proceedings, when necessary, to develop a complete record on the application. After the close of all proceedings, the Administrative Law Judge will make a recommended decision on the application to the NCUA Board. The Board will review it and issue its final decision within 60 days thereafter.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, in particular 44 U.S.C. 3506(c)(5), the application and documentation requirements of the rule were not submitted to the Office of Management and Budget. While these documents are required by law to obtain a benefit, the NCUA Board believes, based upon past records in civil and administrative adjudications, that less than ten persons will, each year, be considered to be "prevailing parties" required to submit applications for benefits under the Act and these rules. Thus, 44 U.S.C. 3506(c)(5) exempts these requirements from review by the Office of Management and Budget. Further, those applications and documents submitted during the conduct of a civil action or an administrative action are

exempt from all requirements of the Paperwork Reduction Act pursuant to 44 U.S.C. 3518(c)(1)(B).

Certification Under the Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NCUA Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities. These rules would affect only those entities with net worths of less than $5 million that prevail in one of the proceedings referred to in Section 747.901. In such proceedings since 1978, only two eligible businesses or individuals, as defined by the Act, have prevailed within the meaning of the proposed subpart. In any event, any effect would be beneficial in nature. Based on this history, the proposed new subpart cannot be expected to affect a substantial number of small entities.

List of Subjects in 12 CFR Part 747

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

Rosemary Brady,

Secretary, National Credit Union Administration Board.

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

Accordingly, the National Credit Union Administration Board hereby issues a final amendment to 12 CFR Part 747, as set forth below.

Subpart I to 12 CFR Part 747 is revised to read as follows:

* * * * *

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

Sec.

Authority: Sec. 120, 73 Stat. 635 (12 U.S.C. 1766); Sec. 209, 84 Stat. 1104 (12 U.S.C. 1789); Sec. 203, 94 Stat. 2325 (5 U.S.C. 504).

§ 747.901 Purpose and scope.

(a) This subpart contains the regulations of the National Credit Union Administration implementing the Equal Access to Justice Act of 1980, Pub. L. 96–481 (5 U.S.C. 504). The Act provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to proceedings conducted under Part 747 of this Chapter. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them.

(b) The rules and procedures set forth in this section apply to adversary adjudications that are pending before the NCUA Board at any time between October 1, 1981, and September 30, 1984. Pending proceedings would include those actions begun prior to October 1, 1981, if no final action has been taken before that date and those pending as of September 30, 1984, regardless of when they were initiated or when final action occurs.

§ 747.902 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant and the number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this Subpart, unless the Board determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 747.903 Prevailing party.

(a) An eligible applicant may be a "prevailing party" if it wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.904 Standards for awards.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.905 Allowable fees and expenses.

(a) Except as provided by § 747.904(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 747.906 Contents of application.

(a) A prevailing eligible party, as defined in § 747.902, 747.903, and 747.904, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) The identity of the applicant and the proceeding for which an award is sought;

(2) A showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) A statement, with supporting documentation, that the applicant is an eligible party, as defined by § 747.902. If the applicant is an individual, he or she must state that his or her net worth does not exceed $1 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed $5 million as of the date the proceeding was inititated. However, an applicant may omit a statement of net worth if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) A statement of the amount of fees and expenses for which an award is sought; and

(5) Any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verfication under oath or under penalty of perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law to obtain a benefit under the Equal Access to Justice Act and this subpart. These requirements were not subject to submission to and review by the Director of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507).

§ 747.907 Statement of net worth.

(a) Each applicant (other than a qualified tax-exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in Section 747.902(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant is an eligible party. The Administrative Law Judge or the Board may require addtional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 747.908 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and

expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submittted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Administrative Law Judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.909 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) As used in this rule, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal.

(d) Any application for an award of fees and expenses shall be filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street NW., Washington, D.C. 20456. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 747.907(a) for statements of net worth.

§ 747.910 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under § 747.913.

(d) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues: (1) That the position of NCUA in the proceeding was substantially justified; (2) that the applicant unduly protracted the proceedings; or (3) that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under § 747.913 of this rule.

§ 747.911 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the Administrative Law Judge or the Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 747.912 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 747.913 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the Board shall transmit the entire record to the Administrative Law Judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the Administrative Law Judge or the Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the Administrative Law Judge or the Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.914 Recommended decision.

The Administrative Law Judge shall file a recommended decision on the application with the Board within 60 days after completion of the proceedings on the application. The recommended decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly proctracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The Administrative Law Judge shall file with and certify to the Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the Board shall serve upon each party to the proceeding a copy of the Administrative Law Judge's recommended decision, findings, conclusions and proposed order. The provisions of this paragraph and § 747.913 shall not apply, however, in any case where the hearing was held before the Board.

§ 747.915 Decision of the Board.

(a) Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file

with the Board written exceptions thereto. A supporting brief may also be filed.

(b) The Board shall render its decision within 60 days after the matter is submitted to it. The Board shall furnish copies of its decision and order to the parties. Judicial review of the Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.916 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board against the agency shall submit to the Office of Services a copy of the Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to the Director, Office of Services, National Credit Union Administration, 1776 G Street N.W., Washington, D.C. 20456. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[FR Doc. 82-23908 Filed 8-30-82; 8:45 am]
BILLING CODE 7535-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for dishwashers.

Under the rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges, which show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule, are published in the Federal Register by the Commission no more often than annually, and are called "ranges of comparability." The figures to be used on the ranges are provided by the Commission after an analysis of data submitted by appliance manufacturers, who derive the energy costs or efficiencies of their appliances by following test procedures prescribed by the Department of Energy (DOE). One element used in calculating the ranges is the representative average unit cost of the energy used by the appliances, which is calculated annually by DOE. Because this average cost usually changes annually, and because appliance models are constantly being added, changed, or dropped by manufacturers, the ranges of comparability are likely to change from year to year. This has been the case with the ranges for dishwashers, and this notice publishes the new range figures, which, under §§ 305.10 and 305.11 of the rule, must be used in the labeling and advertising of dishwashers beginning November 29, 1982.

EFFECTIVE DATE: November 9, 1981.

FOR FURTHER INFORMATION CONTACT: James Mills, 202–376–2891, or Lucerne D. Winfrey, 202–376–2805, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, DOE is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freeezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained information on the estimated annual cost or energy efficiency rating for the seven categories of appliances derived from tests performed pursuant to the DOE test procedures. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From that information, the Commission compiled and published[3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.10(a) of the rule requires that manufacturers, after filing this initial report, shall report annually by specified dates for each product type.[4] The data submitted by manufacturers is based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy appear to be increasing steadily, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually), if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1982 representative average energy costs published by the

[1] Pub. L. 94–163, 89 Stat. 871, Dec. 22, 1975.

[2] 44 FR 66466, 16 CFR 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1981), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerator-freezers and freezers are due by August 1.

Commission on July 14, 1982,[5] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission publishes the following ranges of comparability for use in the labeling and advertising of dishwashers beginning November 29, 1982.

PART 305—RULES FOR USING ENERGY COSTS AND CONSUMPTION INFORMATION USED IN LABELING AND ADVERTISING FOR CONSUMER APPLIANCES UNDER THE ENERGY POLICY AND CONSERVATION ACT

Appendix C to Part 305 is revised to read as set forth below:

APPENDIX C.—DISHWASHERS

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$56.00	$93.00	$28.00	$50.00

[1] No data submitted.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

(Sec. 324 of the Energy Policy and Conservation Act, (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1976), 42 U.S.C. 8294; section 553 of the Administrative Procedure Act, 5 U.S.C. 553)

James A. Tobin,

Acting Secretary.

[FR Doc. 82–23872 Filed 8–30–82; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 81F–0409]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Hydroxypropyl Methylcellulose

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydroxypropyl methylcellulose as an additive in confectionery products. This action is in response to a petition filed by Dow Chemical Co.

DATES: Effective August 31, 1982; objections by September 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Julius Smith, Bureau of Foods (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 29, 1982 (47 FR 4348), FDA announced that a petition (FAP 7A3252) had been filed by Dow Chemical Co., Midland, MI 48640, proposing that § 172.874 (21 CFR 172.874) of the food additive regulations be amended to provide for the safe use of hydroxypropyl methylcellulose as an additive in confectionery products.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the food additive for functional purposes in confectionaries is safe and that the regulations should be amended as set forth below. Under the conditions of the regulation, the additive would only be present in small amounts.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h)(2), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the **Federal Register.** No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 172

Food additives, Food preservatives, Spices and flavorings.

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 172 is amended in § 172.874 by revising the introductory paragraph to read as follows:

§ 172.874 Hydroxypropyl methylcellulose.

The food additive hydroxypropyl methylcellulose (CAS Reg. No. 9004–65–3) may be safely used in food, except in standardized foods which do not provide for such use if:

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 30, 1982 submit to the Dockets Management Branch (HFA–305) (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective August 31, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: August 23, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–23702 Filed 8–30–82; 8:45 am]

BILLING CODE 4160–01–M

[5] 47 FR 30465.

21 CFR Part 176

[Docket No. 80F-0149]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of copolymers of diallyldimethylammonium chloride and acrylamide as a retention and drainage aid employed in the manufacture of paper and paperboard that contact food. This action is based on a petition filed by Calgon Corp.

DATES: Effective August 31, 1982; objection by September 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: James B. Lamb, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 3, 1980 (45 FR 37524), FDA announced that a petition (FAP 8B3411) had been filed by Calgon Corp., P.O. Box 1346, Pittsburgh, PA 15230, proposing that Part 176 (21 CFR Part 176) be amended to provide for the safe use of copolymers of diallyldimethylammonium chloride and acrylamide as a retention and drainage aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard that contact food.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additive use is safe and that Part 176 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the **Federal Register.** No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 176 is amended in § 176.170(a)(5) by alphabetically inserting a new item in the list of substances to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * *	* *
Diallyldimethylammonium chloride with acrylamide (CAS Reg. No. 26590-05-6). The copolymer is produced by co- polymerizing diallyldimethyl- ammonium chloride with acrylamide in a weight ratio of 50-50 so that the finished resin in a 1 percent by weight aqueous solution (active polymer) has a viscosity of more than 22 centipoises at 22° C (71.6° F), as determined by LVF-series Brookfield viscometer using a No. 1 spindle at 60 r.p.m. (or by other equivalent method).	For use only as a drainage and/or retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.05 percent by weight of the finished paper and paperboard.
* * *	* *

Any person who will be adversely affected by the foregoing regulation may at any time on or before (September 30, 1982) submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective August 31, 1982.

(Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348))

Dated: August 23, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23706 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 82F-0027]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Antioxidants and/or Stabilizers for Polymers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of tris (2,4-di-*tert*-butylphenyl) phosphite as an antioxidant and/or stabilizer for certain olefin polymers, without temperature limitations, intended for food-contact use. This action is in response to a petition filed by the Ciba-Geigy Corp.

DATES: Effective August 31, 1982; objections by September 30, 1982.

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

FOR FURTHER INFORMATION CONTACT: Vir Anand, Bureau of Foods (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 12, 1982 (47 FR 10906), FDA announced that a petition (FAP 2B3619) had been filed by the Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10352 (formerly Ardsley, NY 10502),

proposing that § 178.2010 (21 CFR 178.2010) be amended to provide for the safe use of tris (2,4-di-*tert*-butylphenyl) phosphite as an antioxidant and/or stabilizer for olefin polymers complying with § 177.1520(c) (21 CFR 177.1520(c)), without temperature limitations, intended for food-contact applications.

FDA has evaluated the data in the petition and other relevant material and concludes that the proposed food additve use is safe and that the regulations should be amended as set forth below. The agency further concludes that the amendment to § 178.2010 providing for the use of tris (2,4-di-*tert*-butylphenyl) phosphite as an antioxidant and/or stabilizer for ethylene-vinyl-acetate copolymers complying with § 177.1350 (21 CFR 177.1350), in FR Doc. 81–17436 appearing in the **Federal Register** of Friday, June 12, 1981 (46 FR 31007), should be republished for editorial purposes. That order inadvertently listed the additive as a new item with no reference to its current listing with six limitations.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Bureau of Foods (address above) by appointment with the information contact person listed above. As provided in § 171.1(h)(2), the agency will remove from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency previously considered the potential environmental effects of this regulation as announced in the notice of filing published in the **Federal Register**. No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging, Sanitizing solutions.

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 178 is amended in § 178.2010(b) by revising the fifth and sixth items, by republishing the seventh item, and by adding an eighth item in the list of limitations for "Tris(2,4-di-tert-butylphenyl) phosphite" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* *	* * *
Tris(2,4-di-*tert*-butylphenyl) phosphite (CAS Reg. No. 31570–04–4).	For use only: * * * 5. At levels not to exceed 0.25 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 1.1, 1.2, or 1.3. 6. At levels not to exceed 0.2 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 2.1, 2.2, 2.3, 3.1, or 3.2. The finished polymers complying with item 2.1, 2.2, or 2.3 having a density less than 0.94 gram per cubic centimeter and a thickness greater than 0.051 millimeter (0.002 inch), shall contact food only under conditions of use E, F, and G described in table 2 of § 176.170(c) of this chapter. 7. At levels not to exceed 0.2 percent by weight of ethylene-vinyl-acetate copolymers complying with § 177.1350 of this chapter, and that are limited to use in contact with food only under conditions of use E, F, and G described in table 2 of § 176.170(c) of this chapter. The average thickness of such polymers in the form in which they contact fatty food shall not exceed 0.1 millimeter (0.004). 8. At levels not to exceed 0.2 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, item 3.3 or 4. The finished polymers having a thickness greater than 0.051 millimeter (0.002 inch), shall contact food only under conditions of use E, F, and G described in table 2 of § 176.170(c)l of this chapter.
* *	* * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before September 30, 1982 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This regulation shall become effective August 30, 1982.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: August 23, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–23708 Filed 8–30–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 182 and 184

[Docket No. 78N–0273]

GRAS Status of Hypophosphites

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug administration (FDA) is affirming that sodium hypophosphite is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency. The agency is not affirming the GRAS status of calcium, manganese, or potassium hypophosphites because there is no usage information concerning these substances.

EFFECTIVE DATE: September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 10, 1978 (43 FR 46550), FDA published a proposal to remove calcium hypophosphite, manganese hypophosphite, potassium hypophosphite, and sodium hypophosphite as substances that are GRAS for use as direct human food ingredients. The proposal was published in accordance with the announed FDA

review of the safety of GRAS and prior-sanctioned food ingredients. Although manganese hypophosphite is the only hypophosphite listed as GRAS in Part 182 (21 CFR Part 182), an opinion letter issued by the agency in 1961 acknowledged the GRAS status of calcium, potassium, and sodium hypophosphites and is the basis for including these substances in the comprehensive GRAS review.

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

In addition to proposing the actions described above, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these substances. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned use could be determined at this time. That notice was also an opportunity to have prior-sanctioned uses of these substances recognized by issuance of a regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for hypophosphites were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for a use of hypophosphites under conditions different from those set forth in this final rule has been waived.

Three comments were received in response to the proposal. A summary of these comments and the agency's response follows.

1. One comment requested a 6-month delay in the deletion of hypophosphites from the GRAS list to permit completion of research on potential future food uses of these substances.

Nearly 4 years have passed since the agency published the proposal in this matter, but no new data have been submitted. Regardless, the agency declines to delay action on the proposal. The Federal Food, Drug, and Cosmetic Act does not prevent a manufacturer from independently judging a particular use of a substance to be GRAS on its own responsibility. The GRAS review is a review of current uses of substances recognized by the agency to be GRAS or subject to a prior sanction. The GRAS petition procedure in § 170.35(c) is available to those who would like to request that FDA affirm as GRAS a substance that the agency does not currently consider GRAS, or that FDA affirm as GRAS a new use for a substance currently listed as GRAS.

2. The second comment referred to the procedure for preparing calcium hypophosphite that the agency described in the preamble to the proposal. The comment questioned whether the reactant is indeed phosphorous acid, as stated in the proposal, or whether hypophosphorous acid is the actual reactant used.

According to the Condensed Chemical Dictionary, 6th Ed., the correct reactant is elemental phosphorus rather than phosphorous acid or hypophosphorous acid. However, because FDA is not affirming the GRAS status of calcium hypophosphite, correcting the description of this aspect of the preparation procedure does not require any change in the final rule.

3. The third comment requested that sodium hypophosphite be affirmed as GRAS for use as an emulsifier/stabilizer in cod-liver oil emulsions. Further communication with the commenter revealed that sodium hypophosphite has been used in this product since early in the century. The commenter also provided information to the agency on the level of use, annual poundage used, and estimated intake based on the recommended dosage of cod-liver oil.

The agency has considered this new information in light of the Select Committee's conclusion and agrees that sodium hypophosphite should be affirmed as GRAS for this use. Accordingly, FDA is affirming that sodium hypophosphite is GRAS for use as an emulsifier/stabilizer in cod-liver oil at a current good manufacturing practice (CGMP) level. The current GMP level is 0.4 percent. Under § 184.1(a) (21 CFR 184.1(a)), substances approved as GRAS for direct food use may also be used for indirect food uses.

FDA is not adopting food-grade specifications for sodium hypophosphite at this time. The agency concludes that the affirmation of sodium hypophosphite as GRAS, without detailed specifications, does not represent a health problem. FDA will work with the Committee on Codex Specifications of the National Academy of Sciences to develop acceptable specifications for this ingredient. If acceptable specifications are developed, the agency will incorporate them into this regulation at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if commercial sodium hypophosphite complies with the description in this final regulation and is of food-grade purity (21 CFR 170.30(b)(1) and 182.1(b)(3)).

FDA did not receive any comments providing evidence of use of calcium, manganese, or potassium hypophosphites as direct human food ingredients in response to the proposal. In addition, the 1977 National Academy of Sciences/National Research Council (NAS/NRC) industry usage survey did not report use data on any of the hypophosphites.

The format of the final regulation is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1764 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including both the technical effects and food categories listed. This change has no substantive effect but is made merely for clarity.

The agency had determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that the rule is not a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

§ 182.5458 [Removed]

1. Part 182 is amended by removing § 182.5458 *Manganese hypophosphite.*

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

2. Part 184 is amended by adding a new § 184.1764 to read as follows:

§ 184.1764 Sodium hypophosphite.

(a) Sodium hypophosphite (NaH_2PO_2, CAS Reg. No. 7681–53–0) is a white, odorless, deliquescent granular powder with a saline taste. It is also prepared as colorless, pearly crystalline plates. It is soluble in water, alcohol, and glycerol. It is prepared by neutralization of hypophosphorous acid or by direct aqueous alkaline hydrolysis of white phosphorus.

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

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an emulsifier or stabilizer, as defined in §§ 170.3(o)(8) and 170.3(o)(28) of this chapter.

(2) The ingredient is used in cod-liver oil emulsions at levels not to exceed current good manufacturing practice.

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

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Effective date. This regulation is effective September 30, 1982.

Dated: August 10, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23701 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 78N-0015]

GRAS Status of Inositol

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that inositol is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: September 30, 1982.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1978 (43 FR 22056), FDA published a proposal to affirm that inositol is GRAS for use as a direct human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on inositol, data on a mutagenic evaluation, and the report of the Select Committee on GRAS Substances (the Select Committee) on inositol are available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of inositol, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for the substance, other than for the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of inositol recognized by issuance of an appropriate regulation under Part 181—Prior Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Parts 184 or 186) as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert the sanction at any future time.

No reports of prior-sanctioned uses for inositol were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for use of inositol under conditions different from those set forth in this final rule has been waived.

No comments were received in response to the proposal. Inositol is listed as a GRAS substance for dietary supplement use and nutrient use in §§ 182.5370 and 182.8370 (21 CFR 182.5370 and 21 CFR 182.8370) respectively, as described in the **Federal Register** publication of September 5, 1980 (45 FR 58837). That notice reorganized Part 182 to establish separate listings for "Dietary Supplements" and "Nutrients." Although there is no direct evidence of a dietary requirement for inositol in healthy adult humans with a mixed and varied diet, it is required by section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) as a required nutrient in infant formula that is not milk based at a minimum level of 4.0 milligrams per 100 kilocalories. FDA is reviewing all nutrient levels in infant formulas under a contract with the American Academy of Pediatrics. Any necessary modifications in the nutrient level of inositol in infant formula will be proposed by a separate rulemaking under section 412 of the act. As described in the proposal, inositol is also used in certain special dietary foods.

Therefore, FDA is removing inositol from § 182.8370 and affirming it as GRAS for use as a nutrient in infant formulas and special dietary foods. The agency is not taking any action on dietary supplement uses of inositol because there is inadequate information regarding these uses.

FDA has modified this final rule to reflect publication of specifications for inositol in the new Food Chemicals Codex, 3d edition. No differences exist between the specifications in the 2d edition, as referenced in the proposal, and those adopted in the 3d edition.

The format of the final regulation is different from that in the proposal and

in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1370 to make clear that the agency's GRAS affirmation determination is based upon current good manufacturing practice conditions of use, including both the technical effect and food categories listed. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and therefore exempt.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this rule, and the agency has determined that the rule is not a major rule as defined by that Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients; Spices and flavorings.

21 CFR Part 184

Direct food ingredients; Food ingredients; Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 301(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.8370 [Removed]

1. In Part 182 by removing § 182.8379 *Inositol.*

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

2. In Part 184 by adding new § 184.1370 to read as follows:

§ 184.1370 Inositol.

(a) Inositol, or myo-inositol ($C_6H_{12}O_6$, CAS Reg. No. 87–89–8), is *cis*-1,2,3,5-*trans*-4,6-cyclohexanehexol. It occurs naturally and is prepared from an aqueous (0.2 percent sulfur dioxide) extract of corn kernels by precipitation and hydrolysis of crude phytate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 150, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in special dietary foods as defined in Part 105 of this chapter at levels not to exceed current good manufacturing practice. It may also be used in infant formula in accordance with section 412(g) of the act, or with regulations promulgated under section 412(a)(2) of the act.

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

Effective date. This regulation shall be effective September 30, 1982.

(Secs. 201(s), 409, 701(a) 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated August 10, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Note.—Incorporation by reference was approved by the Director of the Office of the Federal Register on June 4, 1982, and is on file at the Office of the Federal Register.

[FR Doc. 82-23718 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 202

Prescription Drug Advertising

CFR Correction

In Title 21, Code of Federal Regulations, revised as of April 1, 1982, in Part 202, § 202.1, appearing on page 58, paragraphs (e)(6) (ii) and (vii) read incorrectly. These two paragraphs should read as follows:

(e) * * *

(6) * * *

(ii) Contains a drug comparison that represents or suggests that a drug is safer or more effective than another drug in some particular when it has not been demonstrated to be safer or more effective in such particular by substantial evidence or substantial clinical experience.

* * * * *

(vii) Contains favorable data or conclusions from nonclinical studies of a drug, such as in laboratory animals or in vitro, in a way that suggests they have clinical significance when in fact no such clinical significance has been demonstrated.

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-82-1022]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I mobile home loans, property improvement loans, and combination and mobile home lot loans as well as historic preservation loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410 (202–755–6680).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on property improvement loans have been lowered from 18.50 percent to 17.50 percent, the finance charge on mobile home loans lowered from 17.50 percent to 16.50 percent, and the finance charge on combination loans for the purchase of a mobile home and a

developed or undeveloped lot has been lowered from 17.00 percent to 16.00 percent. The maximum charge on historic preservation loans has been lowered from 18.50 to 17.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects in 24 CFR Part 201

Health facilities, Historic Preservation, Home improvement, Mobile homes, Manufactured homes and lots.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart A—Eligibility Requirements—Property Improvement Loans

1. Section 201.4(a) is revised to read as follows:

§ 201.4 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge exclusive of fees and charges as provided by paragraph (b) of this section which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 17.50 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

1. Section 201.540(a) is revised to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 16.50 percent simple interest per annum. No points or discounts of any kind may be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

2. Section 201.1511(a)(1) is revised to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.*

* * * * *

(1) 16.00 percent per annum.

* * * * *

4. Section 201.1625(a) is revised to read as follows:

§ 201.1625 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge, exclusive of fees and charges as provided by paragraph (b) of this section, which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed an 17.50 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 USC 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 USC 3534(d))

Dated: August 23, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 82-23828 Filed 8-30-82; 8:45 am]

BILLING CODE 4210-27-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 242, and 244

[Docket No. R-82-1021]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA interest rates on insured loans. This action by HUD is designed to bring the maximum interest rates into line with other competitive market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: August 24, 1982.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Director, Financial Analysis Division, Office of Financial Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410 (202–426–4667).

SUPPLEMENTARY INFORMATION: The following amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans by this Department. The maximum interest rate on HUD/FHA insured home mortgage insurance programs has been lowered from 15.00 percent to 14.00 percent for level payment (including operative builder) and graduated payment home loan programs (GPM). For insured multifamily project mortgage loan programs, the maximum interest rate has been lowered from 16.00 percent to 15.00 percent. The maximum interest rate for multifamily construction and Title X land development loans has been lowered from 17.00 percent to 16.00 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709–1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects in 24 CFR Parts 203, 205, 207, 213, 220, 221, 232, 234, 235, 236, 241, 244, and 245

Mortgate insurance.

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. Section 203.20 paragraph (a) is revised to read as follows:

§ 203.20 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not

exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

2. Section 203.45 paragraph (b) is revised to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

3. Section 203.46 paragraph (c) is revised to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 205—MORTGAGE INSURANCE FOR LAND DEVELOPMENT

4. Section 205.50 is revised to read as follows:

§ 205.50 Maximum interest rate.

Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 16.00 percent per annum. Applications for conditional or firm commitments received on or after August 24, 1982 will be processed at the 16.00 percent rate, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

5. Section 207.7 paragraph (a) is revised to read as follows:

§ 207.7 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

6. Section 213.10 paragraph (a) is revised to read as follows:

§ 213.10 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982 will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

7. Section 213.511 paragraph (a) is revised to read as follows:

§ 213.511 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

8. Section 220.576 paragraph (a) is revised to read as follows:

§ 220.576 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

9. Section 221.518 paragraph (a) is revised to read as follows:

§ 221.518 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

10. Section 232.29 paragraph (a) is revised to read as follows:

§ 232.29 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

11. Section 232.560 paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) On or after August 24, 1982, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 15.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

12. Section 234.29 paragraph (a) is revised to read as follows:

§ 234.29 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

13. Section 234.75 paragraph (b) is revised to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(b) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

14. Section 234.76 paragraph (c) is revised to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(c) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 14.00 percent per annum, except that where an application for commitment was received by the Secretary before August 24, 1982, the mortgage may bear interest at the maximum rate in effect at the time of application.

* * * * *

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

15. Section 235.540 paragraph (a) is revised to read as follows:

§ 234.540 Maximum interest rate.

(a) On or after August 24, 1982, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 15.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

16. Section 236.15 paragraph (a) is revised to read as follows:

§ 236.15 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and

market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

17. Section 241.75 is revised to read as follows:

§ 241.75 Maximum interest rate.

Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(a) 15.00 percent per annum with respect to permanent financing;

(b) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

18. Section 242.33 paragraph (a) is revised to read as follows:

§ 242.33 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES

19. Section 244.45 paragraph (a) is revised as follows:

§ 244.45 Maximum interest rate.

(a) Effective on or after August 24, 1982, the mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed:

(1) 15.00 percent per annum with respect to permanent financing;

(2) 16.00 percent per annum with respect to construction financing prior to and including the cutoff date for cost certification.

Applications for conditional or firm commitments received on or after August 24, 1982, will be processed at the rates specified above, with the exception of applications submitted pursuant to unexpired site appraisal and market analysis (SAMA) or feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

* * * * *

(Sec. 3(a), 82 Stat. 113; 12 USC 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 USC 3535(d))

Dated: August 23, 1982.

Philip Abrams,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner

[FR Doc. 82-23827 Filed 8-30-82; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 215, 236, 425, and 426

[Docket No. R-82-1006]

Rent Requirements for Section 101 (Rent Supplement) and Section 236 Programs

Correction

In FR Doc. 82-23031 published at page 36814 in the issue for Tuesday, August 24, 1982, in the **"DATES"** paragraph of the preamble, the captions for the effective date and for the comment date were inadvertently omitted and only the dates were listed. The **"DATES"** paragraph (on page 36815 in the first column) is corrected to read as follows:

"DATES:

Effective date: November 1, 1982.

Comments due: October 8, 1982."

BILLING CODE 1505-01-M

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24 CFR Part 812

[Docket No. R-82-772]

Definition of Family and Other Related Terms; Occupancy by Single Persons

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

ACTION: Final rule.

SUMMARY: This final rule increases the limitation from 10 to 15 percent of assisted units that may be occupied by single, nonelderly persons within the area under the jurisdiction of a Public Housing Agency (PHA) in accordance with Section 206(c) of the Housing and Community Development Amendments of 1978. This amendment will reduce displacement of single persons in project conversions and enable projects with vacancy problems to fill more units.

EFFECTIVE DATE: October 7, 1982.

FOR FURTHER INFORMATION CONTACT: Edward C. Whipple, Chief, Rental and Occupancy Branch, Room 6236, U.S. Department of Housing and Urban Development, 451 7th Street, S.W.,

Washington, D.C. 20410 (202) 426–0744. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The amendment increases the limitation on the percentage of assisted units that may be occupied by single, nonelderly persons from 10 to 15 percent of the units within the area under the jurisdiction of a PHA. The percentage limitation is reflected in 24 CFR 812.1, 812.3(b)(2)(i) and 812.3(f).

The Department published a proposed rule on March 3, 1980, Docket No. R–80–772, that proposed to amend Title 24 of the Code of Federal Regulations by revising Part 812, Definition of Family and Other Related Terms; Occupancy by Single Persons. (See 45 FR 13780). Interested parties were given until May 2, 1980, to submit comments on the proposed rule.

The Department received three comments in response to the proposed regulation. One commenter indicated approval for the amendment, stating that it will permit more low-income nonelderly nonmarried persons to obtain needed housing assistance.

A second commenter suggested that, in addition to the proposed percentage increase of nonelderly tenancy, there should also be a procedure by which a PHA would be afforded a means of screening public housing applicants who would be disruptive of community life. Such procedures have been adopted in 24 CFR Part 860, Subpart B, which was published in the **Federal Register** on August 8, 1975 and requires PHAs to take into consideration factors of prior conduct of an applicant in determining whether the applicant, if admitted, will have a detrimental effect on the health, physical environment or financial stability of the project. The third commenter suggested that the requirements of this provision were too restrictive in that they acted as a deterrent to the rehabilitation of individuals who were classified as disabled or handicapped because of mental illness. The commenter assumed that if such an individual were determined to be no longer disabled or handicapped, he or she would not continue to be eligible for assistance. There is no requirement that a person determined to be eligible on the basis of disability or handicap be required to move if he or she recovers after admission. Accordingly, the 15 percent limitation and the other restrictions on the admission of single persons not otherwise eligible on the basis of handicap or other factors do not apply and, therefore, do not act as a deterrent to the rehabilitation of the disabled or handicapped. Such persons would not be counted in determining compliance with the 15 percent limitation in the locality. The Department is now publishing revisions to Part 812 as a final rule without change.

It is not anticipated that the increase of the limitation on occupancy by single, non-elderly persons will result in a significant increase in participation by such households. The regulations in both their present and revised forms authorize field offices to approve occupancy by single, non-elderly persons only when projects are being converted to assisted housing, experiencing sustained vacancies or are unsuited for occupancy by the elderly. The Act and the regulations require that single elderly and dispaced individuals be afforded a priority. As a result, participation by single, non-elderly persons is expected to remain rather low because of the generally high demand for units from the elderly. The increase in the limitation will, however, permit the Department to respond more effectively in those situations where the conversion of a project would otherwise result in substantial displacement of single persons or where projects have serious vacancies.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements Section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10278, Department of Housing and Urban Development, 451, 7th Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

This rule was listed in the Agenda as B.33 (H–60–78) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708) pursuant to Executive Order 12291 and Regulatory Flexibility Act.

(The Catalog of Federal Domestic Assistance program number is 14.146)

List of Subjects in 24 CFR Part 812

Low and moderate income housing.

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

Accordingly, 24 CFR Part 812 is amended as follows:

1. By revising § 812.1 to read as follows:

§ 812.1 Purpose and scope.

The purpose of this part is to establish a definition of the term Family and other related terms applicable to all housing assisted under the United States Housing Act of 1937 (the Act). In addition, this part prescribes criteria and procedures for occupancy in low-income and lower income housing projects assisted under the Act by Single Persons who are not otherwise eligible by reason of qualification as an Elderly Family or Displaced Person or as the remaining member of a tenant family. This part also incorporates the statutory 15 percent limitation. (See § 812.3(f)) This part is applicable to all housing assisted under the Act.

2. By revising paragraphs (b)(2)(i) and (f) of § 812.3 to read as follows:

§ 812.3 Authorization to admit single persons.

* * * * *

(b) * * *

(2) * * *

(i) no more than 15 percent of the units in the PHA's Existing Housing Program for which Leases are approved by the PHA are leased by Single Persons, and

* * * * *

(f) Statutory 15 percent limitations pursuant to Section 3(2)(D) of the Act. The number of units authorized by the HUD Field Office to be made available to Single Persons within the area under the jurisdiction of a PHA shall not exceed 15 percent of the difference between the total number of units within

the jurisdiction assisted under the Act at the time of the authorization and the number of units under the Existing Housing Program (24 CFR Part 882, Subparts A and B) within the jurisdiction.

(Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)); Section 206(c) of the Housing and Community Development Amendments of 1978)

Dated: August 19, 1982.

Philip Abrams,

General Deputy Assistant Secretary-Deputy, Federal Housing Commissioner.

[FR Doc. 82-23812 Filed 8-30-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[T.D. 7830]

Employment Taxes; Applicable on or After January 1, 1955; Deposit of Taxes; Department of Defense

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides Employment Tax Regulations (26 CFR Part 31) relating to deposit of employment taxes by the Department of Defense. The regulations provide guidance to the Department of Defense with respect to the time for making such deposits.

DATES: The regulations are effective August 28, 1982.

FOR FURTHER INFORMATION CONTACT:

Barry L. Wold of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3828).

SUPPLEMENTARY INFORMATION:

In General

This regulation extends until September 30, 1982, the time by which the Department of Defense must make deposits of withheld income taxes, FICA taxes, Railroad retirement taxes, and FUTA taxes which, without this regulation, would be required to be deposited before September 30, 1982. This regulation is necessary to avoid any potential for disruption of vital defense and national security functions of that Department. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Non-Applicability of Executive Order 12291

The Treasury Department has determined that this final regulation is not subject to review under Executive Order 12291 or the Treasury and OMB implementation of the Order dated April 28, 1982.

Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b), the Secretary of the Treasury has certified that the requirements of the Regulatory Flexibility Act do not apply to this final regulation as it will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this regulation is Barry L. Wold 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, on matters of both substance and style.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

Adoption of Amendments to the Regulations

Accordingly, the Employment Tax Regulations (26 CFR Part 31) are amended by adding a new § 31.6302 (c)-5 immediately after § 31.6302 (c)-4, to read as follows:

§ 31.6302(c)-5 Use of Government depositaries by the Department of Defense.

Amounts otherwise required by the provisions of §§ 31.6302(c)-1, 31.6302(c)-2, or 31.6302(c)-3 to be deposited by the Department of Defense before September 30, 1982, must be deposited by that Department no later than September 30, 1982.

This Treasury decision is issued under the authority contained in sections 6302 and 7805 of the Internal Revenue Code of 1954 (68A Stat. 775, 26 U.S.C. 6302; 68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 25, 1982.

J. Gregg Ballentine,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-24037 Filed 8-30-82; 9:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 159

[DoD Directive 5200.1, DoD 5200.1-R]

DOD Information Security Program Regulation

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: The Office of the Secretary of Defense is publishing this Regulation (final rule) pursuant to section 5.3(b) of Executive Order 12356. The Executive Order prescribes a uniform information security system; it also establishes a monitoring system to enhance its effectiveness. This Regulation establishes the DoD system for classification, downgrading, declassification, and safeguarding of national security information and supplements the earlier published Part 159 of this title which set forth policy regarding the DoD Information Security Program in compliance with Executive Order 12356.

EFFECTIVE DATE: August 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur E. Fajans, Acting Director, Information Security Directorate, Office of the Deputy Under Secretary of Defense (Policy), Telephone 202-695-2686.

SUPPLEMENTARY INFORMATION: The Information Security Oversight Office (section 5.2 of Executive Order 12356) has issued a Directive (32 CFR 2001) that implements the Executive Order throughout the Executive Branch. This Regulation implements that Directive as well as the Executive Order within the Department of Defense.

List of Subjects in 32 CFR Part 159

Classified information, and foreign relations.

Accordingly, 32 CFR Part 159 is amended as set forth below.

1. Subparts B through O are revised to read as follows:

PART 159—DOD INFORMATION SECURITY PROGRAM REGULATION

* * * * *

Subpart B—General Provisions

Subpart C—Classification

Subpart D—Declassification and Downgrading

Subpart E—Marking

Subpart F—Safekeeping and Storage

Subpart G—Compromise of Classified Information

Subpart H—Access, Dissemination, and Accountability

Subpart I—Transmission

Subpart J—Disposal and Destruction

Subpart K—Security Education

Subpart L—Foreign Government Information

Subpart M—Special Access Programs

Subpart N—Program Management

Subpart O—Administrative Sanctions

* * * * *

Subpart B—General Provisions

§ 159.10 References.

(a) DoD Directive 5200.1, "DoD Information Security Program," June 7, 1982.

(b) Executive Order (E.O.) 12356, "National Security Information," April 2, 1982.

(c) Information Security Oversight Office (ISOO) Directive No. 1, "National Security Information," June 23, 1982.

(d) DoD Directive 5220.22, "Department of Defense Industrial Security Program," December 8, 1980.

(e) DoD 5220.22–R, "Industrial Security Regulation," January 1981.

(f) DoD 5220.22–M, "Industrial Security Manual for Safeguarding Classified Information," July 1981.

(g) Public Law 83–703, "Atomic Energy Act of August 30, 1954," as amended.

(h) DoD Directive 5200.28, "Security Requirements for Automatic Data Processing (ADP) Systems," December 18, 1972.

(i) DoD 5200.28–M, "ADP Security Manual: Techniques and Procedures for Implementing, Deactivating, Testing, and Evaluating Secure Resource-Sharing ADP Systems," January 1973.

(j) E.O. 12333, "United States Intelligence Activities," December 4, 1981.

(k) DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980.

(l) Title 35, United States Code, Sections 101–188, "The Patent Secrecy Act of 1952".

(m) DoD Diirective 5400.11, "Department of Defense Privacy Program," June 9, 1982.

(n) DoD 5200.1–H, "Writing Security Classification Guidance Handbook," October 1980.

(o) DoD 5200.1–I, "DoD Index of Security Classification Guides" [1].

(p) DoD Directive 5535.2, "Delegations of Authority to Secretaries of the Military Departments—Inventions and Patents," October 16,, 1980.

(q) DoD Directive 5200.30, "Guidelines for Systematic Review of 20-Year-Old Classified Information in Permanently Valuable DoD Records," September 9, 1981.

(r) Title 31, United States Code, Section 483a (Title 5, Independent Offices Appropriation Act).

(s) DoD Instruction 7230.7, "User Charges," June 12, 1979.

(t) DoD Directive 7920.1, "Life Cycle Management of Automated Information Systems (AIS)," October 17, 1978.

(u) DoD Directive 5230.22, "Control of Dissemination of Intelligence Information," April 1, 1982.

(v) National COMSEC Instruction 4005, "Safeguarding and Control of COMSEC Material," October 12, 1979.

(w) National Communications Security Committee (formerly USCSB) Policy Directive 14–2, January 16, 1981.

(x) DoD Directive C–5200.5, "Communications Security (COMSEC) (U)," October 6, 1981.

[1] Published on a semiannual basis.

(y) DoD Directive 5210.2, "Access to and Dissemination of Restricted Data," January 12, 1978.

(z) DoD Directive 5100.55, "United States Security Authority for North Atlantic Treaty Organization Affairs," April 21, 1982.

(aa) Joint Army-Navy-Air Force Publications (JANAP) #119 and #299.

(bb) National Security Agency KAG I–D, December 1967.

(cc) E.O. 12065, "National Security Information," June 28, 1978.

(dd) DoD Directive 5210.56, "Use of Force by Personnel Engaged in Law Enforcement and Security Duties," May 10, 1969.

(ee) DoD Directive 5030.47, "National Supply System," May 27, 1971.

(ff) Memorandum by the Secretary, Joint Chiefs of Staff (SM) 701–76, Volume II, "Peacetime Reconnaissance and Certain Sensitive Operations," July 23, 1976.

(gg) DoD Directive 3224.3, "Physical Security Equipment: Assignment of Responsibility for Research, Engineering, Procurement, Installation, and Maintenance," December 1, 1976.

(hh) National COMSEC Instruction 4009, "Protected Distribution Systems," December 30, 1981.

(ii) DoD Directive 5200.12, "Security Sponsorship and Procedures for Scientific and Technical Meetings Involving Disclosure of Classified Military Information," June 15, 1979.

(jj) DoD Instruction 5200.22, "Reporting of Security and Criminal Violations," July 19, 1978.

(kk) DoD Directive 5210.50, "Investigation of and Disciplinary Action Connected with Unauthorized Disclosure of Classified Defense Information," April 29, 1966.

(ll) DoD 5200.2–R, "DoD Personnel Security Program," December 1979.

(mm) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(nn) DoD Directive 7650.1, "General Accounting Office Comprehensive Audits," July 9, 1958.

(oo) DoD Directive 5230.11, "Disclosure of Classified Military Information to Foreign Governments and International Organizations," March 2, 1979.

(pp) Title 50, United States Code, Section 403, "National Security Act."

(qq) DoD Directive 4540.1, "Use of Airspace for United States Military Aircraft and Firings Over the High Seas," January 13, 1961.

(rr) DoD Directive 5210.41, "Security Criteria and Standards for Protecting Nuclear Weapons," September 12, 1978.

(ss) DoD Instruction 1000.13, "Identification Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Personnel," July 16, 1979.

(tt) Public Law 76–433, "Espionage Act," March 28, 1940.

(uu) Title 10, United States Code, Section 801 *et seq*, "Uniform Code of Military Justice."

(vv) Allied Communication Publication (ACP) #110.

§ 159.11 Purpose and Applicability.

(a) *Purpose.* Information of the Department of Defense relating to national security shall be protected against unauthorized disclosure as long as required by national security considerations. This part establishes a system for classification, downgrading and declassification of information; sets forth policies and procedures to safeguard such information; and provides for oversight and administrative sanctions for violations.

(b) *Applicability.* This part governs the DoD Information Security Program and takes precedence over all DoD Component regulations that implement that Program. Under § 159.10 (a), (b), and (c) it establishes, for the Department of Defense, uniform policies, standards, criteria, and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, produced for or by, or under the control of the Department of Defense or its Components.

(c) *Nongovernment operations.* Except as otherwise provided herein, the provisions of this part that are relevant to operations of nongovernment personnel entrusted with classified information shall be made applicable thereto by contracts or other legally binding instruments. (See DoD Directive 5220.22, DoD 5220.22–R, and DoD 5220.22–M, § 159.10 (d), (e) and (f)).

(d) *Combat operations.* The provisions of this part relating to accountability, dissemination, transmission, or safeguarding of classified information may be modified by military commanders but only to the extent necessary to meet local conditions in connection with combat or combat-related operations. Classified information should be introduced into forward combat areas or zones or areas of potential hostile activity only when essential to accomplish the military mission.

(e) *Atomic energy material.* Nothing in this part supersedes any requirement related to "Restricted Data" in the Atomic Energy Act of August 30, 1954, as amended (§ 159.10(g)), or the regulations of the Department of Energy under that Act. "Restricted Data" and material designated as "Formerly Restricted Data," shall be handled, protected, classified, downgraded, and declassified to conform with § 159.10(g) and the regulations issued pursuant thereto.

(f) *Sensitive Compartmented and Communications Security Information.* (1). Sensitive Compartmented Information (SCI) and Communications Security (COMSEC) Information shall be handled and controlled in accordance with applicable national directives and DoD Directives and Instructions. Other classified information, while in established SCI or COMSEC areas, may be handled in the same manner as SCI or COMSEC information. Classification principles and procedures, markings, downgrading, and declassification actions prescribed in this Regulation apply to SCI and COMSEC information. (See also § 159.131(a)(3))

(2) Pursuant to DoD Directive 5200.1 (§ 159.10(a)), the Director, National Security Agency/Chief, Central Security Service may prescribe special rules and procedures for the handling, reporting of loss, storage, and access to classified communications security devices, equipments, and materials in mobile, hand-held or transportable systems, or that are used in conjunction with commercial telephone systems, or in similar circumstances where operational demands preclude the application of standard safeguards. These special rules may include procedures for safeguarding such devices and materials, and penalties for the negligent loss of government property.

(g) *Automatic data processing systems.* This part applies to protection of classified information processed, stored or used in, or communicated, displayed or disseminated by an automatic data processing (ADP) system. Additional security policy, responsibilities, and requirements applicable specifically to ADP systems are contained in DoD Directive 5200.28 and DoD 5200.28–M, § 159.10 (h) and (1).

§ 159.12 Definitions

(a) *Definitions.*

(b) *Carve-Out.* A classified contract issued in connection with an approved Special Access Program in which the Defense Investigative Service has been relieved of inspection responsibility in whole or in part under the Defense Industrial Security Program.

(c) *Classification authority.* The authority vested in an official of the Department of Defense to make an initial determination that information requires protection against unauthorized

disclosure in the interest of national security.

(d) *Classification guide.* A document issued by an authorized original classifier that prescribes the level of classification and appropriate declassification instructions for specified information to be classified derivatively. For purposes of this Regulation, this term does not include DD Form 254, "Contract Security Classification Specification."

(e) *Classified information.* Information or material that is (1) owned by, produced for or by, or under the control of the U.S. Government; and (2) determined under E.O. 12356 § 159.10 (b), or prior orders and this Regulation to require protection against unauthorized disclosure; and (3) so designated.

(f) *Classifier.* An individual who makes a classification determination and applies a security classification to information or material. A classifier may be an original classification authority or a person who derivatively assigns a security classification based on a properly classified source or a classification guide.

(g) *Communications security (COMSEC).* The protective measures taken to deny unauthorized persons information derived from telecommunications of the U.S. Government related to national security and to ensure the authenticity of such communications.

(h) *Compromise.* The disclosure of classified information to persons not authorized access thereto.

(i) *Confidential source.* Any individual or organization that has provided, or that may reasonably be expected to provide, information to the United States on matters pertaining to the national security with the expectation, expressed or implied, that the information or relationship, or both, be held in confidence.

(j) *Critical nuclear weapon design information.* That Top Secret Restricted Data or Secret Restricted Data revealing the theory of operation or design of the components of a thermo-nuclear or implosion-type fission bomb, warhead, demolition munition or test device. Specifically excluded is information concerning arming, fuzing, and firing systems; limited life components; and total contained quantities of fissionable, fusionable, and high explosive materials by type. Among these excluded items are the components which DoD personnel set, maintain, operate, test, or replace.

(k) *Custodian.* An individual who has possession of or is otherwise charged with the responsibility for safeguarding or accounting for classified information.

(l) *Declassification.* The determination that classified information no longer requires, in the interest of national security, any degree of protection against unauthorized disclosure, together with a removal or cancellation of the classification designation.

(m) *Declassification event.* An event that eliminates the need for continued classification of information.

(n) *Derivative classification.* A determination that information is in substance the same as information currently classified, and the application of the classification markings.

(o) *Document.* Any recorded information regardless of its physical form or charateristics, including, without limitation, written or printed matter, data processing cards and tapes, maps, charts, paintings, drawings, engravings, sketches, working notes and papers, or reproductions by any means or process, and sound, voice, magnetic or electronic recordings in any form.

(p) *DOD component.* The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies.

(q) *Downgrade.* A determination that classified information requires, in the interest of national security, a lower degree of protection against unauthorized disclosure than currently provided, together with a changing of the classification designation to reflect such lower degree of protection.

(r) *Foreign government information.* Information that is (1) provided to the United States by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or (2) produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

(s) *Formerly restricted data.* Information removed from the Restricted Data category upon a joint determination by the Department of Energy (or antecedent agencies) and the Department of Defense that such information relates primarily to the military utilization of atomic weapons and that such information can be safeguarded adequately as classified defense information. For purposes of foreign dissemination, however, such information is treated in the same manner as Restricted Data.

(t) *Information.* Knowledge that can be communicated by any means.

(u) *Information security.* The result of any system of administrative policies and procedures for identifying, controlling, and protecting from unauthorized disclosure, information whose protection is authorized by executive order or statute.

(n) *Intelligence activity.* An activity that an agency within the Intelligence Community is authorized to conduct under E.O. 12333 § 159.10 (j)).

(w) *Material.* Any product or substance on, or in which, information is embodied.

(x) *National security.* The national defense and foreign relations of the United States.

(y) *Original classification.* An initial determination that information requires, in the interest of national security, protection against unauthorized disclosure, together with a classification designation signifying the level of protection required.

(z) *Regrade.* A determination that classified information requires a different degree of protection against unauthorized disclosure than currently provided, together with a change of classification designation that reflects such different degree of protection.

(aa) *Restricted data.* All data concerning (1) design, manufacture or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category under Section 142 of § 159.10 (g). (See also Section 11y, Atomic Energy Act of 1954, as amended, and "Formerly Restricted Data," paragraph (r) of this section)

(bb) *Sensitive compartmented information.* Information and material that requires special controls for restricted handling within compartmented intelligence systems and for which compartmentation is established.

(cc) *Special access program.* Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program includes, but is not limited to, special clearance, adjudication, or investigative requirements, special designation of officials authorized to determine "need-to-know," or special

lists of persons determined to have a "need-to-know."

(dd) *Special activity.* An activity, or functions in support of such activity, conducted in support of national foreign policy objectives abroad that is planned and executed so that the role of the U.S. Government is neither apparent nor acknowledged publicly; but that is not intended to influence U.S. political processes, public opinion, policies, or media, and does not include diplomatic activities or the collection and production of intelligence or related support functions.

(ee) *Unauthorized disclosure.* A communication or physical transfer of classified information to an unauthorized recipient.

(ff) *United States and its territories, possessions, administrative, and commonwealth areas.* The 50 States; the District of Columbia; the Commonwealth of Puerto Rico; the Territories of Guam, American Samoa, and the Virgin Islands; the Trust Territory of the Pacific Islands; and the Possessions, Midway and Wake Islands.

(gg) *Upgrade.* A determination that certain classified information requires, in the interest of national security, a higher degree of protection against unauthorized disclosure than currently provided, together with a changing of the classification designation to reflect such higher degree.

§159.13 Policies

(a) *Classification.*—(1) *Basic policy.* Except as provided in the Atomic Energy Act of 1954, as amended (§ 159.10 (g)), E.O. 12356 (§ 159.10 (b)), as implemented by the ISOO Directive No. 1 (§ 159.10 (c)), and this Regulation provides the only basis for classifying information. It is the policy of the Department of Defense to make available to the public as much information concerning its activities as possible consistent with the need to protect the national security. Accordingly, security classification shall be applied only to protect the national security.

(2) *Resolution of doubts.* Unnecessary classification and higher than necessary classification should be avoided. If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified "Confidential" pending a determination by an original classification authority, who shall make this determination within 30 days. If there is reasonable doubt about the appropriate level of classification, it shall be safeguarded at the higher level of classification pending a determination by an original classification authority, who shall make this determination within 30 days. Upon a classification determination, markings shall be applied in accordance with Subpart E.

(3) *Duration.* Information shall be classified as long as required by national security considerations. Each decision to classify requires a simultaneous determination of the duration such classification must remain in force or that the duration of classification cannot be determined.

(b) *Declassification.* Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or upon the occurrence of a declassification event.

(c) *Safeguarding.* Information classified under this Part shall be afforded the level of protection against unauthorized disclosure commensurate with the level of classification assigned under the varying conditions that may arise in connection with its use, dissemination, storage, movement or transmission, and destruction.

§ 159.14 Security Classification Designations.

(a) *General.* Information or material that requires protection against unauthorized disclosure in the interest of national security shall be classified in one of three designations, namely: "Top Secret," "Secret," or "Confidential." The markings "For Official Use Only," and "Limited Official Use" shall not be used to identify classified information. Moreover, no other term such as "Sensitive," "Conference," or "Agency" shall be used in conjunction with the authorized classification designations to identify classified information.

(b) *Top Secret.* "Top Secret" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security.

(c) *Secret.* "Secret" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; compromise of significant military plans or intelligence operations; and compromise of significant scientific or technological developments relating to national security.

(d) *Confidential.* "Confidential" shall be applied only to information or material the unauthorized disclosure of which reasonably could be expected to cause damage to the national security. Examples of damage include the compromise of information that indicates strength of ground, air, and naval forces in the United States and overseas areas; disclosure of technical information used for training, maintenance, and inspection of classified munitions of war; revelation of performance characteristics, test data, design, and production data on munitions of war.

§ 159.15 Authority to Classify, Downgrade, and Declassify.

(a) *Original classification authority.*—(1) *Control.* Authority for original classification of information as Top Secret, Secret, or Confidential may be exercised only by the Secretary of Defense, the Secretaries of the Military Departments, and by officials to whom such authority is specifically delegated in accordance with the subject to the restrictions of this Section. In the absence of an original classification authority, the person designated to act in his or her absence may exercise the classifier's authority.

(2) *Delegation of classification authority.* Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide. Delegations of original classification authority shall be limited to the minimum number required for efficient administration and to those officials whose duties involve the origination and evaluation of information warranting classification at the level stated in the delegation.

(i) *Top Secret.* Only the Secretary of Defense, the Secretaries of the Military Departments, and the senior official designated by each under Section 5.3(a) of E.O. 12356 (§ 159.10(b)), provided that official has original Top Secret classification authority, may delegate original Top Secret classification authority. Such delegation may only be

made to officials who are determined to have a demonstrable and continuing need to exercise such authority.

(ii) *Secret and confidential.* Only the Secretary of Defense, the Secretaries of the Military Departments, the senior official designated by each under Section 5.3(a) of § 159.10(b), and officials with original Top Secret classification authority, may delegate original Secret and Confidential classification authority to officials whom they determine respectively to have a demonstrable and continuing need to exercise such authority.

(iii) Each delegation of original classification authority shall be in writing and shall specify the title of the position held by the recipient.

(3) *Requests for classification authority.* (i) A request for the delegation of original classification authority shall be made only when the following conditions exist:

(A) The normal course of operations or missions of the organization results in the origination of information warranting classification;

(B) There is a substantial degree of local autonomy in operations or missions as distinguished from dependence upon a higher level of command or supervision for relatively detailed guidance;

(C) There is adequate knowledge by the originating level to make sound classification determinations as distinguished from having to seek such knowledge from a higher level of command or supervision; and

(D) There is a valid reason why already designated classification authorities in the originator's chain of command or supervision have not issued or cannot issue classification guidance to meet the originator's normal needs.

(ii) Each request for a delegation of original classification authority shall:

(A) Identify the title of the position held by the nominee and the nominee's organization;

(B) Contain a description of the circumstances, consistent with paragraph (a)(3)(i) above, that justify the delegation of such authority; and

(C) Be submitted through established channels to the Secretary of Defense, the Secretary of the Military Department concerned, the senior official designated by each under Section 5.3(a) of E.O. 12356 (§ 159.10(b)), or the appropriate Top Secret classification authority. (See subsection (c) of this Section.)

(b) *Derivative classification responsibility.* Derivative application of classification markings is a responsibility of those who incorporate, paraphrase, restate, or generate in new form, information that is already classified, or those who apply markings in accordance with guidance from an original classification authority. Persons who apply derivative classifications should take care to determine whether their paraphrasing, restating, or summarizing of classified information has removed all or part of the basis for classification. Persons who apply such derivative classification markings shall:

(1) Respect original classification decisions;

(2) Verify the information's current level of classification as far as practicable before applying the markings; and

(3) Carry forward to any newly created documents the assigned dates or events for declassification and any additional authorized markings.

(c) *Record and report requirements.* (1) Records of designations of original classification authority shall be maintained as follows:

(i) *Top Secret authorities.* A current listing by title and organization of officials designated to exercise original Top Secret classification authority shall be maintained by:

(A) The Office of the Deputy Under Secretary of Defense (Policy) (ODUSD(P)) for the Office of the Secretary of Defense; the Organization of the Joint Chiefs of Staff; the headquarters of each Unified Command and the headquarters of subordinate Joint Commands; and the Defense Agencies.

(B) The Offices of the Secretaries of the Military Departments for the officials of their respective departments, including Specified Commands but excluding officials from their respective departments who are serving in headquarters elements of Unified Commands and headquarters of Joint Commands subordinate thereto.

(ii) *Secret and confidential authorities.* A current listing by title and organization of officials designated to exercise original Secret and Confidential classification authority shall be maintained by:

(A) The ODUSD(P) for the Office of the Secretary of Defense.

(B) The offices of the Secretaries of the Military Departments for the officials of their respective departments, including Specified Commands but excluding officials from their respective departments who are serving in headquarters elements of Unified Commands and headquarters elements of Joint Commands subordinate thereto.

(C) The Director, Joint Staff, for the OJCS.

(D) The Commanders-in-Chief of the United and Specified Commands, for their respective headquarters and the headquarters of subordinate Joint Commands.

(E) The Directors of the Defense Agencies, for their respective agencies.

(iii) If the listing of titles of positions and organizations prescribed in paragraphs (c)(1)(i) and (c)(1)(ii) of this section discloses intelligence or other information that either qualifies for security classification protection or otherwise qualifies to be withheld from public release under statute, some other means may be recommended by the DoD Component by which original classification authorities can be readily identified. Such recommendations shall be submitted to ODUSD(P) for approval.

(iv) The listings prescribed in paragraph (c)(1)(i) and (c)(1)(ii), above, shall be reviewed at least annually by the senior official designated in or pursuant to § 159.131 (a)(1), 159.132(b) or 159.132(c) or designee to ensure that officials so listed have demonstrated a continuing need to exercise original classification authority.

(2) The DoD Components that maintain listings of designated original classification authorities shall, upon request, submit copies of such listings to ODUSD(P).

(d) *Declassification and downgrading authority.* (1) Authority to declassify and downgrade information classified under provisions of this Regulation shall be exercised as follows:

(i) By the Secretary of Defense and the Secretaries of the Military Departments, with respect to all information over which their respective Departments exercise final classification jurisdiction;

(ii) By the official who authorized the original classification, if that official is still serving in the same position, by a successor, or by a supervisory official of either; and

(iii) By other officials designated for the purpose in accordance with paragraph (d)(2) of this section.

(2) The Secretary of Defense, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Directors of the Defense Agencies, or their senior officials designated under subsection § 159.132(b) or 159.132(c) may designate additional officials at the lowest practicable echelons of command and supervision to exercise declassification and downgrading authority over classified information in their functional areas of interest. Records of officials so designated shall be maintained in the same manner as prescribed in paragraph (c)(1)(i) of this section for records of designations of original classification authority.

§ 159.16 [Reserved]

Subpart C—Classification

§ 159.20 Classification Responsibilities.

(a) *Accountability of classifiers.* (1) Classifiers are accountable for the propriety of the classifications they assign, whether by exercise of original classification authority or by derivative classification.

(2) An official who classifies a document or other material and is identified thereon as the classifier is and continues to be an accountable classifier even though the document or material is approved or signed at a higher level in the same organization. (See § 159.40(e).)

(b) *Classification approval.* (1) When an official signs or approves a document or other material already marked to reflect a particular level of classification, he or she shall review the information contained therein to determine if the classification markings are appropriate. If, in his or her judgment, the classification markings are not supportable, he or she shall, at that time, cause such markings to be removed or changed as appropriate to reflect accurately the classification of the information involved.

(2) A higher level official through or to whom a document or other material passes for signature or approval becomes jointly responsible with the accountable classifier for the classification assigned. Such official has discretion to decide whether a subordinate who has classification authority shall be identified as the accountable classifier when he or she has exercised that authority.

(c) *Classification planning.* (1) Advance classification planning is an essential part of the development of any plan, operation, program, research and development project, or procurement action that involves classified information. Classification must be considered from the outset to assure adequate protection for the information and for the activity itself, and to eliminate impediments to the execution or implementation of the plan, operations order, program, project or procurement action.

(2) The official charged with developing any plan, program or project in which classification is a factor, shall include under an identifiable title or heading, classification guidance covering the information involved. The guidance shall conform to the requirements contained in § 159.23 of this subpart.

(d) *Challenges to classification.* If holders of classified information have substantial reason to believe that the information is classified improperly or unnecessarily, they are encouraged to discuss it with their security manager (subsection § 159.132(e)) or the classifier of the information to bring about any necessary correction.

(1) Each DoD Component shall establish procedures whereby holders of classified information may challenge the decision of the classifier.

(2) Challenges to classification made under this subsection shall include sufficient description of the information being challenged to permit identification of the information and its classifier with reasonable effort. Challenges to classification shall also include the reason or reasons why the challenger believes that the information is classified improperly or unnecessarily.

(3) Challenges received under this subsection shall be acted upon within 30 days of receipt. The challenger shall be notified of any changes made as a result of the challenge or the reasons why no change is made.

(4) Pending final determination of a challenge to classification, the information or document in question shall be safeguarded as required for the level of classification initially assigned.

(5) The fact that an emloyee or military member of the Department of Defense has issued a challenge to classification shall not in any way result in or serve as a basis for adverse personnel action.

(6) The provisions of this paragraph do not apply to or affect declassification review actions undertaken under the mandatory review requirements of Subpart D § 159.32 or under the provisions of § 159.10(q).

§ 159.21 Classification principles, criteria, and considerations.

(a) *Reasoned judgment.* Reasoned judgment shall be exercised in making classification decisions. A positive basis must exist for classification. Both advantages and disadvantages of classification must be weighed. If, after consideration of the provisions of this section, there is reasonable doubt, the provisions of § 159.13 apply.

(b) *Identification of specific information.* Before a classification determination is made, each item of information that may require protection shall be identified. This requires identification of that specific information that comprises the basis for a particular national advantage or advantages that, if the information were compromised, would or could be damaged, minimized, or lost, thereby adversely affecting national security.

(c) *Specific classifying criteria.* A determination to classify shall be made only by an original classification authority when, *first,* the information is within categories (1) through (10), below; and *second,* the unauthorized disclosure of the information, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security. The determination involved in the first step is separate and distinct from that in the second. Except as provided in paragraph (d) of this section the fact that the information falls under one or more of the criteria shall not mean that the information *automatically* meets the damage criteria. Information shall be considered for classification if it concerns;

(1) Military plans, weapons, or operations;

(2) Vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(3) Foreign government information;

(4) Intelligence activities including special activities, or intelligence sources or methods;

(5) Foreign relations or foreign activities of the United States;

(6) Scientific, technological, or economic matters relating to the national security;

(7) U.S. Government programs for safeguarding nuclear materials or facilities;

(8) Cryptology;

(9) A confidential source; or

(10) Other categories of information that are related to national security and that require protection against unauthorized disclosure as determined by the Secretary of Defense or Secretaries of the Military Departments. Recommendations concerning the need to designate additional categories of information that may be considered for classification shall be forwarded through channels to the appropriate Secretary for determination. Each such determination shall be reported promptly to the Director of Information Security, ODUSD(P), for promulgation in an Appendix to this Regulation and reporting to the Director, ISOO.

(d) *Presumption of damage.* Unauthorized disclosure of foreign government information (see subsection 159.111(a)), the identity of a confidential foreign source, or intelligence sources or methods is presumed to cause damage to the national security.

(e) 2–204 *Limitations on classification.* (1) Classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

(2) Basic scientific research information not clearly related to national security may not be classified (See also § 159.21(f).)

(3) A product of nongovernment research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified until and unless the government acquires a proprietary interest in the product. This prohibition does not affect the provisions of the Patent Secrecy Act of 1952 (§ 159.10 (1)). (See § 159.26.)

(4) References to classified documents that do not reveal classified information may not be classified or used as a basis for classification.

(5) Classification may not be used to limit dissemination of information that is not classifiable under the provisions of E.O. 12356 (reference (b)) or this Regulation or to prevent or delay public release of such information.

(6) Information may be classified or reclassified after receiving a request for it under the Freedom of Information Act (§ 159.10(k)), the Privacy Act (159.10(m)), or the mandatory review provisions of this Regulation (§ 159.32), if such classification is consistent with this Regulation and is accomplished personally and on a document-by-document basis by the Secretary or Deputy Secretary of Defense, by the Secretaries or Under Secretaries of the Military Departments, by the senior official designated by each Secretary under Section 5.3(a) of § 159.10(b), or except as provided in paragraph 7, below, by an official with original Top Secret classification authority. (See § 159.27(b).)

(7) The Secretary of Defense and the Secretaries of the Military Departments may reclassify information previously declassified and disclosed if it is determined in writing that the information requires protection in the interest of national security and the information may reasonably be recovered. (See § 159.27.) Any such reclassification shall be reported to the DUSD(P) for subsequent reporting to the Director, ISOO.

(f) *Classifying scientific research data.* Ordinarily, except for information that meets the definition of Restricted Data, basic scientific research or its results shall not be classified. However, classification would be appropriate if the information concerns an unusually significant scientific breakthrough and there is sound reason to believe that it is not known or within the state-of-the-art of other nations, and it supplies the United States with an advantage directly related to national security.

(g) *Classifying documents.* Each document and portion thereof shall be classified on the basis of the information it contains or reveals. The fact that a document makes reference to a classified document is not a basis for classification unless the reference citation, standing alone, reveals classified information. (See paragraph (e)(4) of this section.) The overall classification of a document or group of physically-connected documents shall be at least as high as that of the most highly classified component. The subject or title of a classified document normally should be unclassified. When the information revealed by a subject or title warrants classification, an unclassified short title should be added for reference purposes.

(h) *Classifying material other than documents.* (1) Items of equipment or other physical objects shall be classified only when classified information may be derived from them by visual observation of their internal or external appearance or structure, or by their operation, test, application, or use. The overall classification assigned to end items of equipment or objects shall be at least as high as the highest classification of any of its integrated parts.

(2) If more knowledge of the existence of the item of equipment or object would compromise or nullify its national security advantage, its existence would warrant classification.

(i) *State of the art and intelligence.* Classification requires consideration of the information available from intelligence sources concerning the extent to which the same or similar information is known or is available to others. It is also important to consider whether it is known, publicly or internationally, that the United States has the information or even is interested in the subject matter. The state-of-the-art in other nations may often be a vital consideration.

(j) *Effect of open publication.* Classified information shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information. Appearance in the public domain of information currently classified or being considered for classification does not preclude initial or continued classification. However, such disclosures require immediate determination of the degree of damage to the national security and reevaluation of the information to determine whether the publication has so compromised the information that downgrading or declassification is warranted. (See also subpart G.) Similar consideration must be given to related items of information in all programs, projects, or items incorporating or pertaining to the compromised items of information. Holders should continue classification until advised to the contrary by a competent government authority.

(k) *Reevaluation of classification because of compromise.* Classified information, and information related thereto, that is or may have been compromised, shall be reevaluated and acted upon as follows:

(1) The original classifying authority, upon learning that a compromise or probable compromise of specific classified information has occurred, shall:

(i) Reevaluate the information involved and determine whether (A) the classification should be continued without changing the specific information involved; (B) the specific information, or parts thereof, should be modified to minimize or nullify the effects of the reported compromise and the classification retained; (C) declassification or downgrading is warranted.

(ii) When such determination is within categories (k)(1)(i)(B) or (C) of this Section, give prompt notice to all holders of such information.

(2) Upon learning that a compromise or probable compromise has occurred, any official having original classification jurisdiction over related information shall reevaluate the related information and determine whether one of the courses of action enumerated in subparagraph (1)(i), above, should be taken or, instead, whether upgrading of the related information is warranted. When such a determination is within categories (k)(1)(i)(B) or (C) of this Section, or that upgrading of the related items is warranted, prompt notice of the determination shall be given to all holders of the related information. (See Subpart G.)

(l) *Compilation of information.* Certain information that would otherwise be unclassified may require classification when combined or associated with other unclassified information. However, a compilation of unclassified items of information should normally not be classified. In unusual circumstances, classification may be required if the combination of unclassified items of information provides an added factor that warrants classification under subsection § 159.21(c). Classification on this basis shall be fully supported by a written explanation that will be provided with the material so classified. (See also subsection § 159.41(d).)

(m) *Extracts of information.* Information extracted from a classified source shall be derivatively classified or not classified in accordance with the classification markings shown in the source. The overall and internal markings of the source should supply adequate classification guidance. If internal markings or classification guidance are not found in the source, and no reference is made to an applicable and available classification guide, the extracted information shall be classified according either to the overall marking of the source, or guidance obtained from the classifier of the source material.

§ 159.22 Duration of Original Classification.

(a) *General.* When a determination is made by an official with authority to classify original information as Top Secret, Secret, or Confidential, such official must also determine how long the classification shall remain in effect.

(b) *Duration of classification.* (1) Information shall be classified as long as required by national security considerations.

(2) Dates or events on which automatic declassification should occur shall be consistent with national security. Any event specified for declassification shall be an event certain to occur.

(3) Original classification authorities may not be able to predetermine a date or event for automatic declassification in which case they shall provide for the indefinite duration of classification (see Subpart E for the marking "Originating Agency's Determination Required").

(4) Information classified under predecessor orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of this Regulation (also see §159.45).

(c) *Subsequent extension of duration of classification.* The duration of classification specified at the time of original classification may be extended only by officials with requisite original classification authority and only if all known holders of the information can be notified of such action before the date or event previously set for declassification. Any decision to continue classification of information designated for automatic declassification under E.O. 12065 (§ 159.10(cc)) or predecessor orders, other than on a document-by-document basis, shall be reported to the DUSD(P) who shall, in turn, report to the Director, ISOO.

§ 159.23 Classification Guides.

(a) *General.* (1) A classification guide shall be issued for each classified system, program, plan, or project as soon as practicable before the initial funding or implementation of the system, program, plan or project. Successive operating echelons shall prescribe more detailed supplemental guides that are considered essential to assure accurate and consistent classification. In preparing classification guides, originators should review DoD 5200.1–H (§ 159.10(n)).

(2) Classification guides shall:

(i) Identify the information elements to be protected, using categorization to the extent necessary to ensure that the information involved can be identified readily and uniformly;

(ii) State which of the classification designations (that is, Top Secret, Secret, or Confidential) applies to each element or category of information; and

(iii) State declassification instructions for each element or category of information in terms of a period of time, the occurrence of an event, or a notation that the information shall not be declassified automatically without approval of the originating agency.

(3) Each classification guide shall be approved personally and in writing by an official who:

(i) Has program or supervisory responsibility over the information or is the senior agency official designated by the Secretary of Defense or Secretaries of the Military Department in accordance with Section 5.3(a) of E.O. 12356 (§ 159.10(b)); and

(ii) Is authorized to classify information originally at the highest level of classification prescribed in the guide.

(b) *Multiservice interest.* For each classified system, program, project, plan, or item involving more than one DoD Component, a classification guide shall be issued by (1) the element in the Office of the Secretary of Defense that assumes or is expressly designated to exercise overall cognizance over it; or (2) the DoD Component that is expressly designated to serve as the executive or administrative agent for the particular effort. When there is doubt which Component has cognizance of the information involved, the matter shall be referred to the DUSD(P) for resolution.

(c) *Research, development, test, and evaluation.* A program security classification guide shall be developed for each system and equipment development program that involves research, development, test, and evaluation (RDT&E) of technical information. For each such program covered by an approved Decision Coordinating Paper (DCP) or Program Objective Memorandum (POM), initial basic classification guidance applicable to technical characteristics of the system or equipment shall be developed and submitted with the proposed DCP or POM to the Under Secretary of Defense for Research and Engineering for approval. A detailed classification guide shall be developed and issued as near in time as possible to the approval of the DCP or POM.

(d) *Project phases.* Whenever possible, classification guides shall cover specifically each phase of transition, that is, RDT&E, procurement, production, service use, and obsolescence, with changes in assigned classifications to reflect the changing sensitivity of the information involved.

(e) *Review of classification guides.* (1) Classification guides shall be reviewed by the originator for currency and accuracy not less than once every 2 years. Changes shall be issued promptly. If no changes are made, the originator shall so annotate the record copy and show the date of the review.

(2) Classification guides issued before August 1, 1982, that are in current use must be updated to meet the requirements of paragraph (a)(2) above. Such updating shall be accomplished by the next biennial review. Converting previous declassification determinations directed by classification guides shall be accomplished in accordance with the following:

(i) 1. Automatic declassification dates or events remain in force unless changed by competent authority in accordance with subsection 159.22(c).

(ii) 2. Dates for declassification review shall be changed to automatic declassification dates or provide for the indefinite duration of classification.

(f) *Distribution of classification guides.* (1) A copy of each approved classification guide and changes thereto other than those covering SCI shall be sent to the Director of Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), and to the Director of Information Security, ODUSD(P). A copy of each approved classification guide covering SCI shall be submitted to and maintained by the Senior Intelligence Officer who has security cognizance over the issuing activity.

(2) Two copies of each approved classification guide and its changes shall be sent by the originator to the Administrator, Defense Technical Information Center (DTIC), Defense Logistics Agency, unless such guide is classified Top Secret, or covers SCI, or

is determined by the approver of the guide to be too sensitive for automatic distribution to DoD Components. Each classification guide forwarded to DTIC must bear one of the following distribution limitation statements on its front cover or first page if there is no cover:

(i) "U.S. Gov't and its contractors."
(ii) "U.S. Gov't only."
(iii) "DoD and DoD contractors only."
(iv) "DoD only."

(g) *Index of security classification guides.* (1) All security classification guides, except as provided in subparagraph (g)(2) below, issued under this Regulation shall be listed in DoD 5200.1–I (§ 159.10 (o)), on the basis of information provided on DD Form 2024, "DoD Security Classification Guide Data Elements." The originator of each guide shall execute DD Form 2024 when the guide is approved, changed, revised, reissued, or canceled, and when its biennial review is accomplished. The original copy of each executed DD Form 2024 shall be forwarded to the Director of Information Security, ODUSD(P), who will maintain the Index. Report Control Symbol DD–POL (B&AR)1418 applies to this information collection system.

(2) Any classification guide that because of classification considerations is not listed in accordance with paragraph a., above, shall be reported by the originator to the Director of Information Security, ODUSD(P). The report shall include the title of the guide, its date, the classification of the guide, and identification of the originating activity. A separate classified list of such guides will be maintained. Report Control System DD–POL(B&AR)1418 applies to this information collection system.

§ 159.24 Resolution of conflicts.

(a) *General.* When two or more offices, headquarters, or activities disagree concerning a classification, declassification, or regrading action, the disagreement must be resolved promptly.

(b) *Procedures.* If agreement cannot be reached by informal consultation, the matter shall be referred for decision to the lowest superior common to the disagreeing parties. If agreement cannot be reached at the major command (or equivalent) level, the matter shall be referred for decision to the headquarters office having overall classification management responsibilities for the Component. That office shall also be advised of any disagreement at any echelon if prompt resolution is not likely to occur.

(c) *Final decision.* Disagreements between DoD Component headquarters, if not resolved promptly, shall be referred for final resolution to the ODUSD(P).

(d) *Timing.* Action under this section at each level of consideration shall be completed within 30 days. Failure to reach a decision within 30 days shall be cause for referral to the next level for consideration.

§ 159.25 Obtaining classification evaluations

(a) *Procedures.* If a person not authorized to classfiy originates or develops information that he or she believes should be safeguarded, he or she shall:

(1) Safeguard the information in the manner prescribed for the intended classification (see § 159.13(a)(2);

(2) Mark the information (or cover sheet) with the intended classification designation prescribed in section 5, Chapter I;

(3) Transmit the information under appropriate safeguards to an appropriate classification authority for evaluation. The transmittal shall state that the information is tentatively marked to protect it in transit. If such authority is not readily identifiable, the information should be forwarded to a headquarters activity of a DoD Component, to the headquarters office having overall classification management responsibilities for a DoD Component, or to the DUSD(P). A determination whether to classify the information shall be made within 30 days of receipt;

(4) Upon decision by the classifying authority, the tentative marking shall be removed. If a classification is assigned, appropriate markings shall be applied; but

(5) In an emergency requiring immediate communication of the information, after taking the action prescribed by paragraphs (a) and (b) of this section, transmit the information and then proceed in accordance with paragraph (a)(3) of this section.

§159.26 Information developed by private sources.

(a) *General.* There are some circumstances in which information not meeting the definition in subsection 159.12(e) may warrant protection in the interest of national security.

(b) *Patent Secrecy Act.* The Patent Secrecy Act of 1952 (§ 159.10 (l)) provides that the Secretary of Defense, among others, may determine that disclosure of an invention by granting of a patent would be detrimental to national security. See § 159.10 (p). A patent application on which a secrecy order has been imposed shall be handled as follows within the Department of Defense:

(1) If the patent application contains information that warrants classification, it shall be assigned a classification and be marked and safeguarded accordingly.

(2) If the patent application does not contain information that warrants classification, the following procedures shall be followed:

(i) A cover sheet (or cover letter for transmittal) shall be placed on the application with substantially the following language:

The attached material contains information on which secrecy orders have been issued by the U.S. Patent Office after determination that disclosure would be detrimental to national security (Patent Secrecy Act of 1952, 35 U.S.C. 181–188). Its transmission or revelation in any manner to an unauthorized person is prohibited by law. Handle as though classified CONFIDENTIAL (or such other classification as would have been assigned had the patent application been within the definition provided in subsection 159.12(e).

(ii) The information shall be withheld from public release; its dissemination within the Department of Defense shall be controlled; the applicant shall be instructed not to disclose it to any unauthorized person; and the patent application (or other document incorporating the protected information) shall be safeguarded in the manner prescribed for equivalent classified material.

(3) If filing of a patent application with a foreign government is approved under provisions of the Patent Secrecy Act of 1952 (§ 159.10 (l)) and agreements on interchange of patent information for defense purposes, the copies of the patent application prepared for foreign registration (but only those copies) shall be marked at the bottom of each page as follows:

Withheld under the Patent Secrecy Act of 1952 (35 U.S.C. 181–188).
Handle as CONFIDENTIAL (or such other level as has been determined).

(c) *Independent research and development.* (1) Information in a document or material that is a product of government-sponsored independent research and development conducted without access to classified information may not be classified unless the government first acquires a proprietary interest in such product.

(2) If no prior access was given but the person or company conducting the independent research or development believes that protection may be warranted in the interest of national

security, the person or company should safeguard the information in accordance with subsection § 159.25(a) and submit it to an appropriate DoD element for evaluation. The DoD element receiving such a request for evaluation shall make or obtain a determination whether a classification would be assigned if it were government information. If the determination is negative, the originator shall be advised that the information is unclassified. If the determination is affirmative, the DoD element shall make or obtain a determination whether a proprietary interest in the research and development will be acquired. If so, the information shall be assigned proper classification. If not, the orginator shall be informed that there is no basis for classification and the tentative classification shall be canceled.

(d) *Other private information.* The procedure specified in subsection §159.25(a) shall apply in any case not specified in paragraph (c) of this section, such as an unsolicited contract bid, in which private information is submitted to a DoD element for a determination of classification.

§ 159.27 Regrading.

(a) *Raising to a higher level of classification.* The upgrading of classified information to a higher level than previously determined by officials with appropriate classification authority and jurisdiction over the subject matter is permitted only when all known holders of the information (1) can be notified promptly of such action, and (2) are authorized access to the higher level of classification, or the information can be retrieved from those not authorized access to information at the contemplated higher level of classification.

(b) *Classification of information previously determined to be unclassified.* Unclassified information, once communicated as such, may be classified only when the classifying authority (1) makes the determination required for upgrading in subsection (a) of this section, (2) determines that control of the information has not been lost by such communication and can still be prevented from being lost; and (3) in the case of information released to secondary distribution centers, such as the DTIC, determines that no secondary distribution has been made and can still be prevented (see also § 159.21 (6) and (7)).

(c) *Notification.* All known holders of information that has been upgraded shall be notified promptly of the upgrading action.

(d) *Downgrading.* When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

§ 159.28 Industrial operations.

(a) *Classification in industrial operations.* Classification of information in private industrial operations shall be based only on guidance furnished by the government. Industrial management may not make original classification determinations and shall implement the classification decisions of the U.S. Government contracting authority.

(b) *Contract security classification specification.* DD Form 254, "Contract Security Classification Specification," shall be used to convey contractual security classification guidance to industrial management. DD Forms 254 shall be changed by the originator to reflect changes in classification guidance and reviewed for currency and accuracy not less than once every 2 years. Changes shall conform with this part and § 159.10 (e) and (f) and shall be provided to all holders of the DD Form 254 as soon as possible. When no changes are made as a result of the biennial review, the originator shall so notify all holders of the DD Form 254 in writing.

§ 159.29 [Reserved]

Subpart D—Declassification and Downgrading

§ 159.30 General Provisions.

(a) *Policy.* Information classified under E.O. 12356 (§ 159.10(b)) and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event that permits declassification. Information that continues to meet the classification requirements of § 159.21(c) despite the passage of time will continue to be protected in accordance with this Part.

(b) *Responsibility of officials.* Officials authorized under § 159.15(d) to declassify or downgrade information that is under the final classification jurisdiction of the Department of Defense shall take such action in accordance with this Subpart.

(c) *Declassification coordination.* DoD Component declassification review of classified information shall be coordinated with any other DoD or non-DoD office, Component, or agency that has a direct interest in the subject matter.

(d) *Declassification by the Director of the ISOO.* If the Director of the ISOO determines that information is classified in violation of § 159.10(b), the Director may require the activity that originally classified the information to declassify it. Any such decision by the Director may be appealed through the Director of Information Security, ODUSD(P), to the National Security Council (NSC). The information shall remain classified pending a prompt decision on the appeal.

§ 159.31 Systematic Review.

(a) *Assistance to the Archivist of the United States.* The Secretary of Defense and the Secretaries of the Military Departments shall designate experienced personnel to assist the Archivist of the United States in the systematic review of classified information. Such personnel shall:

(1) Provide guidance and assistance to National Archives and Records Service (NARS), General Services Administration (GSA) employees in identifying and separating documents and specific categories of information within documents that are deemed to require continued classification; and

(2) Refer doubtful cases to the DoD Component having classification jurisdiction over the information or material for resolution.

(b) *Systematic review guidelines.* The Director of Information Security, ODUSD(P), in coordination with DoD Components, shall review, evaluate, and recommend revisions of § 159.10(q) at least every 5 years.

(c) *Systematic review procedures.* (1) Except as noted in this subsection classified information transferred to the NARS, GSA, that is permanently valuable will be reviewed systematically for declassification by the Archivist of the United States with the assistance of the DoD personnel designated for that purpose under subsection 159.31 as it becomes 30 years old. Information concerning intelligence (including special activities), sources, or methods created after 1945, and information concerning cryptology created after 1945, accessioned into the NARS will be reviewed systematically as it becomes 50 years old. Such information shall be downgraded or declassified by the Archivist of the United States under E.O. 12356, the directives of the ISOO, and § 159.10(q).

(2) All DoD classified information that is permanently valuable and in the possession or control of DoD Components, including that held in Federal Records Centers or other storage areas, may be reviewed

systematically for declassification by the DoD Component exercising control of such information. Systematic declassification review conducted by DoD Components and personnel designated under subsection 159.31 shall proceed as follows:

(i) Information over which the Department of Defense exercises exclusive or final original classification authority and that under § 159.10(q), the responsible reviewer determines is to be declassified, shall be marked accordingly.

(ii) Information over which the Department of Defense exercises exclusive or final original classification authority that, after review, is determined to warrant continued protection shall remain classified as long as required by national security considerations.

(iii) Classified information over which the Department of Defense does not exercise exclusive or final original classification authority encountered during DoD systematic review may not be declassified unless specifically authorized by the agency having classification jurisdiction over it.

(d) *Systematic review of classified cryptologic information.* Notwithstanding any other provision of this Regulation, systematic review and declassification of classified cryptologic information shall be conducted in accordance with special procedures developed in consultation with affected agencies by the Director, National Security Agency/Chief, Central Security Service, and approved by the Secretary of Defense under E.O. 12356 and § 159.10 (b) and (q).

(e) *Systematic review of intelligence information.* Systematic review for declassification of classified information pertaining to intelligence activities (including special activities), or intelligence sources or methods shall be in accordance with special procedures to be established by the Director of Central Intelligence after consultation with affected agencies.

§ 159.32 Mandatory declassification review.

(a) *Information covered.* Upon request by a U.S. citizen or permanent resident alien, a federal agency, or a state or local government to declassify and release such information, any classified information (except as provided in paragraph (b)) shall be subject to review by the originating or responsible DoD Component for declassification in accordance with this section.

(b) *Presidential information.* Information originated by a President, the White House staff, committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempt from the provisions of this section.

(c) *Cryptologic information.* Requests for the declassification review of cryptologic information shall be processed in accordance with the provisions of § 159.10(q).

(d) *Submission of requests for mandatory declassification review.* Requests for mandatory review of DoD classified information shall be submitted as follows:

(1) Requests shall be in writing and reasonably describe the information sought with sufficient particularity to enable the Component to identify documents containing that information, and be reasonable in scope; for example, the request does not involve such a large number or variety of documents as to leave uncertain the identity of the particular information sought.

(2) Requests shall be submitted to the Office of the Assistant Secretary of Defense (Public Affairs) (ASD (PA)) (entry point for OSD records), the Military Department, or other Component most concerned with the subject matter that is designated under § 159.10(k) to receive requests for records under the Freedom of Information Act. These offices are identified in appropriate Parts of Title 32 of the Code of Federal Regulations for each DoD Component.

(e) *Requirements for processing.* Unless otherwise directed by the ASD(PA), requests for mandatory review shall be processed as follows:

(1) The designated office shall acknowledge receipt of the request. When a request does not satisfy the conditions of § 159.32(d)(1), the requester shall be notified that unless additional information is provided or the scope of the request narrowed, no further action will be undertaken.

(2) DoD Component action upon the initial request shall be completed within 60 days (45 working days). If no determination has been made within 60 days (45 working days) of receipt of the request, the requester shall be notified of his right to appeal and of the procedures for making such an appeal.

(3) The designated office shall determine whether, under the declassification provisions of this part, the requested information may be declassified, and, if so, make such information available to the requester, unless withholding is otherwise warranted under applicable law. If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reasons for denial, notice of the right to appeal the determination within 60 days (45 working days) to a designated appellate authority (including name, title, and address of such authority), and the procedures for such an appeal.

(4) When a request is received for information classified by another DoD Component or an agency outside the Department of Defense, the designated office shall:

(i) Forward the request to such DoD Component or outside agency for review together with a copy of the document containing the information requested, when practicable and when appropriate, with its recommendation to withhold any of the information;

(ii) Notify the requester of the referral unless the DoD Component or outside agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(iii) Request, when appropriate, that the DoD Component or outside agency notify the referring office of its determination.

(5) If the request requires the rendering of services for which fees may be charged under Title 5 of the Independent Offices Appropriation Act (§ 159.10(r)) in accordance with § 159.10 (s)), the DoD Component may calculate the anticipated amount of fees to be charged and ascertain the requester's willingness to pay the allowable charges as a precondition to taking further action upon the request.

(6) A requester may appeal to the head of a DoD Component or designee whenever that DoD Component has not acted on an initial request within 60 days or the requester has been notified that requested information may not be released in whole or in part. Within 30 days after receipt, an appellate authority shall determine whether continued classification of the requested information is required in whole or in part, notify the requester of its determination, and make available to the requester any information determined to be releasable. If continued classification is required under this Regulation, the requester shall be notified of the reasons therefor. If so requested, and appellate authority shall communicate its determination to any referring DoD Component or outside agency.

(7) The ASD(PA) shall act as appellate authority for all appeals regarding OSD, OJCS, and Unified Command records.

(f) *Foreign government information.* Requests for mandatory review for the

declassification of foreign government information shall be processed and acted upon under the provisions of this section subject to subsection 159.111(c).

(g) *Prohibition.* No DoD Component in possession of a document shall in response to a request under the Freedom of Information Act or this section refuse to confirm the existence or nonexistence of the document, unless the fact of its existence or nonexistence would itself be classifiable under this Part.

(h) *Restricted data and formerly restrictecd data.* Any proposed action on a request, including requests from Presidential libraries, for DoD classified documents that are marked "Restricted Data" or "Formerly Restricted Data" must be coordinated with the Department of Energy.

§ 159.33 Declassification of transferred documents or material.

(a) *Material officially transferred.* In the case of classified information or material transferred under statute, E.O., or directive from one department or agency or DoD Component to another in conjunction with a transfer of functions, as distinguished from transfers merely for purposes of storage, the receiving department, agency, or DoD Component shall be deemed to be the original classifying authority over such material for purposes of downgrading and declassification.

(b) *Material not officially transferred.* When a DoD Component has in its possession classified information or material originated in an agency outside the Department of Defense that has ceased to exist and such information or material has not been transferred to another department or agency within the meaning of § 159.33(a), or when it is impossible to identify the orginating agency, the DoD Component shall be deemed to be the originating agency for the purpose of declassifying or downgrading such information or material. If it appears probable that another department, agency, or DoD Component may have a substantial interest in the classification of such information, the DoD Component deemed to be the originating agency shall notify such other department, agency, or DoD Component of the nature of the information or material and any intention to downgrade or declassify it. Until 60 days after notification, the DoD Component shall not declassify or downgrade such information or material without consulting the other department, agency, or DoD Component. During this period, the other department, agency, or DoD Component may express objections to downgrading or declassifying such information or material.

(c) *Transfer for storage or retirement.* Whenever practicable, classified documents shall be reviewed for downgrading or declassification before they are forwarded to a Records Center for storage or to the NARS for permanent preservation. Any downgrading or declassification determination shall be indicated on each document by markings as required by Subpart E.

§ 159.34 Downgrading.

(a) *Automatic downgrading.* Classified information marked for automatic downgrading in accordance with this or prior regulations or E.O.s is downgraded accordingly without notification to holders.

(b) *Downgrading upon reconsideration.* Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information (see § 159.15(d)). Prompt notice of such downgrading shall be provided to known holders of the information.

§ 159.35 Miscellaneous.

(a) *Notification of changes in declassification.* When classified material has been properly marked with specific dates or events for declassification, it is not necessary to issue notices of declassification to any holders. However, when declassification action is taken earlier than originally scheduled, or the duration of classification is extended, the authority making such changes shall ensure prompt notification of all holders to whom the information was originally transmitted. The notification shall specify the marking action to be taken, the authority therefor, and the effective date. Upon receipt of notification, recipients shall effect the proper changes and shall notify holders to whom they have transmitted the classified information. See § 159.43 (a) and (b) for markings and the use of posted notices.

(b) *Foreign relations series.* In order to permit the State Department editors of *Foreign Relations of the United States* to meet their mandated goal of publishing twenty years after the event, DoD Components shall assist the editors in the Department of State by easing access to appropriate classified materials in their custody and by expediting declassification review of items from their files selected for possible publication.

(c) *Reproduction for declassification review.* The provisions of § 159.71(j) shall not restrict the reproduction of documents for the purpose of facilitating declassification review under the provisions of this Chapter or the Freedom of Information Act, as amended (§ 159.10(k)). After review for declassification, however, those reproduced documents that remain classified must be destroyed in accordance with Subpart J.

Subpart E—Marking

§ 159.40 General Provisions.

(a) *Designation.* Subject to the exceptions in paragraph (c) of this section, information determined to require classification protection under this part shall be so designated. Designation by means other than physical marking may be used but shall be followed by physical marking as soon as possible.

(b) *Purpose of designation.* Designation by physical marking, notation, or other means serves to warn the holder about the classification of the information involved; to indicate the degree of protection against unauthorized disclosure that is required for that particular level of classification; and to facilitate downgrading and declassification actions.

(c) *Exceptions.* (1) No article that has appeared, in whole or in part, in newspapers, magazines or elsewhere in the public domain, or any copy thereof, that is being reviewed and evaluated to compare its content with classified information that is being safeguarded in the Department of Defense by security classification, may be marked with any security classification, control or other kind of restrictive marking. The results of the review and evaluation, if classified, shall be separate from the article in question.

(2) Classified documents and material shall be marked in accordance with paragraph (d) of this section unless the markings themselves would reveal a confidential source or relationship not otherwise evident in the document, material, or information.

(3) The marking requirements of paragraph (d)(1)(iv) and (d)(2)(iv) do not apply to documents or other material that contain, in whole or in part, Restricted Data or Formerly Restricted Data information. Such documents or other material or portions thereof shall not be declassified without approval of the Department of Energy with respect to Restricted Data or Formerly Restricted Data information, and with respect to any other national security information contained therein, the approval of the originating agency.

(d) *Documents or other material in general.* (1) At the time of original classification, the following shall be shown on the face of all originally classified documents (see § 159.43(c)) or clearly associated with other forms of classified information in a manner appropriate to the medium involved:

(i) The identity of the original classification authority by position title, unless he or she is the signer or approver of the document;

(ii) The agency and office of origin;

(iii) The overall classification of the document (see § 159.14);

(iv) The date or event for automatic declassification or the notation "Originating Agency's Determination Required" or "OADR"; and, if applicable,

(v) Any downgrading action to be taken and the date or event thereof.

(2) At the time of derivative classification, the following shall be shown on the face of all derivatively classified documents (see § 159.43) or clearly associated with other forms of classified information in a manner appropriate to the medium involved:

(i) The source of classification, that is, a source document or classification guide. If classification is derived from more than one source, the phrase "Multiple Sources" will be shown and the identification of each source will be maintained with the file or record copy of the document;

(ii) The agency and office of origin of the derivatively classified document;

(iii) The overall classification of the document (see subsection 1–500);

(iv) The date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR," carried forward from the classification source. If the classification is derived from multiple sources, either the most remote date or event for declassification marked on the sources or if required by any source, the notation "Originating Agency's Determination Required" or "OADR" shall be shown (also see § 159.43(b)); and, if applicable,

(v) Any downgrading action to be taken and the date or event thereof.

(3) In addition to the foregoing, classified documents shall be marked as prescribed in § 41 of this subpart, Subpart L document contains foreign government information, and with any applicable special notation listed in § 44 of this subpart. Such notations shall be carried forward from source documents to derivatively classified documents when appropriate.

(4) Material other than paper documents shall show the required information on the material itself or if that is not practical, in related or accompanying documentation (see § 159.42).

(e) *Identification of classification authority.* (1) Identification of a classification authority shall be shown on the "Classified by" line prescribed under subsection § 159.43 and shall be sufficient, standing alone, to identify a particular official, source document or classification guide.

(i) If any information in a document or material is classified as an act of original classification, the classification authority who made the determination shall be identified on the "Classified by" line, unless the classifier is also the signer or approver of the document (see § 159.43(c)).

(ii) If the classification of all information in a document or material is derived from a single source (for example, a source document or classification guide), the "Classified by" line shall identify the source document or classification guide, including its date when necessary to insure positive identification (§ 159.43(c)).

(iii) If the classification of information contained in a document or material is derived from more than one source document, classification guide, or combination thereof, the "Classified by" line shall be marked "Multiple Sources" and identification of all such sources shall be maintained with the file or record copy of the document (see § 159.43(c)).

(iv) If an official with requisite classification authority has been designated by the head of an activity to approve security classifications assigned to all information leaving the activity, the title of that designated official shall be shown on the "Classified by" line. The designated official shall maintain records adequate to support derivative classification actions (see § 159.43(c)).

(2) Guidance concerning the identification of the classification authority on electronically transmitted messages is contained in § 159.41(h).

(f) *Wholly unclassified material.* Normally, unclassified material shall not be marked or stamped "Unclassified" unless it is essential to convey to a recipient of such material that it has been examined with a view to imposing a security classification and that is has been determined that it does not require classification.

§ 159.41 Specific markings on documents.

(a) *Overall and page marking.* Except as otherwise specified for working papers (see § 159.72(e)), the overall classification of a document, whether or not permanently bound, or any copy or reproduction thereof, shall be conspicuously marked, stamped or affixed permanently at the top and bottom on the outside of the front cover (if any), on the title page (if any), on the first page, and on the outside of the back cover (if any). Each interior page shall be marked top and bottom according to its content. Alternatively, the overall classification of the document may be conspicuously marked or stamped at the top and bottom of each interior page when such marking is necessary to achieve production efficiency and the particular information to which classification is assigned is otherwise sufficiently identified consistent with the intent of paragraph (c) of this section. In any case, the classification marking of a page shall not supersede the classification marking of portions (paragraph (c) of this section) of the page marked with lower levels of classification.

(b) *Marking components.* The major components of some complex documents are likely to be used separately. In such instances, each major component shall be marked as a separate document in accordance with § 159.20 of this subpart. Examples include each annex, appendix, or similar component of a plan, program or operations order; attachments and appendices to a memorandum or letter; each major part of a report.

(c) *Portion marking.* (1) Each section, part, paragraph, or similar portion of a classified document shall be marked to show the level of classification of the information contained in or revealed by it, or that it is unclassified. Portions of documents shall be marked in a manner that eliminates doubt as to which of its portions contains or reveals classified information. Classification levels of portions of a document, except as provided in paragraph (e) of this section shall be shown by the appropriate classification symbol placed immediately following the portion's letter or number, or in the absence of letters or numbers, immediately before the beginning of the portion. In marking sections, parts, paragraphs, or similar portions, the parenthetical symbols "(TS)" for Top Secret, "(S)" for Secret, "(C)" for Confidential, and "(U)" for unclassified, shall be used. When appropriate, the symbols "RD" for Restricted Data and "FRD" for Formerly Restricted Data shall be added, for example, "(S–RD)" or "(C–FRD)." In addition, portions that contain Critical Nuclear Weapon Design Information (CNWDI) will be marked "(N)" following the classification, for example, "(S–RD)(N)."

(2) Portion marking of DoD documents containing foreign government information shall be in accordance with § 159.111(e).

(3) Illustrations, photographs, figures, graphs, drawings, charts and similar portions of classified documents will be clearly marked to show their classification or unclassified status. Such markings shall not be abbreviated and shall be prominent and placed within or contiguous to the portion. Captions of such portions shall be marked on the basis of their content alone by placing the symbol "(TS)," "(S)," "(C)," or "(U)" immediately preceding the caption.

(4) If, in an exceptional situation, parenthetical portion marking is determined to be impracticable, the document shall contain a statement sufficient to identify the information that is classified and the level of such classification. Thus, for example, each portion of a classified document need not be separately marked if all portions are classified at the same level, provided a statement to that effect is included in the document.

(5) When elements of information in one portion require different classifications, but segregation into separate portions would destroy continuity or context, the highest classification required for any item shall be applied to that portion or paragraph.

(6) Waivers of the foregoing portion marking requirements may be granted for good cause. Any request by a DoD Component senior official (see § 159.132(b)(c)) for a waiver of portion marking requirements shall be submitted to the DUSD(P) and include the following: (i) identification of the information or class of documents for which such waiver is sought; (ii) detailed explanation of why the waiver should be granted; (iii) the Component's judgment of the anticipated dissemination of the information or class of documents for which the waiver is sought, and (iv) the extent to which such information subject to the waiver may be a basis for derivative classification. Waivers shall be granted only upon a written determination by the DUSD(P) as the designee of the Secretary of Defense, that there will be minimal circulation of the specified documents or information, and minimal potential usage of these documents or information as a source for derivative classification determinations; or there is some other basis to conclude that the benefits of portion marking are clearly outweighed by the increased administrative burdens. The granting and revocation of portion marking waivers shall be reported to the Director of the ISOO by the DUSD(P).

(d) *Compilations.* When classification is required to protect a compilation of information under § 159.21(l), the overall classification assigned to such documents shall be placed conspicuously at the top and bottom of each page and on the outside of the front and back covers, if any, and an explanation of the basis for the assigned classification shall be included on the document or in its text.

(e) *Subjects and titles of documents.* Subjects or titles of classified documents shall be marked with the appropriate symbol, "(TS)," "(S)," "(C)," or "(U)" placed immediately following and to the right of the item. When applicable, other appropriate symbols, for example, "(RD)" or "(FRD)," shall be added.

(f) *File, folder, or group of documents.* When a file, folder, or group of classified documents is removed from secure storage it shall be marked conspicuously with the highest classification of any classified document included therein or shall have an appropriate classified document cover sheet affixed.

(g) *Transmittal documents.* A transmittal document, including endorsements and comments when such endorsements and comments are added to the basic communication, shall carry on its face a prominent notation of the highest classification of the information transmitted by it, and a legend showing the classification, if any, of the transmittal document, endorsement, or comment standing alone. For example, an unclassified document that transmits as an attachment a classified document shall bear a notation substantially as follows: "Unclassified When Separated From Classified Enclosure." (See also § 159.44(a)(1).)

(h) *Electronically transmitted messages.* (1) The copy of a classified message (for example, DD Form 173, Joint Messageform) approved for electronic transmission and maintained as the record copy shall be marked as required by § 159.40(d) for other documents. Additionally, copies not electronically transmitted (such as, mail and courier copies) shall be marked as required by § 159.40(d).

(2) The first item of information in the text of a classified electronically transmitted message shall be its overall classification. Paper copies of classified electronically transmitted messages shall be marked at the top and bottom with the assigned classification. Portions shall be marked as prescribed herein for paper copies of documents. When such messages are printed by an automated system, classification markings may be applied by that system, provided that page markings so applied are clearly distinguishable on the face of the document from the printed text.

(3) The originator of a classified electronically transmitted message shall be considered the accountable classifier under § 159.20(a). The highest level official identified on the message as the sender or, in the absence of such identification, the head of the organization originating the message, is deemed to be the classifier of the message. Thus, a "Classified by" line is not required on such messages. The originator is responsible for maintaining adequate records as required by § 159.40(d) to show the source of an assigned derivative classification.

(4) The last line of text of a classified electronically transmitted message shall show the date or event for downgrading, if appropriate, and the date or event for automatic declassification or "Originating Agency's Determination Required," by abbreviated markings from § 159.43(c). The foregoing is not required for messages that contain information identified as Restricted Data or Formerly Restricted Data.

(5) Any document, the classification of which is based solely upon the classification of the content of a classified electronically transmitted message, shall cite the message on the "Classified by" line of the newly created document.

(i) *Translations.* Translations of U.S. classified information into a language other than English shall be marked to show the United States as the country of origin, with the appropriate U.S. classification markings and the foreign language equivalent thereof (see Appendix A).

§ 159.42 Markings on special categories of material.

(a) *General provisions.* Security classification and applicable associated markings (§§ 159.40(d) and 159.42(j)) assigned by the classifier shall be conspicuously stamped, printed, written, painted, or affixed by means of a tag, sticker, decal, or similar device, on classified material other than paper copies of documents, and on containers of such material, if possible. If marking the material or container is not practicable, written notification of the security classification and applicable associated markings shall be furnished to recipients. The following procedures for marking various kinds of material containing classified information are not all inclusive and may be varied to

accommodate the physical characteristics of the material containing the classified information and to accommodate organizational and operational requirements.

(b) *Charts, maps, and drawings.* Charts, maps, and drawings shall bear the appropriate classification marking for the legend, title, or scale blocks in a manner that differentiates between the overall classification of the document and the classification of the legend or title itself. The higher of these markings shall be inscribed at the top and bottom of each such document. When folding or rolling charts, maps, or drawings would cover the classification markings, additional markings shall be applied that are clearly visible when the document is folded or rolled. Applicable associated markings shall be included in or near the legend, title, or scale blocks.

(c) *Photographs, films, and recordings.* Photographs, films (including negatives), recordings, and their containers shall be marked to assure that a recipient or viewer will know that classified information of a specified level of classification is involved.

(1) *Photographs.* Negatives and positives shall be marked, whenever practicable, with the appropriate classification designation and applicable associated markings. Roll negatives or positives may be so marked at the beginning and end of each strip. Negatives and positives shall be kept in containers bearing conspicuous classification markings. All prints and reproductions shall be conspicuously marked with the appropriate classification designation and applicable associated markings on the face side of the print if possible. When such markings cannot be applied to the face side, they may be stamped on the reverse side or affixed by pressure tape label, stapled strip, or other comparable means. (NOTE: When self-processing film of paper is used to photograph or reproduce classified information, all parts of the last exposure shall be removed from the camera and destroyed as classified waste, or the camera shall be protected as classified.)

(2) *Transparencies and slides.* Applicable classification markings shall be shown clearly on the image of each transparency or slide, if possible, or on its border, holder, of frame. Other applicable associated markings shall be shown on the border, holder, or frame.

(3) *Motion picture films.* Classified motion picture films and video tapes shall be marked at the beginning and end of each reel by titles bearing the appropriate classification and applicable associated markings. Such markings shall be visible when projected. Reels shall be kept in containers bearing conspicuous classification and applicable associated markings.

(4) *Recordings.* Sound, magnetic, or electronic recordings shall contain at the beginning and end a clear statement of the assigned classification that will provide adequate assurance that any listener or viewer will know that classified information of a specified level is involved. Recordings shall be kept in containers or on reels that bear conspicuous classification and applicable associated markings.

(5) *Microforms.* Microforms are images, usually produced photographically on transparent or opaque materials, in sizes too small to be read by the unaided eye. Accordingly, the assigned security classification and abbreviated applicable associated markings shall be conspicuously marked on the microform medium or its container, so as to be readable by the unaided eye. These markings shall also be included on the image so that when the image is enlarged and displayed or printed, the markings will be conspicuous and readable. Such marking will be accomplished as appropriate for the particular microform involved. For example, roll film microforms (or roll microfilm employing 16, 35, 70, or 105 mm films) may generally be marked as provided for roll motion picture film in paragraph (d) of this section and decks of "aperture cards" may be marked as provided in paragraph (c)(3) of this section for decks of automatic data processing punched cards. Whenever possible, microfiche, microfilm strips, and microform chips shall be marked in accordance with this paragraph.

(d) *Decks of ADP punched cards.* When a deck of classified ADP punched cards is handled and controlled as a single document, only the first and last card require classification markings. An additional card shall be added (or the job control card modified) to identify the contents of the deck and the highest classification therein. Such additional card shall include applicable associated markings. Cards removed for separate processing or use and not immediately returned to the deck shall be protected to prevent compromise of any classified information contained therein, and for this purpose shall be marked individually as prescribed in § 159.41.

(e) *Removal ADP and word processing storage media.*—(1) *External.* Removable information storage media and devices, used with ADP systems and typewriters or word processing systems, shall bear external markings clearly indicating the classification of the information and applicable associated markings. Included are media and devices that store information recorded in analog or digital form and that are generally mounted or removed by the users or operators. Examples include magnetic tape reels, cartridges, and cassettes; removable discs, disc cartridges, disc packs and diskettes; paper tape reels; and magnetic cards.

(2) *Internal.* ADP systems and word processing systems employing such media shall provide for internal classification marking to assure that classified information contained therein that is reproduced or generated, will bear applicable classification and associated markings. An exception may be made by the DoD Component head, or designee, for the purpose of exempting existing word processing systems when the internal classification and applicable associated markings cannot be implemented without extensive system modification, provided procedures are established to ensure that users and recipients of the media, or the information therein, are clearly advised of the applicable classification and associated markings. For ADP systems, exceptions may be authorized by the DoD Component Designated Approving Authority or Authorities, designated under 159.10(h). For purposes of these exemption provisions, "existing systems" means word processing and ADP systems already acquired, or, in the case of associated automated information systems, those for which the life cycle management process has already progressed beyond the "definition/design" phase as set forth in § 159.10(t). Requirements for the security of nonremovable ADP storage media and clearance or declassification procedures for various ADP storage media are contained in §159.10(i).

(f) *Documents produced by ADP equipment.* At a minimum, the first page, and the front and back covers, if any, of documents produced by ADP equipment shall be marked as prescribed in § 159.41(a). Classification markings of interior pages may be applied by the ADP equipment or by other means. When the application of associated markings prescribed by §159.40(d) by the ADP equipment is not consistent with economical and efficient use of such equipment, such markings may be applied to a document produced by ADP equipment by superimposing upon the first page of such document a "Notice of Declassification Instructions and Other Associated Markings." Such notice shall include the date or event for declassification or the notation

"Originating Agency's Determination Required" or "OADR" and all other such applicable markings. If individual pages of a document produced by ADP equipment are removed or reproduced for distribution to other users, each such page or group of pages shall be marked as prescribed in § 159.40(d) or by superimposing on each such page or group of pages, a copy of any "Notice of Declassification Instructions and Other Associated Markings" applicable to such page or group of pages.

(g) *Material for training purposes.* In using unclassified documents or material to simulate classified documents or material for training purposes, such documents or material shall be marked clearly to indicate the actual unclassified status of the information, for example, "(insert classification designation) for training, otherwise unclassified" or "Unclassified Sample."

(h) *Miscellaneous material.* Documents and material such as rejected copy, typewriter ribbons, carbons, and similar items developed in connection with the handling, processing, production, and of use classified information shall be handled in a manner that assures adequate protection of the classified information involved and destruction at the earliest practicable time (see § 159.51). Unless a requirement exists to retain this material or documents for a specific purpose, there is no need to mark, stamp, or otherwise indicate that the information is classified.

(i) *Special access program documents and material.* Additional markings as prescribed in directives, regulations and instructions relating to an approved Special Access Program shall be applied to documents and material containing information subject to the special access program. Such additional markings shall not serve as the sole basis for continuing classification of the documents or material to which the markings have been applied. When appropriate, such markings shall be excised to ease timely declassification, downgrading, or removal of the information from special control procedures.

(j) *Associated markings.* Other applicable associated markings required for documents by § 159.40(d) shall be accomplished as prescribed in this section or in any other appropriate manner.

§ 159.43 Classification authority, duration, and change in classification markings.

(a) *Declassification and regrading marking procedures.* Whenever classified information is downgraded or declassified earlier than originally scheduled, or upgraded, the material shall be marked promptly and conspicuously to indicate the change, the authority for the action, the date of the action and the identity of the person taking the action. In addition, except for upgrading (see paragraph (d) of this section) prior classification markings shall be canceled, if practicable, but in any event those on the first page, and the new classification markings, if any, shall be substituted. When classified information is downgraded or declassified in accordance with the assigned downgrading and declassification markings, such markings shall be a sufficient notation of the authority for such action.

(b) *Applying derivative declassification dates.* (1) New material that derives its classification from information classified on or after August 1, 1982, shall be marked with the declassification date, event, or the notation "Originating Agency's Determination Required" or "OADR" assigned to the source information.

(2) New material that derives its classification from information classified prior to August 1, 1982, shall be treated as follows:

(i) If the source material bears a declassification date or event, that date or event shall be carried forward to the new material;

(ii) If the source material bears no declassification date or event, or bears an indeterminate date or event such as "Upon Notification by Originator," "Cannot Be Determined," or "Impossible to Determine," or is marked for declassification review, the new material shall be marked with the notation "Originating Agency's Determination Required" or "OADR"; or

(iii) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification review, the new material shall be marked with the notation "Originating Agency's Determination Required" or "OADR."

(3) New material that derives its classification from a classification guide issued prior to August 1, 1982, that has not been updated to conform with this Part shall be treated as follows:

(i) If the guide specifies a declassification date or event, that date or event shall be applied to the new material; or

(ii) If the guide specifies a declassification review date, the notation "Originating Agency's Determination Required" or "OADR" shall be applied to the new material.

(c) *Commonly used markings.* Each classified document is marked on its face with one or more of the following markings:

(1) *Original Classification.* The following markings are used in original classification § 159.40(d)(1):

Classified by——————(*See Note 1*)
Declassify on——————(*See Note 2*)
Message Abbreviation:
DECL——————(*See Note 3*)

(2) *Derivative Classification.* The following markings are used in derivative classification (§ 159.40 (d)(2)):

Classified by——————(*See Note 4*)
Declassify on——————(*See Note 5*)
Message Abbreviation:
DECL——————(*See Note 3*)

(3) *Downgrading.* The following marking is used to specify a downgrading § 159.40(d)(1) and (2):

Downgrade to——————on ——————
(*See Note 6*)
Message Abbreviation:
DNG——————(*See Note 7*)

(4) There is no requirement for adding declassification instructions on documents with Restricted Data or Formerly Restricted Data markings (see § 159.40(c)(3), and § 159.44 (b) and (c). Except for electronically transmitted messages, only a completed "Classified by" line is added to documents so marked.

(5) Electronically transmitted messages do not require a "classified by" line (see § 159.41(5)).

Note 1: Insert identification (position title) of the original classification authority. This line may be omitted if the original classification authority is also the signer or approver of the document.

Note 2: Insert the specific date, an event certain to occur, or the notation "Originating Agency's Determination Required" or "OADR."

Note 3: Insert day, month, and year for declassification, for example, "6 Jun 86," an event certain to occur, or "OADR."

Note 4: Insert identity of the single security classification guide, source document, or other authority for the classification. If more than one such source is applicable, insert the phrase "Multiple Sources."

Note 5: Insert the specific date or event for declassification or the notation "Originating Agency's Determination Required" or "OADR." When multiple sources are used, either the most remote date or event for declassification marked on the sources or, if present on any source, the notation "Originating Agency's Determination Required" or "OADR" is applied to the new document.

Note 6: Insert Secret or Confidential and specific date or event, for example, "Downgrade to *CONFIDENTIAL* on *6 July 1985.*"

Note 7: Insert "S" or "C" to indicate the downgraded classification and specific date or event, for example, "DNG/C/6 Jun 84."

(d) *Upgrading.* When material is upgraded it shall be promptly and conspicuously marked as prescribed in § 159.43 except that in all such cases the old classification markings shall be canceled and new markings substituted.

(e) *Limited use of posted notice for large quantities of material.* (1) When the volume of material is such that prompt remarking of each classified item cannot be accomplished without unduly interfering with operations, the custodian may attach downgrading and declassification notices to the storage unit instead of the remarking required by § 159.43(a). Each notice shall specify the authority for the downgrading or declassification action, the date of the action, and the storage unit to which it applies.

(2) When individual documents or materials are premanently withdrawn from storage units, they shall be remarked promptly as prescribed by § 159.43(a). However, when documents or materials subject to a downgrading or declassification notice are withdrawn from one storage unit solely for transfer to another, or a storage unit containing such documents or materials is transferred from one place to another, the transfer may be made without remarking if the notice is attached to or remains with each shipment.

§ 159.44 Additional warning notices.

(a) *General provisions.* (1) In addition to the marking requirements prescribed in § 159.40(d), the warning notices prescribed in this section shall be prominently displayed on classified documents or materials, when applicable. In the case of documents, these warning notices shall be marked conspicuously on the outside of the front cover, or on the first page if there is no front cover. Transmittal documents, including those that are unclassified § 159.41(g), shall also bear these additional warning notices, when applicable.

(2) When display of warning notices on other materials is not possible, their applicability to the information shall be included in the written notification of the assigned classification.

(b) *Restricted data.* Classified documents or material containing Restricted Data as defined in the Atomic Energy Act of 1954, as amended (§ 159.10(g)), shall be marked as follows:

"Restricted Data"

"This material contains Restricted Data as defined in the Atomic Energy Act of 1954. Unauthorized disclosure subject to administrative and criminal sanctions."

(c) *Formerly restricted data.* Classified documents or material containing Formerly Restricted Data, as defined in Section 142.d, Atomic Energy Act of 1954, as amended (reference (g)), but no Restricted Data, shall be marked as follows:

"Formerly Restricted Data"

"Unauthorized disclosure subject to administrative and criminal sanctions. Handle as Restricted Data in foreign dissemination. Section 144.b, Atomic Energy Act, 1954."

(d) *Intelligence sources and methods information.* (1) Documents that contain information relating to intelligence sources or methods shall include the following marking unless otherwise proscribed by (§ 159.10(u)):

"Warning Notice—Intelligence Sources or Methods Involved"

(2) Existing stamps or preprinted labels containing the caveat "Warning Notice—Intelligence Sources and Methods Involved" may be used on documents created on or after the effective date of this Regulation until replacement is required. Any replacement or additional stamps or labels purchased after the affective date of this Regulation shall conform to the wording of paragraph (1), above.

(e) *Comsec material.* Before release to contractors, Comsec documents will indicate on the title page, or first page if no title page exists, the following notation:

"Comsec Material—Access by Contractor Personnel Restricted to U.S. Citizens Holding Final Government Clearance."

This notation shall be placed on Comsec documents or material when originated and when release to contractors can be anticipated. Other Comsec documents or material shall be marked in accordance with (§ 159.10(v)). Foreign dissemination of Comsec information is governed by (§ 159.10(w)).

(f) *Dissemination and reproduction notice.* Classified information that the DoD originator has determined to be subject to special dissemination or reproduction limitations, or both, shall include, as applicable, a statement or statements on its cover sheet, first page or in the text, substantially as follows:

"Reproduction requires approval of originator or higher DoD authority."

"Further dissemination only as directed by *(insert appropriate office or official)* or higher DoD authority."

(g) *Other notations.* Other notations of restrictions on reproduction, dissemination or extraction of classified information may be used as authorized by § 159.10 (x), (u), (y), (z), (q), (aa), and (bb) respectively.

§ 159.45 Remarking old material.

(a) *General.* (1) Documents and material classified under E.O. 12065 (§ 159.10 (cc)) and predecessor E.Os. that are marked for automatic downgrading or automatic declassification on a specific date or event shall be downgraded and declassified pursuant to such markings. Such documents or material need not be remarked. Information extracted from these documents or material for use in new documents or material shall be marked for declassification on the date specified in accordance with § 159.40 (d)(2).

(2) Documents and material classified under § 159.10 (cc) and predecessor E.Os. that are not marked for automatic downgrading or automatic declassification on a specific date or event shall not be downgraded or declassified without authorization of the originator. Such documents or material need not be remarked. Information extracted from these documents or material for use in new documents or material shall be marked for declassification upon the determination of the originator, that is, the "Declassify on" line shall be completed with the notation "Originating Agency's Determination Required" or "OADR" in accordance with § 159.40(d)(2)

(b) *Earlier declassification and extension of classification.* Nothing in this section shall be construed to preclude declassification under Subpart 1 or subsequent extension of classification under § 159.22(c).

§ 159.46 [Reserved]

Subpart F—Safekeeping and Storage

§ 159.50 Storage and storage equipment.

(a) *General policy.* Classified information shall be stored only under conditions adequate to prevent unauthorized persons from gaining access. The requirements specified in this Regulation represent the minimum acceptable security standards. DoD policy concerning the use of force for the protection of property or information is specified in § 159.10(dd)).

(b) *Standards for storage equipment.* The GSA establishes and publishes minimum standards, specifications, and supply schedules for containers, vaults, alarm systems, and associated security devices suitable for the storage and protection of classified information. Heads of DoD Components may establish additional controls to prevent unauthorized access. Security filing cabinets conforming to federal specifications bear a Test Certification

Label on the locking drawer, attesting to the security capabilities of the container and lock. (On some older cabinets the label was affixed on the inside of the locked drawer compartment). Cabinets manufactured after February 1962 indicate "General Services Administration Approved Security Container" on the outside of the top drawer.

(c) *Storage of classified information.* Classified information that is not under the personal control and observation of an authorized person, will be guarded or stored in a locked security container as prescribed below:

(1) *Top Secret.* Top Secret information shall be stored in:

(i) A safe-type steel file container having a built-in, three-position, dial-type combination lock approved by the GSA or a Class A vault or vault type room that meets the standards established by the head of the DoD Component concerned. When located in buildings, structural enclosures, or other areas not under U.S. Government control, the storage container, vault, or vault-type room must be protected by an alarm system or guarded during nonoperative hours.

(ii) An alarmed area, provided such facilities are adjudged by the local responsible official to afford protection equal to or better than that prescribed in (1)(i), above. When an alarmed area is used for the storage of Top Secret material, the physical barrier must be adequate to prevent (A) surreptitious removal of the material, and (B) observation that would result in the compromise of the material. The physical barrier must be such that forcible attack will give evidence of attempted entry into the area. The alarm system must provide immediate notice to a security force of attempted entry. Under field conditions, the field commander will prescribe the measures deemed adequate to meet the storage standards contained in paragraph (c)(1)(i) and (ii), above.

(2) *Secret and confidential.* Secret and Confidential information shall be stored in the manner prescribed for Top Secret; or in a Class B vault, or a vault-type room, strong room, or secure storage room that meets the standards prescribed by the head of the DoD Component; or, until phased out, in a steel filing cabinet having a built-in, three-position, dial type combination lock; or, as a last resort, an existing steel filing cabinet equipped with a steel lock bar, provided it is secured by a GSA-approved changeable combination padlock. In this latter instance, the keeper or keepers and staples must be secured to the cabinet by welding, rivets, or peened bolts and DoD Components must prescribe supplementary controls to prevent unauthorized access.

(3) *Specialized security equipment.* (i) *Field safe and one-drawer container.* One-drawer field safes, and GSA approved security containers are used primarily for storage of classified information in the field and in transportable assemblages. Such containers must be securely fastened or guarded to prevent their theft.

(ii) *Map and plan file.* A GSA-approved map and plan file has been developed for storage of odd-sized items such as computer cards, maps, and charts.

(4) *Other storage requirements.* Storage areas for bulkly material containing classified information, other than Top Secret, shall have access opening secured by GSA-approved changeable combination padlocks (federal specification FF–P110 series) of key-operated padlocks with high security cylinders (exposed shackle, military specification P–43951 series, or shrouded shackle, military specification P–43607 series).

(i) When combination padlocks are used, the provisions of (e) of this section apply.

(ii) When key-operated high security padlocks are used, keys shall be controlled as classified information with classification equal to that of the information being protected and:

(A) A key and lock custodian shall be appointed to ensure proper custody and handling of keys and locks;

(B) A key and lock control register shall be maintained to identify keys for each lock and their current location and custody;

(C) Keys and locks shall be audited each month;

(D) Keys shall be inventoried with each change of custodian;

(E) Keys shall not be removed from the premises;

(F) Keys and spare locks shall be protected in a secure container;

(G) Locks shall be changed or rotated at least annually, and shall be replaced upon loss or compromise of their keys; and

(H) Master keying is prohibited.

(d) *Procurement and phase-in of new storage equipment.*—(1) *Preliminary survey.* DoD activities shall not procure new storage equipment until:

(i) A current survey has been made of on-hand security storage equipment and classified records; and

(ii) Based upon the survey, it has been determined that it is not feasible to use available equipment or to retire, return, declassify or destroy enough records on hand to make the needed security storage space available.

(2) *Purchase of new storage equipment.* New security storage equipment shall be procured from those items listed on the GSA Federal Supply Schedule. Exceptions may be made by heads of DoD Components, with notification to the DUSD(P).

(3) Nothing in this chapter shall be construed to modify existing Federal Supply Class Management Assignments made under § 159.10(ee).

(e) *Designations and combinations.*—(1) *Numbering and designating storage facilities.* There shall be no external mark as to the level of classified information authorized to be stored therein. For identification purposes each vault or container shall bear externally an assigned number or symbol.

(2) *Combinations to containers.*—(i) *Changing.* Combinations to security containers shall be changed only by individuals having that responsibility and an appropriate security clearance. Combinations shall be changed:

(A) When placed in use;

(B) Whenever an individual knowing the combination no longer requires access;

(C) When the combination has been subject to possible compromise;

(D) At least annually; or

(E) When taken out of service. Built-in combination locks shall be reset to the standard combination 50–25–50; combination padlocks shall be reset to the standard combination 10–20–30.

(ii) *Classifying combinations.* The combination of a vault or container used for the storage of classified information shall be assigned a security classification equal to the highest category of the classified information authorized to be stored therein.

(iii) *Recording storage facility data.* A record shall be maintained for each vault, secure room or container used for storing classified information, showing location of the container, the names, home addresses, and home telephone numbers of the individuals having knowledge of the combination.

(iv) *Dissemination.* Access to the combination of a vault or container used for the storage of classified information shall be granted only to those individuals who are authorized access to the classified information stored therein.

(3) *Electrically actuated locks.* Electrically actuated locks (for example, cypher and magnetic strip card locks) do not afford the required degree of protection of classified information and may not be used as a substitute for the

locks prescribed in paragraph (C) of this section.

(f) *Repair of damaged security containers.* Neutralization of lock-outs or repair of any damage that affects the integrity of a security container approved for storage of classified information shall be accomplished only by authorized persons who are cleared or continuously escorted while so engaged.

(1) A GSA-approved security container is considered to have been restored to its original state of security integrity if:

(i) All damaged or altered parts (for example, locking drawer, and drawer head) are replaced; or

(ii) When a container has been drilled immediately adjacent to or through the dial ring to neutralize a lock-out, the replacement lock is equal to the original equipment, and the drilled hole is repaired with a tapered, hardened tool-steel pin, or a steel dowel, drill bit, or bearing with a diameter slightly larger than the hole and of such length that when driven into the hole there shall remain at each end of the rod a shallow recess not less than ⅛ inch nor more than 3/16 inch deep to permit the acceptance of substantial welds, and the rod is welded both on the inside and outside surfaces. The outside of the drawer head shall then be puttied, sanded, and repainted in such a way that no visible evidence of the hole or its repair remains on the outer surface after replacement of the damaged parts (for example, new lock).

(2) GSA-approved containers that have been drilled in a location or repaired in a manner other than as described in paragraph (1) above, will not be considered to have been restored to their original state of security integrity. The Test Certification Label on the inside of the locking drawer and the "General Services Administration Approved Security Container" label, if any, on the outside of the top drawer shall be removed from such containers.

(3) If damage to a GSA-approved security container is repaired with welds, rivets, or bolts that cannot be removed and replaced without leaving evidence of entry, the cabinet is limited thereafter to the storage of Secret and Confidential material.

(4) If the damage is repaired using methods other than those permitted in paragraphs (f)(1) and (3) of this section above, use of the container will be limited to unclassified material and a notice to this effect will be permanently marked on the front of the container.

§ 159.51 Custodial Precautions.

(a) *Responsibilities of custodians.* (1) Custodians of classified information shall be responsible for providing protection and accountability for such information at all times and for locking classified information in appropriate security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures that ensure that unauthorized persons do not gain access to classified information.

(2) Only the head of an activity, or a designee, may authorize removal of classified information from designated working areas in off-duty hours provided that appropriate activity regulations ensure maximum protection possible under the circumstances.

(b) *Care during working hours.* DoD personnel shall take precaution to prevent unauthorized access to classified information.

(1) Classified documents removed from storage shall be kept under constant surveillance and face down or covered when not in use.

(2) Preliminary drafts, carbon sheets, plates, stencils, stenographic notes, worksheets, typewriter ribbons, and other items containing classified information shall be either destroyed immediately after they have served their purpose; or shall be given the same classification and secure handling as the classified information they contain.

(3) Destruction of typewriter ribbons from which classified information can be obtained shall be accomplished in the manner prescribed for classified working papers of the same classification. After the upper and lower sections have been cycled through and overprinted five times in all ribbon or typing positions, fabric ribbons may be treated as unclassified regardless of their classified use thereafter. Carbon and plastic typewriter ribbons and carbon paper that have been used in the production of classified information shall be destroyed in the manner prescribed for working papers of the same classification after initial usage. However, any ribbon in a typewriter that uses technology which enables the ribbon to be struck several times in the same area before it moves to the next position may be treated as unclassified.

(c) *End-of-day security checks.* Heads of activities shall establish a system of security checks at the close of each working day to ensure that:

(1) All classified material is stored in the manner prescribed;

(2) Burn bags are properly stored or destroyed;

(3) Wastebaskets do not contain classified material; and

(4) Optional Form No. 62 or other designated standard form is used by DoD Components for security container check purposes.

(d) *Emergency planning.* (1) Plans shall be developed for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, terrorist activities, or enemy action. Such plans shall establish detailed procedures and responsibilities for the protection of classified material to ensure that the material does not come into the possession of unauthorized persons. These plans shall include the treatment of classified information located in foreign countries.

(2) These emergency planning procedures do not apply to material related to COMSEC. Planning for the emergency protection including emergency destruction under no-notice conditions of classified COMSEC material shall be developed in accordance with the requirements of NSA KAG I–D (§ 159.10(bb)).

(3) Emergency plans shall provide for the protection of classified material in a manner that will minimize the risk of injury or loss of life to personnel. In the case of fire or natural disaster, the immediate placement of authorized personnel around the affected area, preinstructed and trained to prevent the removal of classified material by unauthorized personnel, is an acceptable means of protecting classified material and reducing casualty risk. Such plans shall provide for emergency destruction to preclude capture of classified material when determined to be required. This determination shall be based on an overall commonsense evaluation of the following factors:

(i) Level and sensitivity of classified material held by the activity;

(ii) Proximity of land-based commands to hostile or potentially hostile forces or to communist-controlled countries;

(iii) Flight schedules or ship deployments in the proximity of hostile or potentially hostile forces or near communist-controlled countries;

(iv) Size and armament of land-based commands and ships;

(v) Sensitivity of operational assignment; and

(vi) Potential for aggressive action of hostile forces.

(4) When preparing emergency destruction plans, consideration shall be given to the following:

(i) Reduction of the amount of classified material held by a command

as the initial step toward planning for emergency destruction;

(ii) Storage of less frequently used classified material at more secure commands in the same geographical area (if available);

(iii) Transfer of as much retained classified material to microforms as possible, thereby reducing the bulk that needs to be evacuated or destroyed;

(iv) Emphasis on the priorities for destruction, designation of personnel responsible for destruction, and the designation of places and methods of destruction. Additionally, if any destruction site or any particular piece of destruction equipment is to be used by more than one activity or entity, the order or priority for use of the site or equipment must be clearly delineated;

(v) Identification of the individual who is authorized to make the final determination when emergency destruction is to begin and the means by which this determination is to be communicated to all subordinate elements maintaining classified information;

(vi) Authorization for the senior individual present in an assigned space containing classified material to deviate from established plans when circumstances warrant; and

(vii) Emphasis on the importance of beginning destruction sufficiently early to preclude loss of material. The effect of premature destruction is considered inconsequential when measured against the possibility of compromise.

(5) The emergency plan shall require that classified material holdings be assigned a priority for emergency evacuation or destruction. Priorities should be based upon the potential effect on national security should such holdings fall into hostile hands, in accordance with the following general guidelines:

(i) *Priority One.* Exceptionally grave damage (Top Secret material);

(ii) *Priority Two.* Serious damage (Secret material); and

(iii) *Priority Three.* Damage (Confidential material).

(6) If, as determined by appropriate threat analysis, Priority One material cannot otherwise be afforded a reasonable degree of protection from hostile elements in a no-notice emergency situation, provisions shall be made for installation of Anticompromise Emergency Destruct (ACED) equipment to ensure timely initiation and positive destruction of such material [2] in accordance with the following standard: "With due regard for personnel and structural safety, the ACED system shall reach a stage in destruction sequences at which positive destruction is irreversible within 60 minutes at shore installations, 30 minutes in ships, and 3 minutes in aircraft following activation of the ACED system." [3]

(7) An ACED requirement is presumed to exist and provisions shall be made for an ACED system to protect Priority One material in the following environments:

(i) Shore-based activities located in or within 50 miles of potentially hostile countries, or located within or adjacent to countries with unstable governments;

(ii) Reconnaissance aircraft, both manned and unmanned, that operate within JCS-designated reconnaissance reporting areas (see Memorandum by the Secretary, Joint Chiefs of Staff (SM) 701–76, Volume II, "Peacetime Reconnaissance and Certain Sensitive Operations" (§ 159.10(ff));[4]

(iii) Naval surface noncombatant vessels operating in hostile areas when not accompanied by a combatant vessel;

(iv) Naval subsurface vessels operating in hostile areas; and

(v) U.S. Navy Special Project ships (Military Sealift Command-operated) operating in hostile areas.

(8) Except in the most extraordinary circumstances, ACED is not applicable to commands and activities located within the United States. Should there be reason to believe that an ACED requirement exists in environments other than in those listed in paragraph (d)(7) of this section, above, a threat and vulnerability study should be prepared and submitted to the head of the DoD Component concerned or his designee for approval. The threat and vulnerability study should include, at a minimum, the following data, classified if appropriate:

(i) Volume and type of Priority One material held by the activity, that is, paper products, microforms, magnetic tape, and circuit boards.

(ii) A statement certifying that the amount of Priority One material held by the activity has been reduced to the lowest possible level;

(iii) An estimate of the time, beyond the time frames cited above, required to initiate irreversible destruction of Priority One material held by the activity, and the methods by which destruction of that material would be attempted in the absence of an ACED system;

(iv) Size and composition of the activity;

(v) Location of the activity and the degree of control it, or other United States authority, exercises over security; and

(vi) Proximity to potentially hostile forces and potential for aggressive action by such forces.

(9) When a requirement is believed to exist for ACED equipment not in the GSA or DoD inventories, the potential requirement shall be submitted to the DUSD(P) for validation in accordance with subsection V. B. of 159.10(gg).[5]

(10) In determining the method of destruction of other than Priority One material, any method specified for routine destruction or any other means that will ensure positive destruction of the material may be used. Ideally, any destruction method should provide for early attainment of a point at which the destruction process is irreversible. Additionally, classified material may be jettisoned at sea to prevent its easy capture. It should be recognized that such disposal may not prevent recovery of the material. Where none of the methods previously mentioned can be employed, the use of other means, such as dousing the classified material with a flammable liquid and igniting it, or putting to use the facility garbage grinders, sewage treatment plants, and boilers should be considered.

(11) Under emergency destruction conditions, destruction equipment may be operated at maximum capacity and without regard to pollution, preventive maintenance, and other constraints that might otherwise be observed.

(12) Commands and activities that are required to maintain an ACED system pursuant to paragraph (d)(7) of this section, shall conduct drills periodically to ensure that responsible personnel are familiar with the emergency plan. Such drills should be used to evaluate the anticipated effectiveness of the plan and the prescribed equipment and should be the basis for improvements in planning and equipment use. Actual destruction should not be initiated during drills.

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[2] Technological limitations, particularly as to personnel and structural safety, place constraints on the amount of material that can be accommodated in buildings, ships, and aircraft by current ACED systems; therefore, only Priority One material reasonably can be so protected at this time. Nevertheless, after processing Priority One material in an emergency situation involving possible loss to hostile forces, it is imperative that Priority Two material and then Priority Three material be destroyed insofar as is possible by whatever means available.

[3] The time frames indicated above are those for the initiation of irreversible destruction, not necessarily for the completion of such destruction.

[4] SM 701–76 is available on a strict need-to-know basis from the Chief, Documents Division, Joint Secretariat, OJCS.

[5] Information on ACED systems may be obtained from the Office of the Chief of Naval Operations (OP–009DX), Navy Department, Washington, D.C. 20350.

(e) *Telecommunications conversations.* Classified information shall not be discussed in telephone conversations except as authorized over approved secure communications circuits, that is, cryptographically protected circuits or protected distribution systems installed in accordance with National COMSEC Instruction 4009 (§ 159.10(hh)).

(f) *Security of meetings and conferences.* Security requirements and procedures governing disclosure of classified information at conferences, symposia, conventions, and similar meetings and those governing the sponsorship and attendance at such meetings, is governed by § 159.10(ii), (e) and (f)).

(g) *Safeguarding of U.S. classified information located in foreign countries.* In addition to the requirements for development of emergency destruction plans as specified in (d) of this section, the following measures shall be employed for the protection of classified information located in foreign countries:

(1) U.S.-classified information in countries other than NATO countries, Australia, New Zeland, or Japan shall be stored in areas that are maintained under U.S. control on a 24-hour basis. At a minimum, this provision requires establishment of a system of on-site duty or watch officers.

(2) U.S.-classified information that has been determined by appropriate authority to be releasable to the host government shall be segregated from that information which has been determined not to be releasable. The arrangements made for segregation will depend upon the volume of classified information involved. For example, if the volume of classified information maintained makes it impractical to store releasable classified information in one security container and nonreleasable classified information in another, the requirement may be met by storing the classified information in different drawers of the same security container. In individual cases, a cognizant DoD Component head or designee may waive the requirement for segregation when such segregation is not feasible or practical.

(3) Foreign personnel shall be escorted when in areas where U.S. nonreleasable classified information is handled or stored. As an alternative in the case of exchange officers, and when required by operational necessity, foreign personnel may be permitted unescorted access during duty hours to areas where U.S. nonreleasable classified information is stored in an appropriate locked security container or is under the direct, personal supervision of U.S. personnel.

§ 159.52 [Reserved]

Subpart G—Compromise of Classified Information

§ 159.60 Policy.

Compromise of classified information presents a threat to the national security. Once a compromise is known to have occurred, the seriousness of damage to U.S. interests must be determined and appropriate measures taken to negate or minimize the adverse effect of such compromise. When possible, action also should be taken to regain custody of the documents or material that were compromised. In all cases, however, appropriate action must be taken to identify the source and reason for the compromise and remedial action taken to ensure further compromises do not occur. The provisions of § 159.10 (jj) and (kk) apply to compromises covered by this Subpart.

§ 159.61 Cryptographic information.

The procedures for handling compromises of crytographic information are set forth in § 159.10(bb).

§ 159.62 Responsibility of discoverer.

(a) Any person who has knowledge of the actual or possible compromise (as defined in subsection 1–307 of classified information shall immediately report such fact to the security manager of the person's activity (see § 159.132(e)).

(b) Any person who discovers classified information out of proper control shall take custody of such information and safeguard it in an appropriate manner, and shall notify immediately an appropriate security authority.

§ 159.63 Preliminary inquiry.

A designated responsible official shall initiate a preliminary inquiry to determine the circumstances surrounding the actual or possible compromise. The preliminary inquiry shall establish one of the following:

(a) That a compromise of classified information did not occur;

(b) That a compromise of classified information did occur but the compromise could not reasonably be expected to cause damage to the national security. If, in such instances, the official finds no indication of significant security weakness, the report of preliminary inquiry will be sufficient to resolve the incident and, when appropriate, support the administrative sanctions under § 159.141; or

(c) That compromise of classified information did occur and that the probability of damage to the national security cannot be discounted. Upon this determination, the responsible official shall:

(1) Report the circumstances of the compromise to an appropriate authority as specified in DoD Component instructions;

(2) If the responsible official is the originator, take the action prescribed in § 159.66; and

(3) If the responsible official is not the originator, notify the originator of the known details of the compromise, including identification of the classified information. If the originator is unknown, notification will be sent to the office specified in DoD Component instructions.

§ 159.64 Investigation.

If it is determined that further investigation is warranted, such investigation will include the following:

(a) Complete identification of each item of classified information involved;

(b) A thorough search for the classified information;

(c) Identification of any person or procedure responsible for the compromise. Any person so identified shall be apprised of the nature and circumstances of the compromise and be provided an opportunity to reply to the violation charged. If such person does not choose to make a statement, this fact shall be included in the report of investigation;

(d) A statement that compromise of classified information occurred or is probable, and the cause of the loss or compromise; or a statement that compromise did not occur or that there is minimal risk of damage to the national security; and

(e) Compilation of the data in paragraphs (a) through (d) of this section, above, in a report to the authority ordering the investigation.

§ 159.65 Responsibility of authority ordering investigation.

(a) The report of investigation shall be reviewed to ensure compliance with this Part and instructions issued by DoD Components.

(b) The recommendations contained in the report of investigation shall be reviewed to determine sufficiency of remedial, administrative, disciplinary, or legal action proposed and, if adequate, the report of investigation shall be forwarded with recommendations through supervisory channels. See subsections § 159.141 and 142.

§ 159.66 Responsibility of originator.

The originator or an official higher in the originator's supervisory chain shall, upon receipt of notification of loss or

probable compromise of classified information, take action as prescribed in § 159.21(k).

§ 159.67 Espionage and deliberate compromise.

Cases of espionage and deliberate unauthorized disclosure of classified information to the public shall be reported in accordance with § 159.10 (references (jj) and (kk)) and implementing issuances.

§ 159.68 Unauthorized absentees.

When an individual who has had access to classified information is on unauthorized absence, an inquiry as appropriate under the circumstances, to include consideration of the length of absence and the degree of sensitivity of the classified information involved, shall be conducted to detect if there are any indications of activities, behavior, or associations that may be inimical to the interest of national security. When such indications are detected, a report shall be made to the DoD Component counterintelligence organization.

§ 159.69 [Reserved.]

Subpart H—Access, Dissemination, and Accountability

§ 159.70 Access.

(a) *Policy.* Except as otherwise provided for in paragraph (f) of this section no person may have access to classified information unless that person has been determined to be trustworthy and unless access is necessary for the performance of official duties. A personnel security clearance is an indication that the trustworthiness decision has been made. Procedures shall be established by the head of each Component to prevent unnecessary access to classified information. There shall be a demonstrable need for access to classified information before a request for a personnel security clearance can be initiated. The number of people cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs. No one has a right to have access to classified information solely by virtue of rank or position. The final responsibility for determining whether an individual's official duties require possession of or access to any element or item of classified information, and whether the individual has been granted the appropriate security clearance by proper authority, rests upon the individual who has authorized possession, knowledge, or control of the information and not upon the prospective recipient. These principles are equally applicable if the prospective recipient is a DoD Component, including commands and activities, other federal agencies, DoD contractors, foreign governments, and others.

(b) *Determination of trustworthiness.* (1) Except as provided in paragraphs (f) (g) and (h) of this section, no person shall have access to classified information unless a determination has been made of that person's trustworthiness. This determination, referred to as a security clearance, shall be based on an investigation in accordance with the standards and criteria of § 159.10 (ll). Interim clearances may be granted in accordance with the provisions of § 159.10 (ll).

(2) U.S. citizen employees of contractors with classified government contracts may be granted Confidential clearances by the contractor under the Industrial Security Program, except that such clearances are not valid for SCI, Restricted Data, cryptographic information, COMSEC information, ACDA, or NATO information classified Confidential.

(c) *Continuous evaluation of eligibility.*(1) DoD activities shall report to an appropriate clearing authority information relative to the criteria of § 159.10(ll) concerning individuals who are cleared or are in the process of being cleared including contractor personnel cleared under the Defense Industrial Security Program (DISP). Reports involving contractor personnel shall be submitted to the Defense Industrial Security Clearance Office, Columbus, Ohio.

(2) All DoD activities shall evaluate continually information coming into their possession regarding persons granted security clearances to ensure the criteria cited in DoD 5200.2–R (§159.10(ll)) continue to be satisfied.

(3) Such evaluation is premised upon close coordination with security, personnel, medical, legal, and supervisory officials to assure that all information available within a command is evaluated when it pertains to an individual who is cleared or is being considered for clearance.

(d) *Determination of need-to-know.* In addition to a security clearance, an individual must have a need for access to the classified information or material sought in connection with the performance of official duties or contractual obligations. The determination of that need shall be made as provided in paragraph (a) of this section.

(e) *Revocation of security clearance for cause.* A security clearance will be revoked by the appropriate clearing authority when it is determined, in accordance with applicable regulations, that such clearance is no longer clearly consistent with the interests of national security.

(f) *Access by persons outside the executive branch.* Classified information may be made available to individuals or agencies outside the Executive Branch provided that such information is necessary for performance of a function from which the Government will derive a benefit or advantage, and that such release is not prohibited by the originating department or agency. Heads of DoD Components shall designate appropriate officials to determine, before the release of classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

(1) *Congress.* Access to classified information or material by Congress, its committees members, and staff representatives shall be in accordance with § 159.10 (mm). Any DoD employee testifying before a congressional committee in executive session in relation to a classified matter shall obtain the assurance of the committee that individuals present have a security clearance commensurate with the highest classification of the information that may be discussed. Members of Congress, by virtue of their elected positions, are not investigated or cleared by the Department of Defense.

(2) *Government Printing Office (GPO).* Documents and materials of all classifications may be processed by the GPO, which protects the information in accordance with DoD/GPO Agreement, November 20, 1981.

(3) *Representatives of the General Accounting Office (GAO).* Representatives of the GAO may be granted access to classified information originated by and in possession of the Department of Defense when such information is relevant to the performance of the statutory responsibilities of that office, as set forth in § 159.10(nn). Officials of the GAO, as designated in Appendix B, are authorized to certify security clearance, and the basis therefor. Certifications will be made by these officials pursuant to arrangements with the DoD Component concerned. Personal recognition or presentation of official GAO credential cards are acceptable for identification purposes.

(4) *Industrial, educational, and commercial entities.* (i) Bidders,

contractors, grantees, educational, scientific or industrial organizations may have access to classified information only when such access is essential to a function that is necessary in the interest of the national security, and the recipients are cleared in accordance with § 159.10(e).

(ii) Contractor employees whose duties do not require access to classified information are not eligible for personnel security clearance and cannot be investigated under the DISP. In exceptional situations, when a military command is vulnerable to sabotage and its mission is of critical importance to national security, National Agency Checks may be conducted on such individuals with the approval of the DUSD(P).

(5) *Historical researchers.* Persons outside the Executive Branch who are engaged in historical research projects may be authorized access to classified information provided that an authorized official within the DoD Component with classification jurisdiction over the information:

(i) Makes a written determination that such access is clearly consistent with the interests of national security in view of the intended use of the material to which access is granted by certifying that the requester has been found to be trustworthy pursuant to paragraph (b)(1) of this section;

(ii) Limits such access to specific categories of information over which that DoD Component has classification jurisdiction and to any other category of information for which the researcher obtains the written consent of a DoD Component or non-DoD department or agency that has classification jurisdiction over information contained in or revealed by documents within the scope of the proposed historical research;

(iii) Maintains custody of the classified material at a DoD installation or activity or authorizes access to documents in the custody of the NARS;

(iv) Obtains the researcher's agreement to safeguard the information and to submit any notes and manuscript for review by all DoD Components or non-DoD departments or agencies with classification jurisdiction for a determination that no classified information is contained therein by execution of a statement entitled, "Conditions Governing Access to Official Records for Historical Research Purposes"; and

(v) Issues an authorization for access valid for not more than 2 years from the date of issuance that may be renewed under regulations of the issuing DoD Component.

(6) *Former Presidential Appointees.* Persons who previously occupied policy making positions to which they were appointed by the President may not remove classified information upon departure from office as all such material must remain under the security control of the U.S. Government. Such persons may be authorized access to classified information that they originated, received, reviewed, signed, or that was addressed to them while serving as such an appointee, provided that an authorized official within the DoD Component with classification jurisdiction for such information:

(i) Makes a written determination that such access is clearly consistent with the interests of national security in view of the intended use of the material to which access is granted and by certifying that the requester has been found to be trustworthy pursuant to paragraph (b)(1) of this section;

(ii) Limits such access to specific categories of information over which that DoD Component has classification jurisdiction and to any other category of information for which the former appointee obtains the written consent of a DoD Component or non-DoD department or agency that has classification jurisdiction over information contained in or revealed by documents with the scope of the proposed access;

(iii) Retains custody of the classified material at a DoD installation or activity or authorizes access to documents in the custody of the National Archives and Records Services; and

(iv) Obtains the former presidential appointee's agreement to safeguard the information and to submit any notes and manuscript for review by all DoD Components or non-DoD departments or agencies with classification jurisdiction for a determination that no classified information is contained therein.

(7) *Judicial proceedings.* (i) An individual or DoD Component that receives an order or subpoena issued by a federal or state court of record to produce classified information shall refer immediately such order or subpoena to the cognizant Judge Advocate General's or General Counsel's office. Such office shall contact the originator of the information to determine if declassification can be effected.

(ii) If declassification is not possible, cognizant legal counsel shall take appropriate action to protect such information.

(iii) If no alternative exists to release of such information for use in a judicial proceeding, cognizant legal counsel shall take all proper steps to ensure the cooperation of the court and opposing counsel in safeguarding and retrieving the information. The steps taken to protect classified information will vary depending on the circumstances of each case. The following are examples of restrictions in the handling of classified information that may be recommended for inclusion in any court order:

(A) Every effort shall be made to limit dissemination to *in camera* review by the judge of the court of record to determine the relevancy of the information in question.

(B) Classified material will not be authorized for introduction into evidence at a civil trial before a jury. Attendance at any proceeding where classified information is to be introduced shall be limited to the presiding judge of a court and those attorneys and other persons whose duties require knowledge or possession of the information and who have been cleared by the Department of Defense.

(C) All proceedings shall be held in a secured court or hearing room pursuant to DoD security procedures and regulations.

(D) Dissemination and accountability controls must be established for all classified information marked for identification or offered or introduced into evidence.

(E) The transcript of the proceeding shall be appropriately marked to show the classified portions.

(F) All classified information shall be handled and stored in a manner consistent with DoD security procedures.

(G) Any note, drafts, or other documents produced by non-DoD individuals no longer required by any party to the proceeding, shall be transferred to the Department of Defense for destruction.

(H) All recipients of classified information disclosed under the provisions of this section shall be advised of the classification level, safeguarding and storage requirements, and their liability in the event of unauthorized disclosure.

(I) At the conclusion of the proceeding, all classified information must be returned to the Department of Defense or placed under seal of the Court of Record.

(g) *Access by foreign nationals, foreign governments, international organizations, and immigrant aliens.*

(1) Classified information may be released to foreign nationals, foreign governments, and international organizations only when authorized under the provisions of the National Disclosure Policy and § 159.10(oo); and

(2) Secret and Confidential information may be released to qualified immigrant aliens (see § 159.10(ll)) in the performance of official duties, provided they have been granted a security clearance based upon a favorable Background Investigation.

(3) Immigrant aliens may be granted a Limited Access Authorization to Top Secret information for a specific contract or program provided that the head of the DoD Component concerned makes a personal written determination that such access is essential to meet government requirements and that the individual is reliable and trustworthy in accordance with § 159.10(ll). A report of each such determination shall be furnished to the DUSD(P).

(4) Access to COMSEC information by persons and activities subject to this subsection shall be in accordance with policy issuances of the National Communications Security Committee (NCSC).

(h) *Other situations.* When necessary in the interests of national security, heads of DoD Components, or their single designee, may authorize access by persons outside the federal government, other than those enumerated in (f) and (g) of this section, to classified information upon determining that the recipient is trustworthy for the purpose of accomplishing a national security objective; and that the recipient can and will safeguard the information from unauthorized disclosure.

(i) *Access required by other Executive Branch investigative and law enforcement agents.* (1) Normally, investigative agents of other departments or agencies may obtain access to DoD information through established liaison or investigative channels.

(2) When the urgency or delicacy of a Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), or Secret Service investigation precludes use of established liaison or investigative channels, FBI, DEA, or Secret Service agents may obtain access to DoD information as required. However, this information shall be protected as required by its classification. Before any public release of the information so obtained the approval of the head of the activity or higher authority shall be obtained.

§ 159.71 Dissemination

(a) *Policy.* DoD Components shall establish procedures consistent with this Regulation for the dissemination of classified material. The originating official or activity may prescribe specific restrictions on dissemination of classified information when necessary. (See § 159.44(f).)

(b) *Restraints on special access requirements.* Special requirements with respect to access, distribution, and protection of classified information shall require prior approval in accordance with Subpart M.

(c) *Information originating in a non-DoD department or agency.* Except under rules established by the Secretary of Defense, or as provided by Section 102 of the National Security Act (reference (pp)), classified information originating in a department or agency other than Department of Defense shall not be disseminated outside the Department of Defense without the consent of the originating department or agency.

(d) *Foreign intelligence information.* Dissemination of foreign intelligence information shall be in accordance with the provisions of § 159.10(u).

(e) *Restricted data and formerly restricted data.* Information bearing the warning notices prescribed in § 159.44 (b) and (c) shall not be disseminated outside authorized channels without the consent of the originator. Access to and dissemination of Restricted Data by DoD personnel shall be subject to § 159.10(y).

(f) *NATO information.* Classified information originated by NATO shall be safeguarded in accordance with § 159.10(z).

(g) *Comsec information.* COMSEC information shall be disseminated in accordance with § 159.10(bb).

(h) *Dissemination of top secret information.* (1) Top Secret information.

(1) Top Secret information, originated within the Department of Defense, may not be disseminated outside the Department of Defense without the consent of the originating DoD Component, or higher authority.

(2) Top Secret information, whenever segregable from classified portions bearing lower classifications, shall be distributed separately.

(i) *Dissemination of secret and confidential information.* Classified information other than Top Secret, originated within the Department of Defense, may be disseminated within the Executive Branch, unless prohibited by the originator. (See § 159.44(f).)

(j) *Code Words, nicknames, and exercise terms.* The use of code words, nicknames, and exercise terms is subject to the provisions of Appendix C.

(k) *Scientific and technical meetings.* Use of classified information in scientific and technical meetings is subject to the provisions of § 159.10(ii).

§ 159.72 Accountability and control

(a) *Top Secret information.* DoD activities shall establish the following procedures:

(1) *Control Officers.* Top Secret Control Officers and alternates shall be designated within offices to be responsible for receiving, dispatching, and maintaining accountability registers of Top Secret documents. Such individuals shall be selected on the basis or experience and reliability, and shall have appropriate security clearances.

(2) *Accountability.*—(i) *Top Secret registers.* Top Secret accountability registers shall be maintained by each office originating or receiving Top Secret information. Such registers shall be retained for 5 years and shall, as a minimum, reflect the following:

(A) Sufficient information to identify adequately the Top Secret document or material to include the title or appropriate short title, date of the document, and identification of the originator;

(B) The date the document or material was received;

(C) The number of copies received or later reproduced; and

(D) The disposition of the Top Secret document or material and all copies of such documents or material.

(ii) *Serialization.* Copies of Top Secret documents and material shall be numbered serially.

(iii) *Disclosure records.* Each Top Secret document or item of material shall have appended to it a Top Secret disclosure record. The name and title of all individuals, including stenographic and clerical personnel to whom information in such documents and materials has been disclosed, and the date of such disclosure, shall be recorded thereon. Disclosures to individuals who may have had access to containers in which Top Secret information is stored, or who regularly handle a large volume of such information need not be so recorded. Such individuals, when identified on a roster, are deemed to have had access to such information. Disclosure records shall be retained for 2 years after the documents or materials are transferred, downgraded, or destroyed.

(3) *Inventories.* All Top Secret documents and material shall be inventoried at least once annually. The inventory shall reconcile the Top Secret accountability register with the documents or material on hand. At such time, each document or material shall be examined for completeness. DoD Component senior officials (§159.132 (b) and (c)) may authorize the annual

inventory of Top Secret documents and material in repositories, libraries, or activities that store large volumes of Top Secret documents or material to be limited to documents and material to which access has been granted within the past year, and 10 percent of the remaining inventory. If a storage system contains large volumes of information and security measures are adequate to prevent access by unauthorized persons, a request for waiver of the annual inventory requirement accompanied by full justification may be submitted to the DUSD(P).

(4) *Retention.* Top Secret information shall be retained only to the extent necessary to satisfy current requirements. Custodians shall destroy nonrecord copies of Top Secret documents when no longer needed. Record copies of documents that cannot be destroyed shall be reevaluated and, when appropriate, downgraded, declassified, or retired to designated records centers.

(5) *Receipts.* Top Secret documents and material will be accounted for by a continuous chain of receipts.

(b) *Secret information.* Administrative procedures shall be established controlling Secret material originated or received by an activity; distributed or routed to a sub-element of such activity; and disposed of by the activity by transfer of custody or destruction. The control system for Secret must be determined by the practical balance of security and operating efficiency.

(c) *Confidential information.* Administrative controls shall be established to protect Confidential information received, originated, transmitted, or stored by an activity.

(d) *Receipt of classified material.* Procedures shall be developed within DoD activities to protect incoming mail, bulk shipments, and items delivered by messenger until a determination is made whether classified information is contained therein. Screening points shall be established to limit access to classified information to cleared personnel.

(e) *Working papers.* (1) Working papers are documents and material accumulated or created in the preparation of finished documents and material. Working papers containing classified information shall be:

(i) Dated when created;

(ii) Marked with the highest classification of any information contained therein;

(iii) Protected in accordance with the assigned classification;

(iv) Destroyed when no longer needed; and

(v) Accounted for, controlled, and marked in the manner prescribed for a finished document of the same classification when:

(A) Released by the originator outside the activity or transmitted electrically or through message center channels within the activity;

(B) Retained more than 90 days from date of origin;

(C) Filed permanently; or

(D) Top Secret information is contained therein.

(2) Heads of DoD Components, or their single designees, may approve waivers of accountability, control, and marking requirements for working papers containing Top Secret information for activities within their Components on a case-by-case basis provided a determination is made that:

(3)(i) The conditions set forth in subparagraphs (e)(1)(v)(A), (e)(2) or above, will remain in effect;

(ii) The activity seeking a waiver routinely handles large volumes of Top Secret working papers and compliance with prescribed accountability, control, and marking requirements would have an adverse effect on the activity's mission or operations; and

(iii) Access to areas where Top Secret working papers are handled is restricted to personnel who have an appropriate level of clearance, and other safeguarding measures are adequate to preclude the possibility of unauthorized disclosure.

(3) In all cases in which a waiver is granted under (2) above, the DUSD(P) shall be notified.

(f) *Restraint on reproduction.* Except for the controlled initial distribution of information processed or received electrically or as provided by § 159.11(f) and 159.34(c), portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition against reproduction shall be strictly observed. (See subsection § 159.44(f).) The following measures apply to reproduction equipment and to the reproduction of classified information;

(1) Copying of documents containing classified information shall be minimized;

(2) Officials authorized to approve the reproduction of Top Secret and Secret information shall be designated by position title and shall review the need for reproduction of classified documents and material with a view toward minimizing reproduction;

(3) Specific reproduction equipment shall be designated for the reproduction of classified information. Rules for reproduction of classified information shall be posted on or near the designated equipment;

(4) Notices prohibiting reproduction of classifed information shall be posted on equipment used only for the reproduction of unclassified information;

(5) DoD Components shall ensure that equipment used for reproduction of classified information does not leave latent images in the equipment or on other material;

(6) All copies of classified documents reproduced for any purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made; and

(7) Records shall be maintained to show the number and distribution of reproduced copies of all Top Secret documents, of all classified documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination and reproduction limitations. (See § 159.44 (f).)

§ 159.73 [Reserved]

Subpart I—Transmission

§ 159.80 Methods of Transmission or Transportation.

(a) *Policy.* Classified information may be transmitted or transported only as specified in this chapter.

(b) *Top Secret information.* Transmission of Top Secret information shall be effected only by:

(1) The Armed Forces Courier Service (ARFCOS);

(2) Authorized DoD Component Courier Services;

(3) If appropriate, the Department of State Courier System;

(4) Cleared and designated personnel traveling on a conveyance owned, controlled, or chartered by the government or DoD contractors,

(5) Cleared and designated U.S. Military personnel and government civilian employees by surface transportation;

(6) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft within and between the United States, its Territories, and Canada, when approved in accordance with paragraph (d)(1).

(7) Cleared and designated U.S. Military personnel and government civilian employees on scheduled commercial passenger aircraft on flights outside the United States, its territories,

and Canada, when approved in accordance with paragraph (d)(2).

(8) Cleared and designated DoD contractor employees within and between the United States and its Territories provided that the transmission has been authorized in writing by the appropriate contracting officer or his designated representative, and the designated employees have been briefed on their responsibilities as couriers or escorts for the protection of Top Secret material. Complete guidance for Top Secret transmission is specified in § 159.10 (e) and (f).

(9) A cryptographic system authorized by the Director, NSA, or via a protected distribution system designed and installed to meet the standards included in the National COMSEC and Emanations Security (EMSEC) Issuance System.

(c) *Secret information.* Transmission of Secret information may be effected by:

(1) Any of the means approved for the transmission of Top Secret information except that Secret information may be introduced into the ARFCOS only when the control of such information cannot be otherwise maintained in U.S. custody. This restriction does not apply to SCI and COMSEC information;

(2) Appropriately cleared contractor employees within and between the United States and its Territories provided that (i) the designated employees have been briefed in their responsibilities as couriers or escorts for protecting Secret information; (ii) the classified information remains under the constant custody and protection of the contractor personnel at all times; and (iii) the transmission otherwise meets the requirements specified in § 159.10 (e) and (f). In other areas, appropriately cleared DoD contractor employees may transmit Secret information only when (A) the information is not transported across international borders; (B) time limitations do not permit the use of U.S. Government channels; (C) the transmission is begun and completed during normal duty hours of the same day and by surface means only; and (D) the transmission otherwise meets the requirements specified in § 159.10 (e) and (f);

(3) U.S. Postal Service registered mail within and between the United States and its Territories;

(4) U.S. Postal Service registered mail through Army, Navy, or Air Force Postal Service facilities outside the United States and its Territories, provided that the information does not at any time pass out of U.S. citizen control and does not pass through a foreign postal system or any foreign inspection;

(5) U.S. Postal Service and Canadian registered mail with registered mail receipt between U.S. Government and Canadian Government installations in the United States and Canada;

(6) Carriers authorized to transport Secret information by way of a Protective Security Service (PSS) under the DoD Industrial Security Program. This method is authorized only within the U.S. boundaries and only when the size, bulk, weight, and nature of the shipment, or escort considerations make the use of other methods impractical. Routings for these shipments will be obtained from the Military Traffic Management Command (MTMC);

(7) The following carriers under appropriate escort: government and government contract vehicles including aircraft, ships of the U.S. Navy, civil service-operated U.S. Naval ships, and ships of U.S. registry. Appropriately cleared operators of vehicles, officers of ships or pilots of aircraft who are U.S. citizens may be designated as escorts provided the control of the carrier is maintained on a 24-hour basis. The escort shall protect the shipment at all times, through personal observation or authorized storage to prevent inspection, tampering, pilferage, or unauthorized access. However, observation of the shipment is not required during the period it is stored in an aircraft or ship in connection with flight or sea transit, provided the shipment is loaded into a compartment that is not accessible to any unauthorized persons or in a specialized secure, safe-like container that is:

(i) Constructed of solid building material that provides a substantial resistance to forced entry;

(ii) Constructed in a manner that precludes surreptitious entry through disassembly or other means, and that attempts at surreptitious entry would be readily discernible through physical evidence of tampering; and

(iii) Secured by a numbered cable seal lock affixed to a high security hasp. The hasp must be installed in a manner that precludes surreptitious removal.

(8) Use of specialized containers aboard aircraft requires that:

(i) Appropriately cleared personnel maintain observation of the material as it is being loaded aboard the aircraft and that observation of the aircraft continues until it is airborne;

(ii) Observation by appropriately cleared personnel is maintained at the destination as the material is being off-loaded and at any intermediate stops. Observation will be continuous until custody of the material is assumed by appropriately cleared personnel.

(d) *Confidential information.* Transmission of Confidential information may be effected by:

(1) Means approved for the transmission of Secret information. However, U.S. Postal Service registered mail shall be used for Confidential only as indicated in paragraph (2) below;

(2) U.S. Postal Service registered mail for:

(i) Confidential information of NATO;

(ii) Other Confidential material to and from FPO or APO addressees located outside the United States and its Territories;

(iii) Other adressees when the originator is uncertain that their location is within U.S. boundaries. Use of return postal receipts on a case-by-case basis is authorized.

(3) U.S. Postal Service first class mail between DoD Component locations anywhere in the United States and its Territories. However, the outer envelope or wrappers of such Confidential material shall be endorsed "Postmaster: Do Not Forward. Return to Sender." Certified or if appropriate registered mail shall be used for material directed to DoD contractors and to non-DoD agencies of the Executive Branch. U.S. Postal Service Express Mail Service may be used between DoD Component locations, between DoD contractors, and between DoD Components and DoD contractors.

(4) Within U.S. boundaries, commercial carriers that provide a Signature Security Service (SSS). Information concerning commercial carriers that provide SSS may be obtained from the MTMC.

(5) In the custody of commanders or masters of ships of U.S. registry who are U.S. citizens. Confidential information shipped on ships of U.S. registry may not pass out of U.S. Government control. The commanders or masters must give and receive classified information receipts and agree to:

(i) Deny access to the Confidential material by unauthorized persons, including customs inspectors, with the understanding that Confidential cargo that would be subject to customs inspection will not be unloaded; and

(ii) Maintain control of the cargo until a receipt is obtained from an authorized representative of the consignee.

(6) Such alternative or additional methods of transmission as the head of any DoD Component may establish by rule or regulation, provided those methods afford at least an equal degree of security.

(e) *Transmission of classified information to foreign governments.* (1) After a determination by competent

authority that classified information may be released to a foreign government, it shall be transmitted only:

(i) To an embassy or official agency or representative of the recipient government; or

(ii) For on-loading aboard a ship, aircraft or other carrier designated by the recipient government at the point of departure from the United States, or its Territories, provided that at the time of delivery a duly authorized representative of the recipient government is present at the point of departure to accept delivery, to ensure immediate loading, and to assume security responsibility for the classified material.

(2) Classified material shall be transferred on a government-to-government basis by duly authorized representatives of each government, and shall not pass to a foreign government until a delivery receipt, to include a U.S. postal receipt; when applicable, has been executed by a duly authorized representative of the recipient foreign government.

(3) Each contract, agreement or arrangement that contemplates transfer of classified material to a foreign government at a point within the United States, its Territories or possessions, shall designate a point of delivery in accordance with paragraphs (e)(1) (i) or (ii) of this section. If delivery is to be at a point as described in paragraph (e)(1)(ii) of this section, the contract, agreement, or arrangement shall provide for:

(i) U.S. Government storage, or

(ii) Storage by a cleared commerical carrier or other U.S. cleared storage point, or.

(iii) Storage at a storage point owned or controlled by the recipient foreign government, at or near the delivery point so that the classified material may be temporarily stored in the event the carrier designated by the recipient foreign government is not available for loading.

(iv) Storage facilities used or designated must afford the classified material the protection required by this regulation. Any storage facility referred to in paragraph (e)(3)(iii) of this section shall be protected by a trained guard force consisting of nationals of the recipient government, or U.S. citizens for whom security assurances have been provided by the Department of Defense to the recipient foreign government. In addition, an industrial security representative of the Defense Investigative Service (DIS) located in the geographical area will, upon request, visit the storage facility and furnish guidance with regard to the physical safeguards required. Continued inspection to ensure the facility is continuing to provide protection required by this Regulation will be made by a DIS representative with the cooperation of the foreign government concerned.

(4) Classified material to be delivered to a foreign government within the recipient country shall be transmitted in accordance with the provisions of this Chapter. Unless the material is accompanied by a designated or approved courier or escort, it shall be delivered on arrival in the recipient country, to a U.S. Government representative who shall arrange for transfer to a duly authorized representative of the recipient foreign government.

(5) Classified material to be delivered to the representative of a foreign government within a third country shall be delivered by a U.S. courier or escort to such representative at an agency or installation of the United States or of the recipient country that has extraterritorial status or is otherwise exempt from the jurisdiction of the third country.

(f) *Consignor-consignee responsibility for shipment of bulky material.* The consignor of a bulk shipment shall:

(1) Normally, select a carrier that will provide a single line service from the point of origin to destination, when such a service is available;

(2) Ship packages weighing less than 200 pounds in closed vehicles only;

(3) Notify the consignee, and military transshipping activities, of the nature of the shipment (including level of classification), the means of shipment, the number of seals, if used, and the anticipated time and date of arrival by separate communication at least 24 hours in advance of arrival of the shipment. Advise the first military transshipping activity that, in the event the material does not move on the conveyance originally anticipated, the transshipping activity should so advise the consignee with information of firm transshipping date and estimated time of arrival. Upon receipt of the advance notice of a shipment of classified material, consignees and transshipping activities shall take appropriate steps to receive the classified shipment and to protect it upon arrival.

(4) Annotate the bills of lading to require the carrier to notify the consignor immediately by the fastest means if the shipment is unduly delayed enroute. Such annotations shall not under any circumstances disclose the classified nature of the commodity. When seals are used, annotate substantially as follows:

DO NOT BREAK SEALS EXCEPT IN EMERGENCY OR UPON AUTHORITY OF CONSIGNOR OR CONSIGNEE. IF BROKEN APPLY CARRIER'S SEALS AS SOON AS POSSIBLE AND IMMEDIATELY NOTIFY CONSIGNOR AND CONSIGNEE.

(5) Require the consignee to advise the consignor of any shipment not received more than 48 hours after the estimated time of arrival furnished by the consignor or transshipping activity. Upon receipt of such notice, the consignor shall immediately trace the shipment. If there is evidence that the classified material was subjected to compromise, the procedures set forth in Subpart G of this part for reporting compromises shall apply.

(g) *Transmission of COMSEC information.* COMSEC information shall be transmitted in accordance with National COMSEC Instruction 4005 (§ 159.10(v)).

(h) *Transmission of restricted data.* Restricted Data shall be transmitted in the same manner as other information of the same security classification. The transporting and handling of nuclear weapons or nuclear components shall be in accordance with § 159.10 (qq) and (rr) and applicable DoD Component directives and regulations.

§ 159.81 Preparation of material for transmission or shipment.

(a) *Envelopes or containers.* (1) Whenever classified information is transmitted, it shall be enclosed in two opaque sealed envelopes or similar wrappings when size permits, except as provided below.

(2) Whenever classified material is transmitted of a size not suitable for transmission in accordance with paragraph (1) above, it shall be enclosed in two opaque sealed containers, such as boxes or heavy wrappings.

(i) If the classified information is an internal component of a packageable item of equipment, the outside shell or body may be considered as the inner enclosure provided it does not reveal classified information.

(ii) If the classified material is an inaccessible internal component of a bulky item of equipment that is not reasonably packageable, the outside or body of the item may be considered to be a sufficient enclosure provided the shell or body does not reveal classified information.

(iii) If the classified material is an item or equipment that is not reasonably packageable and the shell or body is classified, it shall be concealed with an opaque covering that will hide all classified features.

(iv) Specialized shipping containers, including closed cargo transporters, may be used instead of the above packaging requirements. In such cases, the container may be considered the outer wrapping or cover.

(3) Material used for packaging shall be of such strength and durability as to provide security protection while in transit, prevent items from breaking out of the container, and to facilitate the detection of any tampering with the container. The wrappings shall conceal all classified characteristics.

(4) Closed and locked vehicles, compartments, or cars shall be used for shipments of classified information except when another method is authorized by the consignor. Alternative methods authorized by the consignor must provide security equivalent to or better than the methods specified herein. In all instances, individual packages weighing less than 200 pounds gross shall be shipped only in a closed vehicle.

(5) To minimize the possibility of compromise of classified material caused by improper or inadequate packaging thereof, responsible officials shall ensure that proper wrappings are used for mailable bulky packages. Responsible officials shall require the inspection of bulky packages to determine whether the material is suitable for mailing or whether it should be transmitted by other approved means.

(b) *Addressing.* (1) Classified information shall be addressed to an official government activity or DoD contractor with a facility clearance and not to an individual. This is not intended, however, to prevent use of office code numbers or such phrases in the address as "Attention: Research Department," or similar aids in expediting internal routing, in addition to the organization address.

(2) Classified written information shall be folded or packed in such a manner that the text will not be in direct contact with the inner envelope or container. A receipt form shall be attached to or enclosed in the inner envelope or container for all Secret and Top Secret information; Confidential information will require a receipt only if the originator deems it necessary. The mailing of written materials of different classifications in a single package should be avoided. However, when written materials of different classifications are transmitted in one package, they shall be wrapped in a single inner envelope or container. A receipt listing all classified information for which a receipt is requested shall be attached or enclosed. The inner envelope or container shall be marked with the highest classification of the contents.

(3) The inner envelope or container shall show the address of the receiving activity, classification, including, where appropriate, the "Restricted Data" marking, and any applicable special instructions. It shall be carefully sealed to minimize the possibility of access without leaving evidence of tampering.

(4) An outer cover or single envelope or container shall show the complete and correct address and the return address of the sender.

(5) An outer cover or single envelope or container shall not bear a classification marking, a listing of the contents divulging classified information, or any other unusual data or marks that might invite special attention to the fact that the contents are classified.

(6) Care must be taken to ensure that classified information intended only for U.S. elements of international staffs or other organizations is addressed specifically to those elements.

(c) *Receipt systems.* (1) Top Secret information shall be transmitted under a chain of receipts covering each individual who gets custody.

(2) Secret information shall be covered by a receipt between activities and other authorized addressees.

(3) Receipts for Confidential information are optional.

(4) Receipts shall be provided by the transmitter of the material and the forms shall be attached to the inner cover.

(i) Postcard receipt forms may be used.

(ii) Receipt forms shall be unclassified and contain only such information as is necessary to identify the material being transmitted.

(iii) Receipts shall be retained for at least 2 years.

(5) In those instances where a fly-leaf (page check) form is used with classified publications, the postcard receipt will not be required.

(d) *Exceptions.* Exceptions may be authorized to the requirements contained in this Chapter by the head of the Component concerned or designee, provided the exception affords equal protection and accountability to that provided above. Proposed exceptions that do not meet these minimum standards shall be submitted to the DUSD(P) for approval.

§ 159.82 Restrictions, procedures, and authorization concerning escort or hand-carrying of classified information.

(a) *General restrictions.* Appropriately cleared personnel may be authorized to escort or hand-carry classified material between their duty station and an activity to be visited subject to the following conditions:

(1) The storage provisions of § 159.50 of this Regulation shall apply at all stops enroute to the destination, unless the information is retained in the personal possession and constant surveillance of the individual at all times. The hand-carrying of classified information on trips that involve an overnight stopover is not permissible without advance arrangements for proper overnight storage in a U.S. Government installation or a cleared contractor's facility.

(2) Classified material shall not be read, studied, displayed, or used in any manner in public conveyances or places.

(3) When classified material is carried in a private, public, or government conveyance, it shall not be stored in any detachable storage compartment such as automobile trailers, luggage racks, aircraft travel pods, or drop tanks.

(4) Responsible officials shall provide a written statement to all individuals escorting or carrying classified material aboard commercial passenger aircraft authorizing such transmission. This authorization statement may be included in official travel orders and should ordinarily permit the individual to pass through passenger control points without the need for subjecting the classified material to inspection. Specific procedures for carrying classified documents board commercial aircraft are contained in paragraph (c) of this section.

(5) Each activity shall list all classified information carried or escorted by traveling personnel. All classified information shall be accounted for.

(6) Individuals authorized to carry or escort classified material shall be fully informed of the provisions of this Chapter before departure from their duty station.

(b) *Restrictions on hand-carrying classified information aboard commercial passenger aircraft.* Classified information shall not be hand-carried aboard commercial passenger aircraft unless:

(1) There is neither time nor means available to move the information in the time required to accomplish operational objective or contract requirements, including request-for-quotation (RFQ) and request-for-bid (RFB).

(2) The hand-carry has been authorized by an appropriate official in accordance with paragraph (d) of this section.

(3) In the case of the hand-carry of classified information across international borders, arrangements

have been made to ensure that such information will not be opened by customs, border, postal, or other inspectors, either U.S. or foreign.

(4) The hand-carry is accomplished aboard a U.S. carrier. Foreign carriers will be utilized only when no U.S. carrier is available and then the approving official must ensure that the information will remain in the custody and physical control of the U.S. escort at all times.

(c) *Procedures for hand-carrying classified information aboard commercial passenger aircraft.*

(1) *Basic requirements.* (i) Advance and continued coordination by the DoD activity and contractor officials shall be made with departure airline and terminal officials and, when possible, with intermediate transfer terminals to develop mutually satisfactory arrangements within the terms of this issuance and Federal Aviation Administration (FAA) guidance. Specifically, a determination should be made beforehand whether documentation described in paragraph (d)(3) of this section will be required. Local FAA Security Officers can be of assistance in making this determination. To aid coordination and planning, a listing of FAA field offices is at Appendix D.

(ii) The individual designated as courier shall be in possession of either DD Form 2, "Armed (or Uniformed) Services Identification Card" (any color), or other DoD or contractor picture identification card and written authorization to carry classified information.

(iii) The courier shall be briefed as to the provisions of this Chapter.

(2) *Procedures for carrying classified information in envelopes.* Persons carrying classified information should process through the airline ticketing and boarding procedure the same as all other passengers except for the following:

(i) The classified information being carried shall contain no metal bindings and shall be contained in sealed envelopes. Should such envelopes be contained in a briefcase or other carry-on luggage, the briefcase or luggage shall be routinely offered for opening for inspection for weapons. The screening officials may check envelope by X-ray machine, flexing, feel, and weight, without opening the envelopes themselves.

(ii) Opening or reading of the classified document by the screening official is not permitted.

(3) *Procedures for transporting classified information in packages.* Classified information in sealed or packaged containers shall be processed as follows:

(i) The government or contractor official who has authorized the transport of the classified information shall notify the appropriate air carrier in advance.

(ii) The passenger carrying the information shall report to the affected airline ticket counter before boarding, present his documentation, and the package or cartons to be exempt from screening. The airline representative will review the documentation and description of the containers to be exempt.

(iii) If satisfied with the identification of the passenger and his documentation, the official will provide the passenger with an escort to the screening station and authorize the screening personnel to exempt the container from physical or other type inspection.

(iv) If the airline official is not satisfied with the identification of the passenger or the authenticity of his documentation, the passenger will not be permitted to board, and not be subject to further screening for boarding purposes.

(v) The actual loading and unloading of the information will be under the supervision of a representative of the air carrier; however, appropriately cleared personnel shall accompany the material and keep it under surveillance during loading and unloading operations. In addition, appropriately cleared personnel must be available to conduct surveillance at any intermediate stops where the cargo compartment is to be opened.

(vi) DoD Components and contractor officials shall establish and maintain appropriate liaison with local FAA officials, airline representatives and airport terminal administrative and security officials. Prior notification is emphasized to ensure that the airline representative can make timely arrangements for courier screening.

(4) *Documentation.* (i) When authorized to carry sealed envelopes or containers containing classified information, both government and contractor personnel shall present an identification card carrying a photograph, descriptive data, and signature of the individual. (If the identification card does not contain date of birth, height, weight, and signature, these items must be included in the written authorization.)

(A) DoD personnel shall present an official identification issued by U.S. Government agency.

(B) Contractor personnel shall present identification issued by the contractor or the U.S. Government. Contractors' identification cards shall carry the name of the employing contractor, or otherwise be marked to denote "contractor."

(C) The courier shall have the original letter authorizing the individual to carry classified information. A reproduced copy is not acceptable; however, the traveler shall have sufficient authenticated copies to provide a copy to each airline involved. The letter shall be prepared on letterhead stationary of the agency or contractor authorizing the carrying of classified material. In addition, the letter shall:

(*1*) Give the full name of the individual and his employing agency or company;

(*2*) Describe the type of identification the individual will present (for example, Naval Research Laboratory Identification Card, No. 1234; ABC Corporation Identification Card No. 1234);

(*3*) Describe the material being carried (for example, three sealed packages, 9"×8"×24", addresses and addressor);

(*4*) Identify the point of departure, destination, and known transfer points;

(*5*) Carry a date of issue and an expiration date;

(*6*) Carry the name, title, and signature of the official issuing the letter. Each package or carton to be exempt shall be signed on its face by the official who signed the letter; and

(*7*) Carry the name of the government agency designated to confirm the letter of authorization, and its telephone number. The telephone number of the agency designated shall be an official U.S. Government number.

(ii) Information relating to the issuance of DoD identification cards is contained in § 159.10(ss). The green, gray, and red DD Forms 2 and other DoD and contractor picture ID cards are acceptable to FAA. DoD Components shall provide for the issuance of DD Form 1173, "Uniformed Services Identification and Privilege Card" to civilian employees selected for courier duties, if individuals have not been issued other acceptable ID cards.

(iii) The Director, DIS shall provide for the issuance of DIS/ID card or DD Form 1173 when required by contractor employees selected for courier or hand-carrying duties, and when the employer involved does not have an appropriate identification medium.

(d) *Authority to approve escort or hand-carry of classified information aboard commercial passenger aircraft.*

(1) Within the United States, its Territories, and Canada.

(i) DoD Component officials who have been authorized to approve travel orders and designate couriers may approve the escort or hand-carry of

classified information within the United States, its Territories, and Canada.

(ii) The Director, DIS, shall provide for authorization for contractor personnel to hand-carry classified material.

(2) Outside the United States, its Territories, and Canada.

The head of a DoD Component, or single designee, may authorize the escort or hand-carry of classified information outside the area encompassed by the United States, its Territories, and Canada.

§ 159.83 [Reserved]

Subpart J—Disposal and Destruction

§159.90 Policy.

Documentary record information originated or received by a DoD Component in connection with the transaction of public business, and preserved as evidence of the organization, functions, policies, operations, decisions, procedures, or other activities of any U.S. Government department or agency or because of the informational value of the data contained therein, may be disposed of or destroyed only in accordance with DoD Component record management regulations. Nonrecord classified information and other material of similar temporary nature, shall be destroyed when no longer needed under procedures established by the head of the cognizant DoD Component, consistent with the following requirements.

§ 159.91 Methods of destruction.

Classified documents and material shall be destroyed by burning or, with the approval of the cognizant DoD Component head or designee, by melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation sufficient to preclude recognition or reconstruction of the classified information.

§159.92 Records of destruction.

(a) Records of destruction are required for Top Secret and Secret information. The record shall be dated and signed at the time of destruction by two witnesses for Top Secret information and one witness for Secret. In the case of information placed in burn bags for central disposal, the destruction record need only be signed by the witnessing official or officials when the information is so placed.

(b) Records of destruction shall be maintained for a minimum of 2 years. In individual cases involving Secret information, a cognizant DoD Component head or designee may waive the requirement for destruction records if compliance would create an unacceptable degree of operating inefficiency.

§ 159.93 Classified waste.

Waste material, such as handwritten notes, carbon paper, typewriter ribbons, and working papers that contain classified information must be protected to prevent unauthorized disclosure of the information. Classified waste shall be destroyed when no longer needed by a method described in § 159.91. Destruction records are not required.

§159.94 [Reserved]

Subpart K—Security Education

§159.100 Responsibility and objectives.

Heads of DoD Components shall establish security education programs for their personnel. Such programs shall stress the objectives of improving the protection of information that requires it. They shall also place emphasis on the balance between the need to release the maximum information appropriate under the Freedom of Information Act (§159.10 (k)) and the interest of the Government in protecting the national security.

§ 159.01 Scope and principles.

The security education program shall include all personnel authorized or expected to be authorized access to classified information. Each DoD Component shall design its program to fit the requirements of different groups of personnel. Care must be exercised to assure that the program does not evolve into a perfunctory compliance with formal requirements without achieving the real goals of the program. The program shall, as a minimum, be designed to:

(a) Advise personnel of the adverse effects to the national security that could result from unauthorized disclosure and of their personal, moral, and legal responsibility to protect classified information within their knowledge, possession, or control;

(b) Indoctrinate personnel in the principles, criteria, and procedures for the classification, downgrading, declassification, marking, and dissemination of information, as prescribed in this Regulation, and alert them to the strict prohibitions on improper use and abuse of the classification system;

(c) Familiarize personnel with procedures for challenging classification decisions believed to be improper;

(d) Familiarize personnel with the security requirements of their particular assignment;

(e) Inform personnel of the techniques employed by foreign intelligence activities in attempting to obtain classified information, and their responsibility to report such attempts;

(f) Advise personnel of the penalties for engaging in espionage activities;

(g) Advise personnel of the strict prohibition against discussing classified information over an unsecure telephone or in any other manner that permits interception by unauthorized persons;

(h) Inform personnel of the penalties for violation or disregard of the provisions of this Regulation (see § 159.141(b));

(i) Instruct personnel that individuals having knowledge, possession, or control of classified information must determine, before disseminating such information, that the prospective recipient has been cleared for access by competent authority; needs that information in order to perform his or her official duties; and can properly protect (or store) the information.

§ 159.102 Refresher briefings.

Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in § 159.101 shall be tailored to fit the needs of experienced personnel.

§ 159.103 Foreign travel briefings.

Personnel who have had access to classified information shall be given a foreign travel briefing, before travel, to alert them to their possible exploitation under the following conditions:

(a) Travel to or through Communist-controlled countries; and

(b) Attendance at international scientific, technical, engineering or other professional meetings in the United States or in any country outside the United States where it can be anticipated that representatives of Communist-controlled countries will participate or be in attendance. (See § 159.10(e).)

(c) Individuals who travel frequently, or attend or host meetings of foreign visitors as described in (b), above, need not be briefed for each occasion, but shall be provided a thorough briefing at least once every 6 months and a general reminder of security responsibilities before each such activity.

§ 159.104 Termination briefings.

(a) Upon termination of employment or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material,

and execute a Security Termination Statement. This statement shall include:

(1) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act § 159.10(tt)), other criminal statutes, DoD regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(2) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(3) An acknowledgment that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(4) An acknowledgment that the individual will report without delay to the FBI or the DoD Component concerned any attempt by any unauthorized person to solicit classified information.

(b) When an individual refuses to execute a security termination statement, that fact shall be reported immediately to the security office of the cognizant organization concerned.

(c) The security termination statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's record retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

§ 159.105 [Reserved]

Subpart L—Foreign Government Information

§ 159.110 Classification.

(a) *Classification.* (1) Foreign government information classified by a foreign government or international organization of governments shall retain its original classification designation or be assigned a U.S. classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.

(2) Foreign government information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence must be classified by an original classification authority. The two-step procedure for classification prescribed in § 159.21 does not apply to the classification of such foreign government information because E.O. 12356 § 159.10 states a presumption of damage to the national security in the event of unauthorized disclosure of such information. Therefore, foreign government information shall be classified at least Confidential, but higher whenever the damage criteria of § 159.14(b)(c) are determined to be met.

(b) *Duration of classification.* (1) Foreign government information shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign entity.

(2) Foreign government information classified by the Department of Defense under this or previous Regulations shall be protected for an indefinite period (see paragraph (e) of § 159.112).

§ 159.111 Declassification.

(a) *Policy.* In considering the possibility of declassification of foreign government information, officials shall respect the intent of this part to protect foreign government information and confidential foreign sources.

(b) *Systematic review.* When documents containing foreign government information are encountered during the systematic review process they shall be referred to the originating agency for a declassification determination. Consultation with the foreign originator through appropriate channels may be necessary before final action can be taken.

(c) *Mandatory review.* Requests for mandatory review for declassification of foreign government information shall be processed and acted upon in accordance with the provisions of § 159.32, except that foreign government information will be declassified only in accordance with the guidelines developed for such purpose and after necessary consultation with other DoD Components or government agencies with subject matter interest. When these guidelines cannot be applied to the foreign government information requested, or in the absence of such guidelines, consultation with the foreign originator through appropriate channels normally should be effected prior to final action taken on the request. When the responsible DoD Component is knowledgeable of the foreign originator's view toward declassification or continued classification of the types of information requested, consultation with the foreign originator may not be necessary.

§ 159.112 Marking.

(a) *Equivalent U.S. classification designations.* Except for the foreign security classification designation RESTRICTED, foreign classification designations, including those of international organizations of governments, that is, NATO, generally parallel U.S. classification designations. A table of equivalents is contained in Appendix A.

(b) *Marking NATO documents.* Classified documents originated by NATO, if not already marked with the appropriate classification in English, shall be so marked. Markings required under § 159.43(c) shall not be placed on documents originated by NATO. Documents originated by NATO that are marked RESTRICTED shall be marked with the following additional notation: "To be safeguarded in accordance with USSAN Instruction 1–69" (§ 159.10(z)).

(c) *Marking other foreign government documents.* (1) If the security classification designation of foreign government documents is shown in English, no other classification marking shall be applied. If the foreign classification designation is not shown in English, the equivalent overall U.S. classification designation (see Appendix A) shall be marked conspicuously on the document. When foreign government documents are marked with a classification designation having no U.S. equivalent, as in the last column of Appendix A, such documents shall be marked in accordance with paragraph (c)(2) of this section.

(2) Certain foreign governments use a fourth classification designation as shown in the last column of Appendix A. Such designations equate to the foreign classification RESTRICTED. If foreign government documents are marked with any of the classification designations listed in the last column of Appendix A, whether or not in English, no other classification marking shall be applied. In all such cases, the notation, "This material is to be safeguarded in accordance with § 159.113," shall be shown on the face of the document.

(3) Other marking requirements prescribed by this Regulation for U.S. classified documents are not applicable to documents of foreign governments or international organizations of governments.

(d) *Marking of DoD classification determinations.* Foreign documents containing foreign government information not classified by the foreign government but provided to the Department of Defense in confidence shall be classified as prescribed in § 159.110(a)(2) and marked with the appropriate U.S. classification.

(e) *Marking of foreign government information in DoD documents.* (1)

Except where such markings would reveal that information is foreign government information when that fact must be concealed, or reveal a confidential source or relationship not otherwise evident in the document or information, foreign government information incorporated in DoD documents shall be identified in a manner that ensures that such information is not declassified prematurely or made accessible to nationals of a third country without consent of the originator. This requirement may be satisfied by marking the face of the document "FOREIGN GOVERNMENT INFORMATION," or with another marking that otherwise indicates that the information is foreign government information, such as including the appropriate identification in the portion or paragraph classification markings, for example, (NATO–S) or (U.K.–C). All other markings prescribed by § 159.40(d) are applicable to these documents. In addition, DoD classified documents that contain extracts of NATO classified information shall bear a marking substantially as follows on the cover or first page: "THIS DOCUMENT CONTAINS NATO CLASSIFIED INFORMATION."

(2) The "Declassify on" line of DoD documents containing foreign government information normally shall be completed with the notation "Originating Agency's Determination Required" or "OADR" (see §§ 159.45 and 159.110(a)).

§ 159.113 Protective measures.

(a) *NATO classified information.* NATO classified information shall be safeguarded in accordance with the provisions of § 159.10(z).

(b) *Other foreign government information.* (1) Classified foreign government information other than NATO information shall be protected as is prescribed by this part for U.S. classified information of a comparable classification.

(2) Foreign government information marked under paragraph § 159.112(c)(2) shall be protected as U.S. CONFIDENTIAL, except that such information may be stored in locked filing cabinets, desks, or other similar closed spaces that will prevent access by unauthorized persons.

§ 159.114 [Reserved]

Subpart M—Special Access Programs

§ 159.120 Policy.

It is the policy of the Department of Defense to use the security classification categories and the applicable sections of E.O. 12356 (§ 159.10(b)) and its implementing ISOO Directive (§ 159.10(c)), to limit access to classified information on a "need-to-know" basis to personnel who have been determined to be trustworthy. It is further policy to apply the "need-to-know" principle in the regular system so that there will be no need to resort to formal Special Access Programs. In this context, Special Access Programs may be created or continued only on a specific showing that:

(a) Normal management and safeguarding procedures are not sufficient to limit "need-to-know" or access; and

(b) The number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved.

§ 159.121 Establishment of special access programs.

(a) Procedures for the establishment of Special Access Programs involving NATO classified information are based on international treaty requirements (see § 159.10(z)).

(b) The policies and procedures for access to and dissemination of Restricted Data and Critical Nuclear Weapon Design Information are contained in (§ 159.10(y)).

(c) Special Access Program for foreign intelligence information under the cognizance of the Director of Central Intelligence or the NCSC originate outside the Department of Defense. However, coordination with the DUSD(P) is necessary before the establishment or implementation of any such Programs by any DoD Component may be effected. The information required by § 159.122 will be provided.

(d) Special Access Programs, other than those specified in paragraphs (a), (b), and (c) of this section, that the Military Departments desire to establish after the effective date of this Regulation, shall be submitted with the information referred to in § 159.122, to the Secretary of the Department concerned for approval. If the Secretary of the Military Department approves the establishment of a Program, a copy of the information and rationale for approval shall be furnished to the DUSD(P).

(e) Special Access Programs, other than those specified in paragraphs (a), (b), and (c) of this section, that are desired to be established in any DoD Component other than the Military Departments shall be submitted with the information referred to in § 159.122 to the DUSD(P) for approval.

(f) Special Access Programs shall be reviewed regularly. All such Programs, other than those specified in paragraphs (a), (b), and (c) of this section or those required by treaty or international agreement, shall terminate automatically every 5 years unless reestablished in accordance with the procedure specified above. DoD Components shall review annually any Special Access Programs they have in effect.

(g) Each DoD Component shall appoint an official to act as a single point of contact for security control and administration of all Special Access Programs established by or existing in the Component. Such official shall be responsible for ensuring that the DUSD(P) is advised of the establishment of Special Access Programs in accordance with the provisions of this Subpart.

§ 159.122 Reporting of Special Access Programs.

(a) Reports required under § 159.121 for Special Access Programs shall include:

(1) The responsible department, agency, or DoD Component, including office identification;

(2) The unclassified name or short title of the Program;

(3) The relationship, if any, to other Programs in the Department of Defense or other government agencies;

(4) The rationale for establishing the Special Access Program including the reason why normal management and safeguarding procedures for classified information are inadequate;

(5) The estimated number of persons to be granted special access in the responsible DoD Component; other DoD Components; non-DoD departments or agencies; and the total of such personnel;

(6) A copy of all instructions pertaining to the Program security requirements including, but not limited to, those governing access to Program information;

(7) The date of Program establishment;

(8) The date of last review; and

(9) The DoD Component official who is the point of contact (last name, first name, middle initial; position or title; mailing address; and telephone number).

(b) This information requirement has been assigned Report Control Symbol DD–POL(AR)1605.

§ 159.123 Accounting for Special Access Programs.

The DUSD(P) shall maintain a listing of approved Special Access Programs.

§ 159.124 "Carve-Out" contracts.

(a) The Secretaries of the Military Departments or their designees and the DUSD(P) for other DoD Components shall, in those Special Access Programs affecting contractors, make the Programs applicable by legally binding instruments and provide copies to the Director, DIS.

(b) To the extent necessary for DIS to execute its security responsibilities with respect to Special Access Programs under its security cognizance, DIS personnel shall have access to all information relating to the administration of these Programs.

(c) The use of "carve-out" contracts that relieve the DIS from inspection responsibility under the Defense Industrial Security Program is prohibited unless such contracts are in support of a Special Access Program approved and administered under § 159.121. The fact that a classified contract is a part of, or is otherwise associated with, an approved Special Access Program does not, in and of itself, justify "carve-out" status.

(d) Approval to establish a "carve-out" contract must be requested from the Secretary of a Military Department or designee, the Director, NSA, or designee, or in the case of other DoD Components, from the DUSD(P). Approved "carve-out" contracts shall be assured the support necessary for the requisite protection of the classifed information involved. The support shall be specified through a system of controls that shall provide for:

(1) A written security plan;

(2) "Carve-out" contracting procedures;

(3) A central office of record; and

(4) An official to be the single point of contact for security control and administration. DoD Components other than the Military Departments and NSA shall submit such appropriate rationale and security plan along with requests for approval to the DUSD(P).

§ 159.125 [Reserved]

Subpart N—Program Management

§ 159.130 Executive Branch oversight and policy direction.

(a) *National Security Council.* Pursuant to the provisions of E.O. 12356, (§ 159.10(b)), the NSC shall provide overall policy direction for the Information Security Program.

(b) *Administrator of General Services.* The Administrator of General Services is responsible for implementing and monitoring the Information Security Program established under § 159.10(b). In accordance with § 159.10(b), the Administrator delegates the implementation and monitorship functions of the Program to the Director of the ISOO.

(c) *Information Security Oversight Office.*—(1) *Composition.* The ISOO has a full-time director appointed by the Administrator of General Services with approval of the President. The Director has the authority to appoint a staff for the office.

(2) *Functions.* The Director of the ISOO is charged with the following principal functions that pertain to the Department of Defense:

(i) Oversee DoD actions to ensure compliance with § 159.10(b) and implementing directives, for example, the § 159.10(c) and this Regulation;

(ii) Consider and take action on complaints and suggestions from persons within or outside the government with respect to the administration of the Information Security Program;

(iii) Report annually to the President through the NSC on the implementation of § 159.10(b);

(iv) Review this regulation and DoD guidelines for systematic declassification review; and

(v) Conduct on-site reviews of the Information Security Program of each DoD Component that generates or handles classified information.

(3) *Information requests.* The Director of the ISOO is authorized to request information or material concerning the Department of Defense, as needed by the ISOO in carrying out its functions.

(4) *Coordination.* Heads of DoD Components shall ensure that any significant requirements levied directly on the Component by the ISOO are brought to the attention of the ODUSD(P).

§ 159.131 Department of Defense.

(a) *Management Responsibility.* (1) The DUSD(P) is the senior DoD official having authority and responsibility to ensure effective and uniform compliance with and implementation of E.O. 12356 and its implementing § 159.10 (b) and (c). As such, the DUSD(P) shall have primary responsibility for providing guidance, oversight and approval of policy and procedures governing the DoD Information Security Program. The DUSD(P) or his designee may approve waivers or exceptions to the provisions of this part to the extent such action is consistent with § 159.10(b) and (c).

(2) The heads of DoD Components may approve waivers to the provisions of this Regulation only as specifically provided for herein.

(3) The Director, NSA/Chief, Central Security Service under § 159.10(a), is authorized to impose special requirements with respect to the marking, reproduction, distribution, accounting, and protection of and access to classified cryptologic information. In this regard, the Director, NSA, may approve waivers or exceptions to these special requirements. Except as provided in § 159.11(f), the authority to lower any COMSEC security standards rests with the Secretary of Defense. Requests for approval of such waivers or exceptions to established COMSEC security standards which, if adopted, will have the effect of lowering such standards, shall be submitted to the DUSD(P) for approval by the Secretary of Defense.

§ 159.132 DOD components.

(a) *General.* The head of each DoD Component shall establish and maintain an Information Security Program designed to ensure compliance with the provisions of this Regulation throughout the Component.

(b) *Military departments.* The Secretary of each Military Department shall designate a senior official who shall be responsible for compliance with and implementation of this part within the Department.

(c) *Other components.* The head of each other DoD Component shall designate a senior official who shall be responsible for compliance with and implementation of this Part within their respective Component.

(d) *Program monitorship.* The senior officials designated under Paragraphs (b)(c) above are responsible within their respective jurisdictions for monitoring, inspecting and reporting on the status of administration of the DoD Information Security Program at all levels of activity under their cognizance.

(e) *Field program management.* Throughout the Department of Defense, each activity shall assign an official to serve as security manager for the activity. This official shall be responsible for the administration of an effective Information Security Program in that activity with particular emphasis on security education and training, assignment of proper classifications, downgrading and declassification, safeguarding, and monitorship.

§ 159.133 Information requirements.

DoD Components shall submit on a fiscal year basis a consolidated report concerning the Information Security Program of the Component on SF 311, "Agency Information Security Program Data," to reach the ODUSD(P) by October 20 of each year. SF 311 shall be completed in accordance with the

instructions thereon and augmenting instructions issued by the ODUSD(P). The ODUSD(P) shall submit the DoD report (SF 311) to the ISOO by October 31 of each year. Interagency Report Control Number 0230–GSA–AN applies to this information collection system as well as to that contained in § 159.15(c).

§ 159.134 [Reserved]

Subpart O—Administrative Sanctions

§ 159.140 Individual Responsibility.

All personnel, civilian or military, of the Department of Defense are responsible individually for complying with the provisions of this Regulation.

§ 159.141 Violation subject to sanctions.

(a) DoD Military and civilian personnel are subject to adminsitrative sanctions if they:

(1) Knowingly and willfully classify or continue the classification of information in violation of E.O. 12356 (§ 159.10 (b)), any implementing issuances, or this part.

(2) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under § 159.10 (b) or prior orders; or

(3) Knowingly and willfully violate any other provision of § 159.10 (b), any implementing issuances or this Regulation.

(b) Sanctions include but are not limited to a warning notice, reprimand, termination of classification authority, suspension without pay, forfeiture of pay, removal or discharge, and will be imposed upon any person, regardless of office or level of employment, who is responsible for a violation specified under this paragraph as determined appropriate under applicable law and DoD regulations. Nothing in this part prohibits or limits action under the Uniform Code of Military Justice (§ 159.10 (uu)) based upon violations of that Code.

§ 159.142 Corrective action.

The Secretary of Defense, the Secretaries of the Military Departments, and the heads of other DoD Components shall ensure that appropriate and prompt corrective action is taken whenever a violation under § 159.143 a. occurs or repeated administrative discrepancies or repeated disregard of requirements of this part occurs (see § 159.143).

§ 159.143 Administrative discrepancies.

Repeated administrative discrepancies in the marking and handling of classified documents and material such as failure to show classification authority; failure to apply internal classification markings; failure to adhere to the requirements of this part that pertain to dissemination, storage, accountability, and destruction, and that are determined not to constitute a violation under § 159.141 a. may be grounds for adverse administrative action including warning, admonition, reprimand or termination of classification authority as determined appropriate under applicable policies and procedures.

§ 159.144 Reporting violations.

(a) Whenever a violation under § 159.141 a. occurs, the Director of Information Security, ODUSD(P), shall be informed of the date and general nature of the occurrence including the relevant paragraphs of this part, the sanctions imposed, and the corrective action taken. Notification of such violations shall be furnished to the Director of the ISOO in accordance with Section 5.4(d) of E.O. 12356 (§ 159.10(b)) by the DUSD(P).

(b) Any action resulting in unauthorized disclosure of properly classified information that constitutes a violation of the criminal statutes and evidence reflected in classified information of possible violations of federal criminal law by a DoD employee and of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General shall be the subject of a report processed in accordance with (§ 159.10(kk)) and § 159.10(jj)).

(c) Any action reported under paragraph (b) of this Section, above shall be reported to the Attorney General by the General Counsel, Department of Defense.

§ 159.145 [Reserved]

Appendix C [Amended]

2. In Appendix C, the parenthetical expression which appears just below the subject heading is revised to read "(See § 159.71(j))".

M.S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

August 24, 1982.

[FR Doc. 82–23675 Filed 8–30–82; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 20

[2137–1]

Certification of Facilities

AGENCY: Environmental Protection Agency.

ACTION: Publication of interpretive guidelines.

SUMMARY: On January 9, 1978, the Environmental Protection Agency published final regulations in the **Federal Register** (43 FR 1740) under section 2112 of the Tax Reform Act of 1976 (Pub. L. 94–455), which amended section 169 of the Internal Revenue Code of 1954, 26 U.S.C. 169. The regulations established procedures for EPA certification of pollution control facilities as a prerequisite to a firm's claiming rapid amortization of pollution control facilities under 26 U.S.C. 169. The 10 Regional Offices of the Environmental Protection Agency are primarily responsible for administering the certification procedures. To assure that applications for certification receive similar treatment throughout the Agency, the interpretive guidelines printed below are being issued to the Regional offices and are published in the **Federal Register** as Appendix A to 40 CFR Part 20 for the information of affected businesses. These guidelines revise those published on September 29, 1971, at 36 FR 19132.

EFFECTIVE DATE: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Donnell L. Nantkes, Office of General Counsel, Contracts and General Administration Branch (A–134), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 426–8830.

SUPPLEMENTARY INFORMATION: Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement for a Regulatory Impact Analysis. This regulation is not "Major" because it does not establish any new rules or interpretations and is merely intended to provide information on long-standing EPA applications of Section 169 and to ensure uniform application by EPA Regional Offices.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection at 401 M Street, SW., Room 513WT, Washington, D.C. 20460.

List of Subjects in 20 CFR Part 20

Air pollution control, Income taxes, Water pollution control.

Dated: August 19, 1982.

John E. Daniel,

Acting Administrator.

Appendix A [Added]

Appendix A is added to 40 CFR Part 20, as follows:

Appendix A—Guidelines for Certification

1. General.
2. Air Pollution Control Facilities.
a. Pollution control or treatment facilities normally eligible for certification.
b. Air pollution control facility boundaries.
c. Examples of eligibility limits.
d. Replacement of manufacturing process by another nonpolluting process.
3. Water Pollution Control Facilities.
a. Pollution control or treatment facilities normally eligible for certification.
b. Examples of eligibility limits.
4. Multiple-purpose facilities.
5. Facilities serving both old and new plants.
6. State certification.
7. Dispersal of pollutants.
8. Profit-making facilities.
9. Multiple applications.

1. *General.* Section 2112 of the Tax Reform Act of 1976 (Public Law 94–455, October 4, 1976) amended section 169 of the Internal Revenue Code of 1954, "Amortization of Pollution Control Facilities." The amendment made permanent the rapid amortization provisions of section 704 of the Tax Reform Act of 1969 (Public Law 91–172, December 30, 1969) and redefined eligibility limits to allow certification of facilities which prevent the creation or emission of pollutants.

The law defines a "certified pollution control facility" as "a new identifiable treatment facility" which is:

(a) Used in connection with a plant or other property in operation before January 1, 1976, to abate or control air or water pollution by removing, altering, disposing of, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat;

(b) Constructed, reconstructed, erected or (if purchased) first placed in service by the taxpayer after December 31, 1975;

(c) Not to "significantly" increase the output or capacity, extend the useful life, alter the nature of the manufacturing or production process or facility or reduce the total operating costs of the operating unit of the plant or other property most directly associated with the pollution control facility (as suggested by the legislative history, EPA regulations define the term "significant" as any increase, reduction or extension greater than 5%); and

(d) Certified by both State and Federal authorities, as provided in section 169(d)(1)(A) and (B) of the Internal Revenue Code.

If the facility is a building, the statute requires that it be exclusively devoted to pollution control. Most questions as to whether a facility is a "building" and, if so, whether it is "exclusively" devoted to pollution control are resolved by section 1.169–2(b)(2) of the Treasury Department regulations.

Since a treatment facility is eligible only if it furthers the general policies of the United States under the Clean Air Act and the Clean Water Act, a facility will be certified only if its purpose is to improve the quality of the air or water outside the plant. Facilities to protect the health or safety of employees inside the plant are not eligible.

Facilities installed before January 1, 1976, in plants placed in operation after December 31, 1968, are ineligible for certification under the statute. 26 U.S.C. 169.

2. *Air pollution control facilities.*

a. *Pollution control or treatment facilities normally eligible for certification.* The following devices are illustrative of facilities for removal, alteration, disposal, storage or preventing the creation or emission of air pollution:

(1) Inertial separators (cyclones, etc.).
(2) Wet collection devices (scrubbers).
(3) Electrostatic precipitators.
(4) Cloth filter collectors (baghouses).
(5) Director fired afterburners.
(6) Catalytic afterburners.
(7) Gas absorption equipment.
(8) Vapor condensers.
(9) Vapor recovery systems.
(10) Floating roofs for storage tanks.
(11) Fuel cleaning equipment.
(12) Combinations of the above.

(b) *Air Pollution control facility boundaries.* Most facilities are systems consisting of several parts. A facility need not start at the point where the gaseous effluent leaves the last unit of the processing equipment, nor will it always extend to the point where the effluent is emitted to the atmosphere or existing stack, breeching, ductwork or vent. It includes all the auxiliary equipment used to operate the control system, such as fans, blowers, ductwork, valves, dampers and electrical equipment. It also includes all equipment used to handle, store, transport or dispose of the collected pollutants.

(c) *Examples of eligibility limits.* The amortization deduction is limited to new identifiable treatment facilities which remove, alter, destroy, dispose of, store, or prevent the creation or emission of pollutants, contaminants or wastes. It is not available for all expenditures for air pollution control and is limited to devices which are installed for the purpose of pollution control and which actually remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants by removing potential pollutants at any stage of the production process.

(1) *Boiler modifications or replacements.* Modifications of boilers to accommodate "cleaner" fuels are not eligible for rapid amortization: e.g., removal of stokers from a coal-fired boiler and the addition of gas or oil burners. The purpose of the burners is to produce heat, and they are not identifiable as treatment facilities nor do they prevent the creation or emission of pollutants by removing potential pollutants. A new gas or oil-fired boiler that replaces a coal-fired boiler would also be ineligible for certification.

(2) *Fuel processing.* Eligible air pollution control facilities include preprocessing equipment which removes potential air pollutants from fuels before they are burned. A desulfurization facility would thus be eligible provided it is used in connection with the plant where the desulfurized coal will be burned or is used as a centralized facility for one or more plants. However, fluidized bed facilities would generally not be eligible for rapid amortization. Such facilities would almost certainly increase output or capacity, reduce total operating costs, or extend the useful life of the plant or other property by more than 5%, since the boiler itself would be the operating unit of the plant most closely associated with the pollution control facility. Where the Regional Office and the taxpayer disagree as to the applicability of the 5% rule, the Regional office should nonetheless certify the facility if it is otherwise eligible and leave the ultimate determination to the Treasury Department. The certification should alert Treasury to the possibility that the facility is ineligible for rapid amortization.

(3) *Incinerators.* The addition of an afterburner, secondary combustion chamber or particulate collector would be eligible as would any device added to effect more efficient combustion.

(4) *Collection devices used to collect products or process material.* In some manufacturing operations, devices are used to collect product or process material, as in the case of the manufacture of carbon black. The baghouse would be eligible for certification, but the certification should notify the Treasury Department of the profitable waste recovery involved. (See paragraph 8 below.)

(5) *Intermittent control systems.* Measuring devices which inform the taxpayer that ambient air quality standards are being exceeded are not eligible for certification since they do not physically remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants, but merely act as a signal to curtail operations. Of course, measuring devices used in connection with an eligible pollution control facility would be eligible.

d. *Replacement of manufacturing process by another, nonpolluting process.* An installation does not qualify for certification where it uses a process known to be "cleaner" than an alternative, but which does not actually remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants by removing potential pollutants at any stage in the production process. For example, a minimally polluting electric induction furnace to melt cast iron which replaces, or is installed instead of, a heavily polluting iron cupola furnace would be ineligible for this reason and because it is not an identifiable treatment facility. However, if the replacement equipment has an air pollution control device added to it, the control device would be eligible even though the process equipment would not. For example, where a primary copper smelting reverberatory furnace is replaced by a flash smelting furnace, followed by the installation of a contact sulfuric acid plant, the acid plant would qualify since it is a control device not necessary to the production process. The flash smelting furnace would not qualify because its purpose is to produce copper matte.

3. *Water Pollution Control Facilities.*

a. *Pollution control or treatment facilities normally eligible for certification.* The following types of equipment are illustrative of facilities to remove, alter, destroy, store or prevent the creation of water pollution:

(1) Pretreatment facilities which neutralize or stabilize industrial or sanitary wastes, or both, from a point immediately preceding the point of such treatment to the point of disposal to, and acceptance by, a publicly-owned treatment works. The necessary pumping and transmitting facilities are also eligible.

(2) Treatment facilities which neutralize or stabilize industrial or sanitary wastes, or both, to comply with Federal, State or local effluent or water quality standards, from a point immediately preceding the point of such treatment to the point of disposal, including necessary pumping and transmitting facilities, including those for recycle or segregation of wastewater.

(3) Ancillary devices and facilities such as lagoons, ponds and structures for storage, recycle, segregation or treatment, or any combination of these, of wastewaters or wastes from a plant or other property.

(4) Devices, equipment or facilities constructed or installed for the primary purpose of recovering a by-product of the operation (saleable or otherwise) previously lost either to the atmosphere or to the waste effluent. Examples are:

(A) A facility to concentrate and recover vaporous by-products from a process stream for reuse as raw feedstock or for resale, unless the estimated profits from resale exceed the cost of the facility (see paragraph 8 below).

(B) A facility to concentrate or remove "gunk" or similar "tars" or polymerized tar-like materials from the process waste effluent previously discharged in the plant effluents. Removal may occur at any stage of the production process.

(C) A device used to extract or remove insoluble constitutents from a solid or liquid by use of a selective solvent; an open or closed tank or vessel in which such extraction or removal occurs; a diffusion battery of tanks or vessels for countercurrent decantation, extraction, or leaching, etc.

(D) A skimmer or similar device for removing grease, oils and fat-like materials from the process or effluent stream.

(b) *Examples of eligibility limits.*

(1) In-plant process changes which may result in the reduction or elimination of pollution but which do not themselves remove, alter, destroy, dispose of, store or prevent the creation of pollutants by removing potential pollutants at some point in the process stream are not eligible for certification.

(2) A device, piece of equipment or facility is not eligible if it is associated with or included in a stream for subsurface injection of untreated or inadequately treated industrial or sanitary waste.

4. *Multiple-purpose facilities.* A facility can qualify for rapid amortization if it serves a function other than the abatement of pollution (unless it is a building). Otherwise, the effect might be to discourage installation of sensible pollution abatement facilities in favor of less efficient single-function facilities.

The regulations require applicants to state what percentage of the cost of a facility is properly allocable to its abatement function and to justify the allocation. The Regional Office will review these allocations, and the certification will inform the Treasury Department if the allocation appears to be incorrect. Although not generally necessary or desireable, site inspections may be appropriate in cases involving large sums of money or unusual types of equipment.

5. *Facilities serving both old and new plants.* The statute provides that pollution control facilities must be used in connection with a plant or other property in operation before January 1, 1976. When a facility is used in connection with both pre-1976 and newer property, it may qualify for rapid amortization to the extent it is used in connection with pre-1976 property.

Again, the applicant will submit a theory of allocation for review by the Regional Office. The usual method of allocation is to compare the effluent capacity of the pre-1976 plant to the treatment capacity of the control facility. For example, if the old plant has a capacity of 80 units of effluent (but an average output of 60 units), the new plant has a capacity of 40 units (but an average output of 20 units), and the control facility has a capacity of 150 units, then $^{80}/_{150}$ of the cost of the control facility would be eligible for rapid amortization.

If a taxpayer presents a seemingly reasonable method of allocation different from the foregoing, Regional Office personnel should consult with the Office of Air Quality Planning and Standards or the Office of Water Planning and Standards, and with the Office of General Counsel.

6. *State certification.* To qualify for rapid amortization under section 169, a facility must first be certified by the State as having been installed "in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination." Significantly, the statute does not say that the State must require that a facility be installed. If use of a facility will not actually contravene a State requirement, the State may certify. However, since State certification is a prerequisite to EPA certification, EPA may not certify if the State has denied certification for whatever reason.

It should be noted that certification of a facility does not constitute the personal warranty of the certifying official that the conditions of the statute have been met. EPA certification is binding on the Government only to the extent the submitted facts are accurate and complete.

7. *Dispersal of pollutants.* Section 169 applies to facilities which remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants—including heat. Facilities which merely disperse pollutants (such as tall stacks) do not qualify. However, there is no way to "dispose of" heat other than by transferring B.t.u.'s to the environment. A cooling tower is therefore eligible for certification provided it is used in connection with a pre-1976 plant. A cooling pond or an addition to an outfall structure which results in a decrease in the amount by which the temperature of the receiving water is raised and which meets applicable State standards is likewise eligible.

8. *Profit-making facilities.* The statute denies rapid amortization where the cost of pollution control facilities will be recovered from profits derived through the recovery or wastes "or otherwise."

If a facility recovers marketable wastes, estimated profits on which are not sufficient to recover the entire cost of the facility, the amortization basis of the facility will be reduced in accordance with Treasury Department regulations. The responsibility of the Regional Offices is merely to identify for the Treasury Department those cases in which estimated profits will arise. The Treasury Department will determine the amount of such profits and the extent to which they can be expected to result in cost recovery, but the EPA certification should inform the Treasury whether cost recovery is possible.

The phrase "or otherwise" also includes situations where the taxpayer is in the business of renting the facility for a fee or charging for the treatment of waste. In such cases, the facility may theoretically qualify for EPA certification. The decision as to the extent of its profitability is for the Treasury Department. Situations may also arise where use of a facility is furnished at no additional charge to a number of users, or to the public, as part of a package of other services. In such cases, no profits will be deemed to arise from operation of the facility unless the other services included in the package are merely ancillary to use of the facility. Of course, the cost recovery provision does not apply where a taxpayer merely recovers the cost of a facility through general revenues; otherwise no profitable firm would ever be eligible for rapid amortization.

It should be noted that section 20.9 of the EPA regulation is not meant to affect general principles of Federal income tax law. An individual other than the title holder of a piece of property may be entitled to take depreciation deductions on it if the arrangements by which such individual has use of the property may, for all practical purposes, be viewed as a purchase. In any such case, the facility could qualify for full rapid amortization, notwithstanding the fact that the title holder charges a separate fee for the use of the facility, so long as the taxpayer—in such a case, the user—does not charge a separate fee for use of the facility.

9. *Multiple applications.* Under EPA regulations, a multiple application may be submitted by a taxpayer who applies for certification of substantially identical pollution abatement facilities used in connection with substantially identical properties. It is not contemplated that the multiple application option will be used with respect to facilities in different States, since each such facility would require a separate application for certification to the State involved. EPA regulations also permit an applicant to incorporate by reference in an application material contained in an application previously filed. The purpose of this provision is to avoid the burden of furnishing detailed information (which may in some cases include portions of catalogs or process flow diagrams) which the certifying official has previously received. Accordingly,

material filed with a Regional Office of EPA may be incorporated by reference only in an application subsequently filed with the same Regional Office.

[FR Doc. 82-23831 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL 2188-3]

Approval and Promulgation of Implementation Plans; New Hampshire Revisions—Ozone Attainment Plan

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule.

SUMMARY: The purpose of this action is to withdraw approval of revisions to compliance schedules for major VOC sources in New Hampshire which were published in the **Federal Register** on June 7, 1982. This action will allow parties to offer comments on these revisions, since EPA is publishing a notice of proposed rulemaking elsewhere in today's **Federal Register.** EPA is taking this action in accordance with the procedures described in the June 7, 1982 Immediate Final Rulemaking.

DATE: This action is effective August 31, 1982.

ADDRESSES: Copies of the New Hampshire submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, State Air Programs Branch, Room 1903, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20400; Office of the Federal Register, 1100 L Street, NW., Washington, D.C. 20408; and Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Alan E. Dion, (617) 223-5630.

SUPPLEMENTARY INFORMATION: On May 2, 1980, May 16, 1980, November 20, 1981 and January 8, 1982 the State of New Hampshire submitted revisions to its State Implementation Plan (SIP). These revisions consisted of permits which contained compliance schedules for the control of Volatile Organic Compound (VOC) emissions from major stationary sources. On June 7, 1982 (47 FR 24552) EPA announced the availability of this submittal and approved it as a revision to the New Hampshire Ozone SIP. (For further information about these revisons, see 47 FR 24552).

In the approval notice EPA advised the public that the effective date of approval would be deferred 60 days (until August 7, 1982) to provide an opportunity to submit comments on the revisions. EPA announced that, if within 30 days of the publication of the notice for approval it received notice that someone wanted to submit an adverse or critical comment, it would withdraw its approval and begin a new rule—by proposing the action and establishing a 30-day comment period. EPA also published a general notice explaining this special procedure on September 4, 1981 (46 FR 44476).

EPA has received notice that a member of the public wishes to submit adverse or critical comment on the VOC source compliance schedule revisions. Therefore, in accordance with the procedures described above, EPA is today withdrawing its June 7, 1982 approval of these revisions.

Elsewhere in today's **Federal Register** EPA is proposing to approve this revision and is soliciting comment on that action.

EPA is withdrawing the original approval without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment would be impractical because EPA needs to withdraw its approval quickly in order to consider the comments which members of the public want to submit. In addition, further notice is not necessary because EPA has already informed the public that it would follow this procedure if a request was received to comment on the revision (see 47 FR 25442 and 46 FR 44476). For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(d) to make this withdrawal immediately effective.

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

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

Under Section 307(b)(1) of the Clean Air Act, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110(a) and 301(a), Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a))

Dated: August 18, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLAN

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

Subpart EE—New Hampshire

§ 52.1520 [Amended]

Section 52.1520 is amended by removing and reserving paragraph (c)(20) as follows:

* * * * *

(c) * * *

(20) [Reserved]

[FR Doc. 82-23841 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 81

[A-7-FRL-2183-5]

Designation of Areas for Air Quality; Planning Purposes; Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: EPA today takes final action to redesignate a portion of the City of Dubuque, Iowa, from nonattainment to attainment with respect to the National Ambient Air Quality Standards for carbon monoxide. This action is based on a request from the Iowa Department of Environmental Quality containing monitoring data meeting the EPA criteria for an attainment designation. This action formally relieves the state of the need to adopt a plan to control carbon monoxide air pollution in Dubuque.

This action will be effective 60 days from today unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

EFFECTIVE DATE: November 1, 1982.

ADDRESSES: Comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 324 East 11th Street, Kansas City, Missouri 64106. The state submission is available at the above address and at the Iowa Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319; the Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street, S.W., Washington, D.C. 20460;

and the Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20408.

FOR FURTHER INFORMATION CONTACT:
Daniel J. Wheeler at 816/374–3791.

SUPPLEMENTARY INFORMATION: On June 4, 1982, the Iowa Department of Environmental Quality (IDEQ) submitted a request to redesignate the attainment status of the City of Dubuque. A portion of Dubuque had been designated nonattainment for carbon monoxide (CO) on October 5, 1981 (46 FR 48929), on the basis of violations monitored within the designated area during 1979 and 1980.

The National Ambient Air Quality Standards for CO allow the 8-hour average of 10 micrograms per cubic meter ($\mu g/m^3$) (9 parts per million (ppm)) and the 1-hour standard of 40 $\mu g/m^3$ (35 ppm) to be exceeded once per year. The state submission shows that, since March 1980, neither standard has been exceeded at the Dubuque monitoring site. The EPA criteria for a redesignation to attainment requires that there be no violations of the standard for 24-consecutive months. While the monitoring information submitted by the state is not totally complete, the missing months were ones that have historically never exceeded the CO standards. Monitoring was completed for all months when exceedances in Dubuque would have been likely. EPA believes this is adequate to determine if violations have occurred. Since none have occurred, the monitoring at this site satisfies the criteria for an attainment designation. Therefore, Dubuque is redesignated attainment for CO.

EPA is taking this action without prior proposal because it imposes no new requirements and is noncontroversial. The public is advised that this action will be effective 60 days from the date of publication in the Federal Register. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on a substantial number of small entities since it imposes no new requirements.

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

Under Section 307(b)(1) of the Clean Air Act, as amended, judicial review of this action is available only for the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

This notice of final rulemaking is issued under the authority of Sections 107 and 301 of the Clean Air Act, as amended (42 U.S.C. 7407 and 7601).

Dated: August 17, 1982.

John W. Hernandez,
Acting Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart C—Section 107 Attainment Status Designation

§ 81.316 [Amended]

1. In Section 81.316, in the table "Iowa–CO," the lines beginning "City of Dubuque . . ." and "Remainder of Dubuque County . . ." are removed.

[FR Doc. 82–23840 Filed 8–30–82; 8:45 am]
BILLING CODE 6560–50–M

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40 CFR Part 81

[A–4–FRL–2188–7; AL–001]

Designation of Areas for Air Quality Planning Purposes; Alabama: Redesignation of Ten Counties for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On March 8, 1982, the Alabama Air Pollution Control Commission (AAPCC) asked EPA, pursuant to Section 107 of the Clean Air Act, to redesignate the following counties attainment for ozone: Monroe, Conecuh, Escambia, Autauga, Elmore, Montgomery, Lowndes, Tuscaloosa, and Bibb. The State submitted air quality data which showed no violation of the ozone standards for these counties. EPA today changes the designation of these nine counties from unclassifiable to attainment for ozone.

At the same time, the AAPCC also asked EPA to redesignate Etowah County, Alabama nonattainment for ozone based on measured air quality data. EPA today changes the designation of Etowah County to nonattainment for ozone.

These actions were proposed on April 3, 1982 (47 FR 18922); no comments were received in response.

DATE: These actions are effective September 30, 1982.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460
Air Management Branch, EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365
Division of Air Pollution Control, Alabama Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36130

FOR FURTHER INFORMATION CONTACT:
Archie Lee, Air Management Branch, EPA Region IV, at the above address, telephone 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962 at 8965), EPA made attainment status designations for the State of Alabama. The following counties were included under the entry "Rest of State" indicated to be attainment or unclassifiable for oxidants (ozone): Monroe, Conecuh, Escambia, Autauga, Elmore, Montgomery, Lowndes, Tuscaloosa, Bibb, and Etowah. On March 8, 1982, the State submitted air quality data for two ozone seasons, 1980 and 1981, which showed no violations of the ozone standard for nine of the counties. Violations were measured in Etowah County during 1980–1981, however. The State asked EPA to change the attainment status designations of these ten counties to accord with the recent data.

EPA has reviewed the State's data for representatives, quality, and quantity, and has found them to be acceptable.

Action

Accordingly, EPA redesignates Etowah County, Alabama nonattainment for ozone. A nonattainment designation for Etowah County will not require the adoption of new control requirements since the

State had previously adopted a statewide plan for control of volatile organic compounds in all unclassified areas.

In addition, EPA today redesignates Monore, Conecuh, Escambia, Autauga, Elmore, Montgomery, Lowndes, Tuscaloosa, and Bibb Counties, Alabama attainment for ozone. Section 107(d)(1) of the Clean Air Act does not provide for EPA to make a formal distinction between areas which are unclassifiable for ozone and those which are attainment. Therefore, these nine counties will continue to be included in the entry entitled "Rest of State," which the ozone table of 40 CFR 81.301 indicates to be unclassifiable or better than national standards for ozone.

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107 of the Clean Air Act (42 U.S.C. 7407))

Dated: August 18, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

Subpart C—Section 107 Attainment Status Designations

In § 81.301, the "Alabama—O_3" table is amended by adding an entry for Etowah County. As amended, the table reads as follows:

§ 81.301 Alabama.

ALABAMA—O_3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Etowah County	X	
Jefferson County	X	
Mobile County	X	
Russell County	X	
Rest of State		X

[FR Doc. 82-23843 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 123

[W-4-FRL-2196-8]

Hazardous Waste Management Programs; Mississippi, Interim Authorization Phase II Components A and B

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination.

SUMMARY: The State of Mississippi has applied for Interim Authorization Phase II Components A and B. EPA has reviewed Mississippi's application for Phase II Interim Authorization Components A and B and has determined that Mississippi's hazardous waste program is substantially equivalent to the Federal program covered by Components A and B. The State of Mississippi is hereby granted Interim Authorization for Phase II Components A and B to operate the State's hazardous waste program covered by Components A and B, in lieu of the Federal program.

EFFECTIVE DATE: Interim Authorization Phase II Components A and B for Mississippi shall become effective August 31, 1982.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION: In the May 19, 1980, **Federal Register** (45 FR 33063) the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), to protect human health and the environment from the improper management of hazardous waste. The Act (RCRA) includes provisions whereby a State agency may be authorized by EPA to administer the hazardous waste program in that State in lieu of a Federally administered program. For a State program to receive final authorization, its hazardous waste program must be fully equivalent to and consistent with the Federal program under RCRA. In order to expedite the authorization of State programs, RCRA allows EPA to grant a State agency Interim Authorization if its program is substantially equivalent to the Federal program. During Interim Authorization, a State can make whatever legislative or regulatory changes that may be needed for the State's hazardous waste program to become fully equivalent to the Federal program. The Interim Authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program takes effect.

List of Subjects in 40 CFR Part 123

Hazardous materials, Reporting requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Phase I regulations were published on May 19, 1980, and became effective on November 19, 1980. The Phase I regulations include the identification and listing of hazardous wastes, standards for generators and transporters of hazardous waste, standards for owners and operators of treatment, storage and disposal facilities, and requirements for State Programs. The Phase II regulations cover the procedures for issuing permits under RCRA and the standards that will be applied to treatment, storage, and disposal facilities in preparing permits. In the January 26, 1982, **Federal Register** (46 FR 7965), the Environmental Protection Agency announced that States could apply for components of Phase II of Interim Authorization. Component A, published in the **Federal Register** January 12, 1981 (46 FR 2801), contains standards for permitting containers, tanks, surface impoundments, and waste piles. Component B published in the **Federal Register** January 23, 1982 (46 FR 7666), contains standards for permitting hazardous waste incinerators.

A full description of the requirements and procedures for State Interim Authorization is included in 40 CFR Part 123, Subpart F (46 FR 8298) January 26, 1982.

The State of Mississippi received Interim Authorization of Phase I on January 7, 1981.

Draft Application

The State of Mississippi submitted its draft application for Phase II Interim Authorization on December 28, 1981. After detailed review, EPA identified several areas of major concern and transmitted comments to the State for its consideration:

EPA requested the Attorney General to certify that Mississippi adopted the federal regulations by reference. EPA was also concerned about whether Mississippi had adequate resources to issue the hazardous waste permits in a reasonable time. In addition, the State needed to explain whether Mississippi had the proper skill mix to technically

review the various hazardous waste permits.

State Officials resolved these issues through revisions in the Program Description and Attorney General's Statement. The Attorney General certified that Mississippi adopted the federal regulations by reference. The comments regarding the State's resources and proper skill mix was addressed by the following actions: (1) Mississippi conducted a survey which found that the true number of facilities needing hazardous waste permits were less than the number that EPA's records showed (2) A Chemical Engineer was added to the Mississippi Division of Solid/Hazardous Waste Management's staff (3) Mississippi explained in the Program Description that assistance on permitting was available to the Division of Solid/Hazardous Waste Management within other units of State government and would be used:

a. Geological/Hydrological Assistance—Bureau of Industrial Wastewater Section, Bureau of Land and Water Resources, Bureau of Geology
b. Industrial and Wastewater Assistance—Division of Water Quality
c. Incinerator Review Assistance—Division of Air Quality
d. Chemical Assistance—Bureau of Pollution Control Laboratory
e. Financial Assistance—Bureau of Pollution Control Administrative Assistant
f. Legal Assistance—Chief of Enforcement of Bureau of Pollution Control
g. Management Assistance—Director of Bureau of Pollution Control

Final Application

On May 27, 1982, Mississippi submitted to EPA a Final Application for Interim Authorization, Phase II under RCRA. An EPA review team consisting of both Headquarters and Regional personnel made a detailed analysis of Mississippi's Hazardous Waste Management Program.

EPA comments were forwarded to the State on July 12, 1982. No *major* questions were raised in the comments. The comments requested clarification on the public participation in the permitting process and clarification on the adoption of EPA's financial regulations and correction of typographical errors made by the State.

By letters dated July 9, 1982, and July 19, 1982, the State responded satisfactorily to the issues raised by EPA. In those letters the State clarified the issues on public participation and financial regulations adoption and corrected typographical errors of the State's application.

Public Hearing and Comment Period

As noticed in the **Federal Register** on July 17, 1982 (47 FR 20170) EPA gave the public until July 19, 1982, to comment on the State's application. EPA issued a public notice for a hearing in Jackson, Mississippi on August 2, 1982, if significant public interest was expressed.

EPA received no written or oral comments, inquiries, or requests for a hearing. After careful review, I have determined that the Mississippi hazardous waste program is substantially equivalent to the Federal program.

Certification: Mississippi Application for Interim Authorization, Under the Regulatory Flexibility Act

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

Dated: August 3, 1982.

Charles R. Jeter,

Regional Administrator.

[FR Doc. 82-23787 Filed 8-30-82; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 763

[OPTS-84004C, TSH-FRI 2198-1]

Asbestos; Reporting Requirements; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on the reporting requirements to EPA by asbestos manufacturers, importers, and processors that appeared in the **Federal Register** of July 30, 1982 (47 FR 33198).

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Industry Assistance Office (TS-799), Environmental Protection Agency, Rm. E-511, 401 M St., SW., Washington, D.C. 20460, Toll Free: (800-424-9065), In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404)

The following corrections are made in FR Doc. 82-20684 appearing on page 33086 in the issue of July 30, 1982:

1. On page 33198, in the last line **"FOR FURTHER INFORMATION CONTACT"**, the telephone number "(544-1404)" is corrected to "(554-1404)".

§ 763.77 [Corrected]

2. In § 763.77, the second page of EPA Form 7710-37, the incorrect date of "1980" was given in three places: in the introductory material under "Instructions," in the third paragraph under "Part II Secondary Processor End Products," and in the second paragraph under "Part III Importers of Asbestos Mixture(s) or Article(s) Containing an Asbestos Component." In each instance the date is corrected to read "1981".

Dated: August 20, 1982.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 82-23792 Filed 8-30-82; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loans

AGENCY: Public Health Service (PHS), HHS.

ACTION: Final regulations.

SUMMARY: This notice amends the regulations which establish eligibility requirements for health professions schools to participate in the Health Professions Student Loan Program under the PHS Act as amended. Pub. L. 97-35, enacted August 13, 1981, changed the interest rate on loans made to students under the Health Professions Student Loan Program from 7 to 9 percent.

EFFECTIVE DATE: This increase in interest rate was effective for all loans made on or after August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice M. Swift, Acting Chief, Program Development Branch, Division of Student Services, Bureau of Health Personnel Development and Service, Health Services Administration, 5600 Fishers Lane, Parklawn Building, Room 9A-33, Rockville, Maryland 20857, telephone 301 443-4540.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, is amending Title 42 of the Code of Federal Regulations Part 57, Subpart C which implements sections 740-44 of the Public Health Service Act.

Section 2735 of Pub. L. 97–35, enacted August 13, 1981, amended section 741 of the Public Health Service Act by changing the interest rate for Health Professions Student Loans from 7 to 9 percent.

The Department certifies that these regulations will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354, since the regulations are technical in nature in that they implement statutory changes of a nondiscretionary nature. For the same reason, the Secretary has determined that this regulation is not a major rule under Executive Order 12291 and therefore a regulatory impact analysis is not required. The Secretary has determined, according to 5 U.S.C. 553 and Department policy that it would be unnecessary and contrary to the public interest to follow proposed rulemaking procedures or to delay the effective date of these regulations.

List of Subjects in 42 CFR Part 57 [1]

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Student aid, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships.

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Accordingly, Subpart C of 42 CFR Part 57 is amended as set forth below:

Paragraph (a)(1) of § 57.208 is revised to read as follows.

§ 57.208 Health professions student loan promissory note.

(a)* * *

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 9 percent per year.

* * * * *

(Sec. 215 of the PHS Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–744 of the PHS Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920 (42 U.S.C. 294m-q))

[1] The Health Services Administration is providing this list in compliance with 1 CFR 18.20. That regulation required agencies to include a list of index terms for each CFR part affected in Rules and Proposed Rules documents published in the Federal Register beginning April 1, 1982.

Dated: June 28, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: August 9, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82-23847 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Parts 2 and 22

Records and Testimony and Administrative Claims Under Federal Tort Claims Act

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule

SUMMARY: This final rule will amend 43 CFR Part 2 (Records and Testimony) and 43 CFR Part 22 (Administrative Claims Under Federal Tort Claims Act). 43 CFR Part 2 will be revised to reflect organization and title changes to include references to Appendix B thereto and to update addresses contained therein, to update Privacy Act system numbers, to delete references to systems of records no longer under Interior jurisdiction, and to make editorial corrections. 43 CFR Part 22 will be amended to remove a subsection which references an appendix previously removed from Title 43.

EFFECTIVE DATE: September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Richard A. Stephan, (202–343–6191).

SUPPLEMENTARY INFORMATION: The amendments to 43 CFR Part 2 are needed in order to provide the public with the most up-to-date references to the officials and organizations of the Department responsible for implementing the provisions of the Part. The majority of the Part was last updated in 1975 and does not reflect the appropriate locations or officials to whom requests for information should be directed by the public.

The amendment to 43 CFR Part 22 is needed in order to avoid confusion that may be caused by the reference to Appendix A, which was removed from Title 43 in 1975. This amendment is being made at the request of the Office of the Federal Register, which is responsible for assuring that agencies keep their applicable titles of the Code of Federal Regulations current.

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). These conclusions are based on the fact that the document pertains solely to administrative matters. On the same basis the Department has determined that this rule is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR 1500–1508).

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

Because these amendments involve purely administrative matters, the Department finds good cause to waive the public comment period and to issue this document as a final rule.

The principal author of this document is Richard A. Stephan, Division of Directives and Regulatory Management, Office of Information Resources Management, Department of the Interior.

List of Subjects

43 CFR Part 2

Administrative practice and procedure, Classified information, Freedom of information, Privacy.

43 CFR Part 22

Claims.

In light of the foregoing, 43 CFR Parts 2 and 22 are hereby amended as follows:

PART 2—RECORDS AND TESTIMONY

§ 2.11 [Amended]

1. Section 2.11(b) is revised to read:

* * * * *

(b) Before invoking the formal procedures set out below, persons seeking information or records of the Department may find it useful to consult with officials of the bureau possessing the information or records or the Office of Public Affairs, U.S. Department of the Interior, Washington, D.C. 20240.

§ 2.14 [Amended]

2. Section 2.14(a) is amended by adding: the following sentence to the end thereof:

(a) * * * Appendix B to this part provides a list of offices and bureaus of the Department and their addresses.

* * * * *

3. Section 2.14(b) is revised to read:

* * * * *

(b) *Assistance in submitting request.* If a requester is uncertain which bureau

of the Department is responsible for a record which he wishes to inspect or copy, he may seek guidance from the Office of Public Affairs, U.S Department of the Interior, Washington, D.C. 20240, to assist him in determining the appropriate bureau to which to submit his request.

* * * * *

§ 2.15 [Amended]

4. Section 2.15(e)(4) is revised to read:

* * * * *

(e) * * *

(4) A statement that the denial may be appealed to the Assistant Secretary—Policy, Budget and Administration, pursuant to § 2.17 and that such appeal must be in writing and be received by this official within 20 days (Saturdays, Sundays, and public legal holidays excepted) after the date of the denial, in the case of the denial of an entire request, or within 20 days (Saturdays, Sundays, and public legal holidays excepted) of records being made available, in the case of a partial denial, by writing to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240.

* * * * *

5. Section 2.15(g)(1) is revised to read:

* * * * *

(g) *Filing of denials.* (1) Copies of all replies denying, in whole or part, a request for a record which are issued under this section or § 2.14 shall be promptly submitted to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240. The Freedom of Information Act Appeals Officer shall be responsible for promptly furnishing copies of such denials to the Office of the Solicitor, the Office of Public Affairs and the appropriate program Assistant Secretary.

* * * * *

§ 2.16 [Amended]

6. Section 2.16(d)(3) is revised to read:

* * * * *

(d) * * *

(3) A copy of the written notice shall be forwarded to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240. The Freedom of Information Act Appeals Officer shall be responsible for promptly furnishing copies of such notices to the Office of the Solicitor, the Office of Public Affairs, and the appropriate program Assistant Secretary.

* * * * *

7. Section 2.16(e)(2) is revised to read:

* * * * *

(e) * * *

(2) When no determination can be reached within the applicable time limit, the responsible official shall nevertheless continue to process the request. On expiration of the time limit, the responsible official shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial for purposes of appeal to the Assistant Secretary—Policy, Budget and Administration in accordance with § 2.17. The requester may be asked to consider delaying use of his right to appeal until the date on which the determination is expected to be dispatched. If the requester so agrees, he is deemed not to have treated the failure to respond within the applicable time limit as a denial for purposes of the running of the 20 working-day appeal period set out in § 2.17(b). If a determination on the request is not issued by the new agreed upon date, or if the request is denied in whole or part, the requester will have available his full right of appeal under § 2.17, including the entire 20 working-day period for filing of the appeal.

§ 2.17 [Amended]

8. Section 2.17(a) is revised to read:

(a) *Right of appeal.* Where a request for records has been denied, in whole or part, the person submitting the request may appeal the denial to the Assistant Secretary—Policy, Budget and Administration.

* * * * *

9. Section 2.17(c)(2) is revised to read:

* * * * *

(c) * * *

(2) The appeal shall be addressed to the Freedom of Information Act Appeals Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240.

* * * * *

10. Section 2.17(c)(4) is revised to read:

* * * * *

(c) * * *

(4) The Freedom of Information Act Appeals Officer shall be responsible for promptly furnishing copies of such notices to the Office of the Solicitor, the Office of Public Affairs, and the appropriate program Assistant Secretary.

§ 2.18 [Amended]

11. Section 2.18(a) is revised to read:

(a) *Authority.* Appeals from initial denials of requests for records shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration after consultation with the Solicitor, the Director of Public Affairs and the appropriate program Assistant Secretary. If the initial denial appealed from was issued by an official required to be consulted by this paragraph, the Assistant Secretary—Policy, Budget and Administration is not required to consult with that official.

* * * * *

12. Section 2.18(c)(1) is revised to read:

* * * * *

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 2.16(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended by the Assistant Secretary—Policy, Budget and Administration to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 2.16(c) requires an extension.

* * * * *

13. Section 2.18(c)(2) is revised to read:

* * * * *

(c) * * *

(2) The Assistant Secretary—Policy, Budget and Administration shall, in writing, advise the appellant of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

* * * * *

14. Section 2.18(d) is revised to read:

* * * * *

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the Assistant Secretary—Policy, Budget and Administration shall immediately make the records available or instruct the appropriate bureau official to make them immediately available. If the determination upholds in whole or part the initial denial of a request for records,

the determination shall advise the requester of his right to obtain judicial review in the United States District Court for the district in which the withheld records are located, or in which the requester resides or has his principal place of business or in the United States District Court for the District of Columbia, and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If the determination is to release a requested record or portions thereof and the record was obtained by the Department from a person or entity outside of the Government, the Assistant Secretary—Policy, Budget and Administration shall, when it is administratively feasible to do so, notify the person or entity of the release of the record.

* * * * *

15. Section 2.18(e) is revised to read:

* * * * *

(e) *Distribution of copies.* Copies of final determinations issued by the Assistant Secretary—Policy, Budget and Administration shall be provided to the Office of the Solicitor, the Office of Public Affairs and the appropriate program Assistant Secretary.

§ 2.41 [Amended]

16. Section 2.41(a)(2) is revised to read:

(a) * * *

(2) Any person desiring a classification review of a document of the Department of the Interior containing information classified as National Security Information by reason of the provisions of Executive Order 12065 (or any predecessor executive order) and which is more than 10 years old, should address such request to the Chief, Division of Enforcement and Security Management, Office of Administrative Services, U.S. Department of the Interior, Washington, D.C. 20240.

* * * * *

Section 2.41(b)(2) is amended to read:

* * * * *

(b) * * *

(2) If the requester does not receive a decision on his request within sixty (60) days from the date of receipt of his request, or from the date of his most recent response to a request for more particulars, he may apply to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, D.C. 20240, for a decision on his request. The Committee must render a decision within thirty (30) days.

* * * * *

18. Section 2.41(c) is revised to read:

* * * * *

(c) *Form of decision and appeal to Oversight Committee for Security.* In the event that the bureau to which a request is assigned or the Chief, Division of Enforcement and Security Management, in the case of a request assigned to him, determines that the requested information must remain classified by reason of the provisions of Executive Order 11652, the requester shall be given prompt notification of that decision and, whenever possible, shall be provided with a brief statement as to why the information or material cannot be declassified. He shall also be advised that if he desires he may appeal the determination to the Chairman, Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, D.C. 20240. An appeal shall include a brief statement as to why the requester disagrees with the decision which he is appealing. The Department Oversight Committee for Security shall render its decision within thirty (30) days of receipt of an appeal. The Departmental Committee shall be authorized to overrule previous determinations in whole or in part when, in its judgement, continued protection is no longer required.

* * * * *

19. Section 2.41(d) is revised to read:

* * * * *

(d) *Appeal to Interagency Classification Review Committee.* Whenever the Department of the Interior Oversight Committee for Security confirms a determination for continued classification, it shall so notify the requester and advise him that he is entitled to appeal the decision to the Interagency Classification Review Committee established under section 8(A) of the Executive Order 11652. Such appeals shall be addressed to the Interagency Classification Review Committee, the Executive Office Building, Washington, D.C. 20500.

* * * * *

20. Section 2.41(e) is revised to read:

* * * * *

(e) *Suggestions and complaints.* Any person may also direct suggestions or complaints with respect to the administration of the other provisions of Executive Order 11652 and the NSC Directive by the Department of the Interior to the Department of the Interior Oversight Committee for Security, U.S. Department of the Interior, Washington, D.C. 20240.

§ 2.46 [Amended]

21. Section 2.46(h) is revised to read:

* * * * *

(h) *Office of Personnel Management personnel records.* As used in the subpart, "Office of Personnel Management personnel records" means records maintained for the Office of Personnel Management by the Department and used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

* * * * *

22. Section 2.46(m) is revised to read:

* * * * *

(m) *Departmental Privacy Act Officer.* As used in this subpart, "Departmental Privacy Act Officer" means the official in the Office of the Assistant Secretary—Policy, Budget and Administration charged with responsibility for assisting the Assistant Secretary—Policy, Budget and Administration in carrying out the function which he is assigned in this subpart and for coordinating the activities of the bureaus of the Department in carrying out the functions which they are assigned in this subpart.

* * * * *

§ 2.51 [Amended]

23. Section 2.51(d) is revised to read:

* * * * *

(d) *Office of Personnel Management personnel records.* A system of records made up of Office of Personnel Management personnel records shall be maintained under the security requirements set out in 5 CFR 293.108.

* * * * *

§ 2.61 [Amended]

24. Section 2.61(c)(2) is revised to read:

* * * * *

(c) * * *

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him shall be in writing and shall state the basis for denial of the request and shall advise the individual that he may appeal the declination to the Assistant Secretary—Policy, Budget and Administration pursuant to § 2.65 by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

§ 2.64 [Amended]

25. Section 2.64(c)(2) is revised to read:

* * * * *

(c) * * *

(2) A decision denying a request for access, in whole or part, shall be in writing and shall state the basis for denial of the request. The decision shall also contain a statement that the denial may be appealed to Assistant Secretary—Policy, Budget and Administration pursuant to § 2.65 by writing the Privacy Act Officer, Office of Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

* * * * *

§ 2.65 [Amended]

26. Section 2.65(a) is revised to read:

(a) *Right of appeal.* If an individual has been notified that he is not entitled to notification of whether a system of records contains records pertaining to him or has been denied access, in whole or part, to a requested record, that individual may appeal to the Assistant Secretary—Policy, Budget and Administration.

* * * * *

27. Section 2.65(b)(2) is revised to read:

* * * * *

(b) * * *

(2) The Assistant Secretary—Policy, Budget and Administration may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the initial decision of the request.

* * * * *

28. Section 2.65(c)(3) is revised to read:

* * * * *

(c) * * *

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240.

* * * * *

29. Section 2.65(d)(1) is revised to read:

* * * * *

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to § 2.61 and § 2.63 shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration after consultation with the Solicitor.

* * * * *

§ 2.72 [Amended]

30. Section 2.72(e)(2) is revised to read:

* * * * *

(e) * * *

(2) If the petitioned for amendment is rejected, in whole or part, the decision shall advise the petitioner that the rejection may be appealed to the Assistant Secretary—Policy, Budget and Administration by writing to the Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240, and that the appeal must be received by this official within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision.

* * * * *

§ 2.74 [Amended]

31. Section 2.74(a) is revised to read:

(a) *Right of appeal.* Where a petitioned-for amendment has been rejected in whole or part, the individual submitting the petition may appeal the denial to Assistant Secretary—Policy, Budget and Administration.

* * * * *

32. Section 2.74(b)(2) is revised to read:

* * * * *

(b) * * *

(2) The Assistant Secretary—Policy, Budget and Administration may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within twenty (20) days (Saturdays, Sundays and public legal holidays excepted) of the date of the decision on a petition.

* * * * *

33. Section 2.74(c)(3) is revised to read:

* * * * *

(c) * * *

(3) The appeal shall be addressed to Privacy Act Officer, Office of the Assistant Secretary—Policy, Budget and Administration, U.S. Department of the Interior, Washington, D.C. 20240.

§ 2.75 [Amended]

34. Section 2.75(a) is revised to read:

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided for the Department by the Assistant Secretary—Policy, Budget and Administration, after consultation with the Solicitor, unless the record challenged by the initial petition is an Office of Personnel Management personnel record maintained by the Department. Appeals from decisions on initial petitions requesting amendment of Office of Personnel Management records maintained by the Department shall be transmitted by the Assistant Secretary—Policy, Budget and Administration to the Office of Personnel Management for decision.

* * * * *

§ 2.77 [Amended]

35. Section 2.77(a) is revised to read:

(a) *Filing of statement.* If the determination of the Assistant Secretary—Policy, Budget and Administration under § 2.75 rejects in whole or part, a petitioned for amendment, the individual submitting the petition may file with the system manager for the system containing the challenged record a concise written statement setting forth the reasons for his disagreement with the determination of the Department.

* * * * *

§ 2.79 [Amended]

36. Section 2.79(b)(1) is revised and paragraphs (b) (6) and (7) are reserved as follows:

* * * * *

(b) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Records, Interior/Office of Inspector General—2.

* * * * *

(6) [Reserved]

(7) [Reserved]

* * * * *

37. Section 2.79(c) is revised to read:

* * * * *

(c) Investigatory records exempt under 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these subsections:

(1) Applicant Files System, Interior/Office of the Secretary—70.

(2) National Research Council Grants Program, Interior/GS–9

(3) Committee Management Files, Interior/Office of the Secretary—68.

38. Appendix B to Part 2 is amended to read:

Appendix B—Bureaus and Offices of the Department of the Interior

1. *Bureaus and Offices of the Department of the Interior.* (The address for all bureaus and offices, unless otherwise indicated, is U.S. Department of the Interior, Washington, D.C. 20240.)

Secretary of the Interior, Office of the Secretary.
Executive Secretariat, Office of the Secretary (for Office of the Secretary components)
Commissioner, Bureau of Indian Affairs
Director, U.S. Fish and Wildlife Service
Director, National Park Service
Commissioner, Bureau of Reclamation
Director, Bureau of Land Management
Director, Minerals Management Service
Director, Bureau of Mines, Columbia Plaza, 2401 E Street, N.W., Washington, D.C. 20241
Director, Geological Survey, The National Center, Reston, VA 22092
Director, Office of Surface Mining—Reclamation and Enforcement
Director, Office of Hearings and Appeals, 4015 Wilson Blvd., Arlington, VA 22203
Inspector General, Office of the Inspector General
Solicitor, Office of the Solicitor

2. *Public Information Officers of the Department of the Interior.* (The address for all public information officers, unless otherwise indicated, is U.S. Department of the Interior, Washington, D.C. 20240.)

Director, Office of Public Affairs, U.S. Department of the Interior
Director, Public Information Staff, Bureau of Indian Affairs
Chief, Office of Public Affairs, Bureau of Land Management
Chief, Office of Mineral Information, Bureau of Mines, Columbia Plaza, 2401 E Street, N.W., Washington, D.C. 20241
Director, Office of Public Affairs, Bureau of Reclamation
Chief, Office of Public Affairs, National Park Service
Public Affairs Officer, Office of Surface Mining-Reclamation and Enforcement
Assistant Director, Public Affairs, U.S. Fish and Wildlife Service
Information Officer, U.S. Geological Survey, The National Center, Reston, VA 22092

3. *Office of Hearings and Appeals—Field Offices:*

Administrative Law Judges, 2020 Hurley Way, Suite 170, Sacramento, CA 95825
Administrative Law Judge, 1052C Federal Bldg., 600 Federal Place, Louisville, KY 40202
Administrative Law Judge, 706 Wm. S. Moorehead Federal Bldg., 1000 Liberty Avenue, Pittsburgh, PA 15222
Administrative Law Judge, 1111 Northshore Drive, Suite 202, Bldg. #1 Knoxville, TN 37919
Administrative Law Judges, 6432 Federal Bldg., Salt Lake City, UT 84138
Administrative Law Judge (Indian Probate), Federal Bldg., RM 2021, 230 N. First Ave., Phoenix, AZ 85025
Administrative Law Judge (Indian Probate), 2020 Hurley Way, Suite 150, Sacramento, CA 95825
Administrative Law Judges (Indian Probate), Federal Building, Rooms 674 and 686, Fort Snelling, Twin Cities, MN 55111
Administrative Law Judges (Indian Probate), Federal Bldg. & Courthouse, Rooms 3319, 3329 and 3337, 316 North 26th Street, Billings, MT 59101
Administrative Law Judge (Indian Probate), 301 Federal Building, Hill & 3rd St., Gallup, NM 87301.
Administrative Law Judge (Indian Probate), 215 Dean A. McGee Ave., Rm. 712, Oklahoma City, OK 73102
Administrative Law Judge (Indian Probate), 1425 N.E., Irving St., Bldg. 100, Suite 112, Portland, OR 97232
Administrative Law Judge (Indian Probate), Federal Bldg. & Courthouse, 515 9th St., Suite 201, Rapid City, SD 57701

4. *Office of the Solicitor—Field Offices*

Alaska Region

Regional Solicitor, U.S. Department of the Interior, 701 C Street, Anchorage, AK 99513

Intermountain Region

Regional Solicitor, U.S. Department of the Interior, Suite 6201, Federal Building, 125 South State Street, Salt Lake City, UT 84138

Northeast Region

Regional Solicitor, U.S. Department of the Interior, Suite 612, One Gateway Center, Newton Corner, MA 02158
Field Solicitor, U.S. Department of the Interior, 603 Morris Street, 2nd Floor, Charleston, WV 26301
Field Solicitor, U.S. Department of the Interior, Suite 505, Federal Building & U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204
Field Solicitor, U.S. Department of the Interior, Bishop Henry Whipple Federal Building, Twin Cities, MN 55111

Pacific Northwest Region

Regional Solicitor, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah, Portland, OR 97232
Field Solicitor, U.S. Department of the Interior, Box 020, Federal Building, U.S. Courthouse, 550 West Fort Street, Boise ID 83724

Pacific Southwest Region

Regional Solicitor, U.S. Department of the Interior, Room E-2753, 2800 Cottage Way, Sacramento, CA 95825
Field Solicitor, U.S. Department of the Interior, 3610 Central Avenue, Suite 104, Riverside, CA 92506
Field Solicitor, U.S. Department of the Interior, Box 36064, 450 Golden Gate Avenue, Room 14126, San Francisco, CA 94102
Field Solicitor, U.S. Department of the Interior, P.O. Box 427 Park Street, Boulder City, NV 89005
Field Solicitor, U.S. Department of the Interior, Valley Bank Center, Suite 2080, 201 North Central Avenue, Phoenix, AZ 85073
Field Solicitor, U.S. Department of the Interior, Window Rock, AZ 86515

Rocky Mountain Region

Regional Solicitor, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225
Field Solicitor, U.S. Department of the Interior, Room 211, Federal Building, Aberdeen, SD 57401
Field Solicitor, U.S. Department of the Interior, Room 5431, Federal Building, 316 N. 26th Street, Billings, MT 59103

Southeast Region

Regional Solicitor, U.S. Department of the Interior, Richard B. Russell Federal Building, 75 Spring Street, S.W., Suite 1328, Atlanta, GA 30303
Field Solicitor, U.S. Department of the Interior, P.O. Box 15006, Knoxville, TN 37901

Southwest Region

Regional Solicitor, U.S. Department of the Interior, Room 3068, Page Belcher Federal Building, 33 West 4th Street, Tulsa, OK 74103
Field Solicitor, U.S. Department of the Interior, Room 7102, Federal Building & Courthouse, Albuquerque, NM 87101
Field Solicitor, U.S. Department of the Interior, 331 Sandoval Street, Room 117, Santa Fe, NM 87501
Field Solicitor, U.S. Department of the Interior, Room 319, Federal Building, 5th and Broadway, Muskogee, OK 74401
Field Solicitor, U.S. Department of the Interior, Osage Agency, Grandview Avenue, Pawhuska, OK 74056
Field Solicitor, U.S. Department of the Interior, 1100 South Fillmore, Amarillo, TX 79101
Field Solicitor, U.S. Department of the Interior, W.C.D. Office Building, Route 1, Anadarko, OK 73005

PART 22—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

§ 22.1 [Amended]

39. 43 CFR Part 22 is amended by removing § 22.1(b)

Richard R. Hite,

Deputy Assistant Secretary of the Interior.

Dated: August 25, 1982.

[FR Doc. 82-23885 Filed 8-30-82; 8:45 am]
BILLING CODE 4310-10-M

FEDERAL MARITIME COMMISSION

46 CFR Part 549

[General Order 29; Docket No. 82-16]

Indefinite Suspension of Regulations Governing Level of Military Rates

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule suspends the regulations governing rates quoted for the transportation of U.S. Defense Department cargoes pursuant to Military

Sealift Command requests for proposals for an indefinite period. This action is taken in light of the determination that military rates are no longer so low as to be detrimental to the commerce of the United States, and with a view towards lessening the regulatory burden on U.S. flag operators.

DATE: Effective on October 1, 1982.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, D.C. 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Federal Maritime Commission is extending the suspension of its regulations governing the level of military rates established in Part 549 of Title 46 of the Code of Federal Regulations, Federal Maritime Commission General Order 29, for an indefinite period. The suspension currently in effect will expire on September 30, 1982.

The Commission's General Order 29 (46 CFR Part 549) governing the level of military rates was published in the **Federal Register** on December 2, 1972 (47 FR 25720). The Commission's proposal to temporarily suspend General Order 29, and the reasons therefor, were published in the **Federal Register** on February 4, 1981 (46 FR 10767). The final rule suspending General Order 29 during the period October 1, 1981 through September 30, 1982 was published in the **Federal Register** on April 3, 1981 (46 FR 20199). On March 23, 1982, a proposed rule to make the suspension permanent through the removal of 46 CFR Part 549 was published (47 FR 12367).

Four parties commented on the proposed rule. The Military Sealift Command (MSC) supported the rule, asserting that General Order 29 was unworkable and burdensome. Sea-Land Service, Inc. (Sea-Land) and E. I. Dupont de Nemours and Company (Dupont), concerned with a reoccurrence of the abuses which led to the promulgation of General Order 29, recommended that its suspended status be continued. Such action would provide regulatory relief, while maintaining the Commission's ability to react to events which may occur in the future. The Del Monte Corp. stated that the regulations made a positive contribution to the current reasonable level of military rates.

The Commission has concluded that the contention of Sea-Land and Dupont that this action, as opposed to outright elimination of the regulations, has considerable merit. It will accomplish the goal of reducing the regulatory burden imposed on U.S. flag carriers, while providing the salutary effect of demonstrating a continued interest in rates offered for the carriage of Defense Department cargoes. Should the Commission, at some point, terminate the suspension, steps will be taken to improve the effectiveness of the regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission certifies that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities. The primary impact of this proposed rule will be carriers publishing military cargo rates and the Military Sealift Command, none of which are generally considered to be small entities within the meaning of the Act.

List of Subjects in 46 CFR Part 549

Rates, Maritime carriers.

PART 549—REGULATIONS GOVERNING LEVEL OF MILITARY RATES

Therefore, pursuant to section 18(b)(5) and 43 of the Shipping Act, 1916 (46 U.S.C. 817 and 841(a)), the Commission revises § 549.9, Part 549 of Title 46 CFR to read as follows:

§ 549.9 Suspension.

The provisions of this Part are suspended for an indefinite period.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-23780 Filed 8-30-82; 8:45 am]

BILLING CODE 6730-01-M

Proposed Rules

Federal Register
Vol. 47, No. 169
Tuesday, August 31, 1982

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Definition of Small Business For Paying Reduced Patent Fees

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration in conjunction with the Patent and Trademark Office is proposing to establish a definition of a small business concern for the purpose of paying patent fees under sections 41 (a) and (b) of Title 35, United States Code, which are reduced by 50 per centum for small business concerns as required by the public law resulting from H.R. 6260. The definition would be implemented by the Patent and Trademark Office. The proposed rulemaking is necessary at this time in order that the definition of a small business concern for the purpose of paying reduced fees will be effective on October 1, 1982, the effective date of the changes in the amounts of Patent and Trademark Office fees established by the public law resulting from H.R. 6260.

DATE: Written comments must be submitted by September 15, 1982.

ADDRESS: Address all comments to: Harvey D. Bronstein, Office of Industry Analysis, Small Business Administration, 1441 L Street NW., Room 500, Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: R. Franklin Burnett (703) 557–3054. Harvey D. Bronstein (202) 653–6373.

SUPPLEMENTARY INFORMATION: The public law resulting from H.R. 6260 provides that funds available under the act to the Patent and Trademark Office "shall be used to reduce by 50 per centum the payment of fees under section 41 (a) and (b) of title 35, United States Code, by * * * small business concerns as defined in section 3 of the Small Business Act and by regulations established by the Small Business Administration."

A notice of proposed rulemaking relating to provisions of the public law resulting from H.R. 6260 other than the definition of a small business concern was published by the Patent and Trademark Office in the **Federal Register** on June 28, 1982, at 47 FR 28042–28065 and in the Patent and Trademark Office *Official Gazette* on June 29, 1982, at 1019 O.G. 57–120. Oral hearings were held by the Patent and Trademark Office on July 9, 1982. A final rule on "Revision of Patent and Trademark Fees" was published on July 30, 1982, at 47 FR 33086–33112 with corrections in the printing thereof being published on August 4, 1982, at 47 FR 33688 and on August 5, 1982, at 47 FR 33959.

In order to be a small business concern under the proposal, the number of employees of the concern, including those of its affiliates, could not exceed 500 persons. Concerns would be affiliates of each other when either, directly or indirectly one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The number of employees a business concern has would be determined by counting the number of persons of the concern and its affiliates employed on a full-time, part-time or temporary basis during the previous fiscal year of the concern and of its affiliates. The number of employees would be the average over the fiscal year of the persons employed during each of the pay periods of the fiscal year. Business concerns located in any country which meet the small business definition and which comply with Patent and Trademark Office applicable procedures are intended to be eligible for the fee reduction.

The proposed definition would also require a small business concern for this purpose to be one "which has not assigned, granted, conveyed, or license, and is under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a nonprofit organization under this section." 500 employees is the current size standard for purposes of research and development. Patents are primarily related to research and development. Furthermore, unlike the typical SBA size standard, research and development and patent fees are not specific for any individual industry.

The definition proposed also is consistent with the limited amount of funds authorized to cover the revenue loss from the fee reduction. A size standard greater than 500 employees could exceed necessary funding estimates anticipated in the public law resulting from H.R. 6260.

The proposed rulemaking has been developed in conjunction with the Patent and Trademark Office.

Additional procedures relating to the establishment of status as a small business concern would be developed by the Patent and Trademark Office in conjunction with SBA. The size definition would be also incorporate into Patent and Trademark Office rules. Appeals from Patent and Trademark Office adverse initial size determinations will be made to SBA, and such appeal rights are noted in the proposed rule.

Other Considerations Relating to the Proposed Rulemaking

Environmental, energy, and other considerations: The proposed rule will not have a significant impact on the quality of the human environment or the conservation of energy resources.

Small business concerns will be benefitted by the rule. The proposed rule will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act. Pub. L. 96–354). The public law resulting from H.R. 6260 has taken into consideration the impact it may have on small entities and has reduced the fees therefor by 50 per centum.

The Small Business Administration has determined that this proposed rule is not a major rule under Executive Order 12291. The annual effect on the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule will not impose a

burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, since no significant additional record keeping or reporting requirements are placed upon the public.

List of Subjects in 13 CFR Part 121

Small businesses.

PART 121—SMALL BUSINESS SIZE STANDARDS

Accordingly, pursuant to section 3 of the Small business Act and the public law resulting from H.R. 6260, it is proposed to amend Part 121 of Title 13 of the Code of Federal Regulations by adding the following section at the end thereof:

§121.3–18 Definition of Small Business for paying reduced patent fees under Title 35, U.S. Code.

(a) Pursuant to the public law resulting from H.R. 6260, a small business concern for purposes of paying reduced fees under 35 U.S. Code 41(a) and (b) to the Patent and Trademark Office means any business concern (1) whose number of employees, including those of its affiliates, does not exceed 500 persons and (2) which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which woud not qualify as a small business concern or a nonprofit organization under this section. For the purpose of this section concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. The number of employees of the business concern is the average over the fiscal year of the persons employed during each of the pay periods of the fiscal year. Employees are those persons employed on a full-time, part-time or temporary basis during the previous fiscal year of the concern.

(b) If the Patent and Trademark Office determines that a concern is not eligible as a small business concern within this section, the concern shall have a right to appeal that determination to the Small Business Administration. The Patent and Trademark Office shall transmit its written decision and the pertinent size determination file to the SBA in the event of such adverse determination and size appeal. Such appeals by concerns should be submitted to the SBA at 1441 L Street, N.W., Washington, D.C. 20416 (Attention: SABA Office of General Counsel). The appeal should state the basis upon which it is claimed that the Patent and Trademark Office initial size determination on the concern was in error; and the facts and arguments supporting the concern's claimed status as a small business concern under this section.

Dated: August 25, 1982.

Peter Terpeluk, Jr.,

Acting Deputy Administrator.

[FR Doc. 82-23898 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM80-36-000]

Generic Determination of Rate of Return on Common Equity for Electric Utilities

August 26, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations under the Federal Power Act by adding a new Part 37. The new Part would in effect sever rate of return on common equity as a contested issue from individual electric utility rate cases before the Commission. This Part would establish procedures for generically determining rates of return applicable to all electric utilities subject to the Commission's jurisdiction and for applying such rates of return in the individual rate cases of each electric utility. These procedures are intended to provide a more efficient and accurate means by which allowed rates of return are determined.

DATES: Written comments must be received by the Commission on or before November 15, 1982. Reply comments must be received by the Commission on or before December 31, 1982.

ADDRESSES: All filings should reference Docket No. RM80-36 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations by adding a new Part 37 applicable to the electric utility industry. The rule, as published in this notice, would in effect sever rate of return on common equity as a contested issue from individual rate cases before the Commission and establish procedures for determining generic rates of return applicable to all electric utilities subject to the Commission's jurisdiction and for applying such rates of return [1] in the individual rate cases of each electric utility.

Under the proposed rule, the Commission would first divide the electric utilities subject to its jurisdiction into three classes based on relative risk. It would then determine a base year rate of return equal to an estimate of the average cost of equity capital for each of the three risk classes. The Commission would next calculate an implied equity risk premium for each risk class by computing the difference between the applicable base year rate of return and the average of the monthly interest rates on 10-year constant maturity Treasury bonds for the base year. Absent an accelerated or postponed schedule, base year rates of return and implied equity risk premiums would be determined biennially in informal rulemaking proceedings. In addition, the Commission in this rulemaking would determine the base year rates of return and implied equity risk premiums for the 1983–1984 biennium, to be applicable on the effective date of the final rule.

Following the close of each calendar quarter beginning after the end of the base year, the Commission would publish the generic rate of return applicable to each risk class for that quarter. Such generic rates of return would be computed by adding the average of the monthly interest rates on 10-year constant maturity Treasury bonds for that quarter to the base year implied equity risk premium for each risk class.

In individual rate cases, an average of these quarterly generic rates of return would be used as the allowed rate of return, but only if the rate of return issue had not been settled. The Commission does not propose to change the existing

[1] Unless otherwise indicated, the term "rate of return" refers to the rate of return on common equity capital.

provisions of Part 35 regarding the substance of or procedures for electric rate filings.

II. Background

A. Existing Commission Procedures

1. *The procedural framework.* In the exercise of their statutory responsibilities, public utility commissions, including the FERC, seek to set rates of return on common equity that are fair to both ratepayers and common stockholders. The cost of equity capital to the regulated utility is generally viewed as the proper standard for this purpose. This standard is consistent with the general cost-based methodology employed in utility ratemaking. As such, it serves to limit the expense borne by ratepayers to the minimum necessary to ensure adequate service, while affording utilities an opportunity to earn a rate of return sufficient to attract capital by enabling them to compensate investors for their assumed risks.

The rule here proposed would not alter the fundamental cost-based standard for rate of return, but it would modify the standard's application. Rather than being determined individually for each utility in a case-by-case approach, the rate of return issue would be determined generically for each of three relative-risk classes of jurisdictional electric utilities. The generically determined rates of return would only be applied to individual rate filings, however, when the rate of return issue is not resolved by agreement of the parties.

The Commission's interest in adopting a generic approach can perhaps be best understood by beginning with the way in which the rate of return issue now fits into the decisional process.[2] When a rate increase is filed, the Commission staff derives the utility's rate of return implicit in the filing by performing an abbreviated cost of service analysis. This rate of return is compared to one that staff would recommend, based on its preliminary analysis, and a recommendation is made to the Commission based on this and other factors as to whether the rate filing should be rejected, accepted, or suspended and set for hearing.

While rate filings are usually suspended and set for hearing, most are settled prior to hearing. In fact, over two-thirds of electric rate filings are resolved through settlement. Therefore, settlements constitute the most frequently used procedure for arriving at a utility's rate of return. During settlement discussions, however, the dollar amount of the requested rate increase is the primary issue; the individual cost components that would justify an adjudicated rate determination receive less attention. Settlement orders that come to the Commission for approval thus rarely specify an agreed-on rate of return. That rate of return usually must be determined as a residual: the difference between the total revenues expected to be generated by the agreed-on rates and the utility's other allowed costs of service. However, staff would not recommend approval of a settlement if this residual value proved to be excessive in its view.

If settlement discussions fail, the case goes to hearing, where most parties typically sponsor rate of return witnesses. The decision of the administrative law judge (ALJ), written after the completion of the hearing, generaly contains an extensive discussion on rate of return, to which there frequently are extensive objections. Almost invariably the initial decision is appealed to the Commission. Draft Commission opinions discussing rate of return are reviewed by advisory staff and presented to the Commission at an open meeting, where there can be full discussion of the Commission's final opinion.

Regardless of the decisional path followed, it has taken a considerable length of time to resolve electric rate cases. for cases decided in Fiscal Year 1980, uncontested settlements required on average 14 months to complete, while contested settlements required an average of 37 months. Fully litigated applications—cases in which there was no settlement, contested or uncontested—on average required nearly 50 months to process.[3]

2. *The analytical framework.* Where the rate of return issue is considered by the Commission in a full opinion, its analysis usually has certain common elements.[4] Most Commission opinions first provide a description of the utility's capital structure. They then describe the evidence presented below, the ALJ's analysis of that evidence, and the points appealed. Often the Commission declares what evidence is important to its consideration of an appropriate rate of return, and in doing so it may declare why some evidence should be given little or no consideration.

On the basis of this evidence, the Commission frequently establishes a zone of reasonableness for the rate of return.[5] A specific number then is selected within the zone, sometimes with an explicit weighing of factors to determine whether the end result should be near the zone's upper or lower limit. Finally, the allowed rate of return is used along with the adopted capital structure to calculate the overall rate of return on rate base.

Within the general framework, the Commission consistently has reviewed the determination of a fair rate of return as a matter for the exercise of its independent quantitative and qualitative judgment.[6] The opinions often state that the data to be used, the weight given that data, and the final determination of the issue lie within the Commission's discretion without being bound by the opinions (or techniques) of parties or the ALJ.[7] A corollary is that there is no precise answer to the question of what is the "right" rate of return. Although the result of any Commission opinion must be a single number, no technical method can guarantee that this number will reflect a company's actual cost of equity capital with "pinpoint accuracy."[8] This view is

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[2] On December 15, 1980, a Commission Staff Study Group issued a discussion paper on electric rate of return, *Establishing The Rate of Return on Equity For Wholesale Electric Sales: Potential Regulatory Reforms* [hereinafter cited as Commission Staff Study]. Appendix B of the Staff Study provides a more detailed review of the Commission's procedures for deciding electric rate cases.

[3] Commission Staff Study, *supra*, at 34. Table III presents summary data and shows the number of cases for Fiscal Year 1980 that were resolved by each of the three procedural paths.

[4] *See* Commission Staff Study, *supra*, at 38–46.

[5] *See* e.g., Opinion No. 88, Minnesota Power & Light Co., Docket No. ER76–827, 11 FERC ¶61,312 at 61,642 (June 24, 1980); Opinion No. 44, Pub. Serv. Co. of Ind. Inc., Docket Nos. ER76–149 and E–9537, 7 FERC ———, *mimeo* at 26 [June 28, 1979]: Opinion No. 20, Minnesota Power & Light Co., Docket Nos. E–9499, *et al.*, 4 FERC ———, *mimeo* at 12 (August 3, 1978), Opinion on rehearing, Opinion No. 20–A, 5 FERC ———, (October 30, 1978); Opinion No. 12, Minnesota Power & Light Co., Docket No. E–8494, 3 FERC ¶61,045 at 61,134 (April 14, 1978). At times, however, no zone of reasonableness is expressly established. *See* Opinion No. 55, Southern California Edison Co., Docket No. E–8570, 8 FERC ———, *mimeo* at 32 (August 1, 1979).

[6] As stated in one opinion, "a rate of return results from an exercise of informed judgment based on the record and on consideration of the interests of the particular company involved, its investors and its customers." Opinion No. 19, Carolina Power & Light Co., Docket No. ER76–495 (Phase II), 4 FERC ———, *mimeo* at 12 (August 2, 1978). *See also e.g.*, Opinion No. 44, Pub. Serv. Co. of Ind., Inc., *supra*, *mimeo* at 20–23; and Opinion No. 55 Southern California Edison Co., *supra*, *mimeo* at 32.

[7] Opinion No. 12, Minnesota Power & Light Co., *supra*, 3 FERC ¶61,045 at 61,133 (Commission retains independent judgment of the reasonableness of the final result produced by any analytic technique). *Accord*, Opinion No. 20, Minnesota Power & Light Co., *supra*, *mimeo* at 10; and Opinion No. 20–A, *supra*, *mimeo* at 4.

[8] Opinion No. 13, Idaho Power Co., Docket Nos. ER76–469 and ER76–508, 3 FERC ¶61,108 at 61,293 (May 4, 1978). *See also* Opinion No. 53, Boston Edison Co., Docket No. E–8855, 8 FERC ———, *mimeo* at 14 (July 31, 1979).

consistent with the nature of the record typically presented to the Commission, which usually contains support for rates of return over a range of several percentage points. With this in mind, the Commission has encouraged the development of new methods for determining rate of return in an attempt to obtain improved records.[9]

3. *Evaluation of current procedures.* This case-specific consideration of the rate of return issue may, however, suffer from shortcomings that cannot be corrected simply through the use of improved analytical techniques. The case approach imposes substantial administrative burdens on regulated utilities, their customers, and the Commission, and these burdens have grown as inflation and diminished productivity gains have led to large increases in the number of electric rate filings.[10] The drain on the Commission's resources is a matter of particular concern in the context of current budgetary levels. But even if resources were more readily available, we are doubtful that they would be best used in the often repetitive analysis of rate return issues in each case.

One factor deserving consideration is that the impact of the Commission's rate of return determinations is limited by the boundaries of its jurisdiction. In 1982 the Commission had on file the rate schedules of 206 privately-owned electric utilities.[11] In 1980 these utilities accounted for 78% of total industry generation,[12] but only a small portion of their sales are within this Commission's jurisdiction. In 1980, jurisdictional sales were responsible for only 11.3% of the total revenues from sales of electricty by Class A and B private electric utilities.[13] For some utilities the percentage of revenues from jurisdictional sales was higher. But as the following table demonstrates, most utilities derive 20% or less of their electric revenues from jurisdictional sales.

TABLE I.—ELECTRIC REVENUES REGULATED BY THE FERC IN 1980

Wholesale revenues as percent of total company electric revenues	No. of utilities	Percentage of utilities	Cumulative percentage of utilities
0-5	87	43.1	43.1
5-10	38	18.8	61.9
10-15	16	7.9	69.8
15-20	18	8.9	78.7
20-25	8	4.0	82.7
25-30	5	2.5	85.1
30-35	7	3.5	88.6
35-40	0	0	88.6
40-45	1	0.5	89.1
45-50	3	1.5	90.6
50-55	1	0.5	91.1
55-60	0	0	91.1
60-65	0	0	91.1
65-70	0	0	91.1
70-75	1	0.5	91.6
75-80	0	0	91.6
80-85	0	0	91.6
85-90	0	0	91.6
90-95	0	0	91.6
95-100	17	8.4	100.0

SOURCE: U.S. Department of Energy, *Statistics of Privately-Owned Electric Utilities in the United States: 1980 (Class A and B Companies)*, 227-260 (1981).

In view of these facts, the 1980 Commission Staff Study concluded that the Commission's rate of return decisions usually have little direct impact on either the financial health of the regulated companies or the size of the ultimate consumers' bills.[14] Obviously, this limited impact does not justify a failure to give careful consideration to the facts and analyses relevant to each case, but it does suggest that perhaps the time and resources available for that consideration should be commensurate with the impact.

However, even if more time and resources were expended, rate of return may well continue to be an inherently troublesome issue to resolve through an adjudicatory process. Rate of return has not been as readily susceptible to disposition by precedent as other cost of service items. It is sometimes difficult to identify controlling principles for determining rates of return from past cases. Moreover, the rate of return issue usually is evaluated against the background of prevailing economic conditions and the subject utility's financial circumstances, and both of these factors change over time.[15]

Extensive testimony is thus usually submitted in litigated cases by expert witnesses for each party. From direct testimony through the briefs opposing exceptions, these witnesses and their attorneys vigorously debate the relative merits of their respective positions. The nature of the subject area and the competing arguments are such that it is often very difficult for an ALJ or the Commission to assess which party's position should be accorded the greatest weight.

The end result of the decisional process under current procedures has been rate of return allowances which generally do not appear to reflect electric utilities' actual costs of equity capital.[16] As a result, the Commission must question whether the benefits of current procedures match their costs. The cost in time and resources has already been mentioned. Another cost is a loss of perspective. Current procedures, focusing as they do on the "trees" of individual utilities, can make it difficult for the Commission to perceive the "forest" of the industry being regulated.

The current case-by-case approach also results in a lack of consistency between the time periods on which parties focus their rate of return analyses, and between those time periods and the one to which the rates are to apply. In a typical case, analytical support for the rate of return incorporated in the utility's proposed rate must accompany the filing, and thus must be based on data available some time before the filing. Intervenors and staff, on the other hand, do not file their rate of return testimony until several months later, presumably employing the most recent information available at that time. Moreover, it is unlikely that any of the parties know at the time that they file rate of return testimony how long the rates will be in effect. Even if they did, they could not be expected to forecast changes in capital costs with any great degree of confidence.

When a case is not settled, several more months, and sometimes years, pass before the Commission reaches its final decision. By that time, the Commission has at its disposal all the evidence in the record plus more recent information about interest rate levels and whether the rate has been locked-in[17] by a subsequent filing.

[9] Opinion No. 12, Minnesota Power & Light Co., *supra*, 3 FERC at 61,133. *See also* Opinion No. 19, Carolina Power & Light Co., *supra*, mimeo at 11.

[10] C. Curtis, *Decisional Delay in Wholesale Electric Rate Increase Cases: Causes, Consequences and Possible Remedies* (Report to Congress pursuant to Section 207(b) of the Public Utility Regulatory Policies Act of 1978) (January 23, 1980); Federal Energy Regulatory Commission Advisory Committee on Revision of Rules of Practice and Procedure, *Report of the Subcommittee on the Review of the Decisional Process* (July 26, 1979). This latter report went so far as to observe that "we are confronted with a crisis in the decision-making process * * *" *Id.* at 7.

[11] A listing of these jurisdictional companies is provided in Appendix A.

[12] U.S. Department of Energy, *Statistics of Privately-Owned Electric Utilities in the United States: 1980 (Class A and B Companies)*, 15 (1981).

[13] *Id.* at 23. Class A utilities are those having an annual electric operating revenue of $2.5 million or more. Class B utilities are those with an annual electric operating revenue of $1 million or more, but less than $2.5 million.

[14] Commission Staff Study, *supra*, at 25.

[15] As the Supreme Court stated, "[a] rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market and business conditions generally." Bluefield Waterworks and Improvement Co. v. Pub. Ser. Comm'n. 262 U.S. 679, 693 (1923).

[16] Commission Staff Study, *supra*, at 64. Chart 3 compares average Commission allowed rates of return to estimates of industry average costs of equity for 48 adjudicated decisions.

[17] "Locked-in" means that the rate in a pending case has been superseded by the rate in a subsequent case. Thus, the entire effective period of the locked-in rate is known.

The problem of inconsistent time periods has been accentuated in recent years by the volatility of capital markets. Case records have been presented to the Commission which are clearly not reflective of the current realities of these markets. Consequently, the Commission has found it necessary in several recent decisions to rely on post-record evidence, such as published interest rate data, in setting allowed rates of return.[18] But even in those cases, the rate of return decision may not truly reflect the appropriate cost of equity because the Commission has felt contrained by the zones of reasonableness supported in the record.

B. The Legal Basis for a Generic Rate of Return

Under these circumstances, the Commission believes it appropriate to propose replacing the present case-specific procedure with a generic one. In particular, the Commission is proposing to utilize informal "notice and comment" rulemaking procedures for this purpose.

While these procedures have not been widely used in the past in setting rates for electric utilities, it has not been from lack of the legal authority. Section 403(c) of the Department of Energy Organization Act provides that the Commission may carry out its ratemaking functions under the Federal Power Act through rulemaking procedures.[19] Further, the Conference Report states that, under Section 403(c), "the Commission may utilize informal rulemaking procedures, rather than formal, on the record proceedings, to establish rates and charges under the Federal Power Act of the Natural Gas Act."[20]

Nor is the concept of determining rates of return generically a novel concept. Other federal regulatory agencies, including the Civil Aeronautics Board,[21] and the Interstate Commerce Commission,[22] have conducted such proceedings for a number of years. We are thus following the lead of other agencies rather than charting a course into unknown waters.

III. The Proposed Rule

A. Purposes and Objectives

The generic procdure here proposed may encourage settlements by providing a more certain legal framework and should also reduce the resources required to process those cases that are not settled.[23] To the extent that these savings are realized, utilities, their customers, and the Commission will share in the benefits.

An equally important objective in proposing this generic approach, however, is to improve the accuracy of the Commission's rate of return decisions. There are several reasons why this objective appears attainable. First, the proposed procedure would largely eliminate the timing problem referred to earlier by requiring all parties submitting comments to focus their analyses on the same time period and by making use of financial data that correspond more closely to the period to which the decisions would apply. Second, a generic approach would allow the Commission periodically to assess the financial condition of the industry as a whole, rather than on a piecemeal basis. Finally, the concentration of public and private resources in a consolidated proceeding should provide a better forum for addressing the substantive aspects of the rate of return issue.

We recognize that these benefits would not be obtained without some cost. The present rulemaking itself requires a commitment of resources by the Commission and by interested parties. If adopted, the proposed rule would inevitably mean that, for rate of return purposes, the particular characteristics of individual companies generally would be subordinated to the characteristics of the industry or risk class as a whole.[24] However, it is our judgment, reflected in this proposed rule, that these costs are outweighed by the benefits that a generic procedure would bring.

B. Base Year Generic Determinations

The Commission intends to determine base year rates of return biennially and to establish a quarterly indexing procedure. Base year rates of return for the 1983–1984 biennium would be determined in the present rulemaking, and base year rates of return for subsequent biennia would be determined at two-year intervals. To determine these base year rates of return in each rulemaking, the universe of jurisdictional electric utilities would be divided into three classes according to relative riskiness. The Commission would then determine a rate of return equal to an estimate of the average market cost of equity for each of the three relative-risk classes. Although several methodologies for risk evaluation and cost of equity are discussed below, the procedures proposed for this rule would not incorporate any particular methodology.

These base year rates of return would be used to calculate the implied equity risk premium for each risk class during the base year. The implied equity risk premiums in turn would be used to determine the generic rates of return over the following biennium. The generic rates of return would be revised quarterly during the biennium by adding the average of the monthly interest rates on 10-year constant maturity Treasury bonds for each quarter to the implied equity risk premium for each risk class. All of these steps involve essentially arithmetic operations which are specifically spelled out in the proposed rule.

1. *Procedural implementation.* Calendar year 1982 would serve as the initial base year, and the final rule would:

(1) Divide the jurisdictional electric utilities into three risk classes;

(2) Determine the base year rate of return for each risk class;

(3) Set forth the average of the monthly interest rates on 10-year

[18] *See* e.g. Opinion No. 44, Pub. Serv. Co. of Indiana, *supra, mimeo* at 26 (took into account change in interest rates occurring after close of the record but during period rate was in effect); Opinion No. 82, Missouri Utilities Co., Docket Nos. ER77–354 and ER78–14, 10 FERC ¶ 61,297, at 61,600 (March 28, 1980); Opinion No. 85, El Paso Electric Co., Docket Nos. ER77–488 and ER78–520 (Phase I), 11 FERC ¶ 61,168 at 61,357–61,358 (May 19, 1980).

[19] 42 U.S.C. 7173(c) (Supp. II 1978).

[20] H. Rep. No. 95–539, 95th Cong., 1st Sess. 77 (July 26, 1977). Of course, even prior to enactment of the DOE Act, the Federal Power Commission had utilized a variation on informal rulemaking procedures for purposes of setting rates for wellhead sales of natural gas. Almost without exception, the courts approved use of these procedures. American Public Gas Ass'n. v. FPC, 567 F. 2d 1016, 1064–1067 (D.C. Cir. 1977), cert. denied 435 U.S. 907 (1978); Shell Oil Co. v. FPC, 520 F. 2d 1061, 1074–1076 (5th Cir. 1975), *cert. denied sub nom.* California Co. v. FPC, 426 U.S. 941 (1976); Phillips Petroleum v. FPC, 475 F. 2d 842 (10th Cir. 1973), *cert. denied sub nom.* Chevron Oil Co. v. FPC, 414 U.S. 1146 (1974); and American Public Gas Ass'n v. FPC, 498 F. 2d 718 (D.C. Cir. 1974). Cf. Mobil Oil Corp. v. FPC, 483 F. 2d 1238, 1249–1264 (D.C. Cir. 1973). For a broader discussion of these issues, *see* Willrich, *Administration of Energy Shortages: Natural Gas and Petroleum* 61–66 (1976).

[21] Domestic Passenger-Fare Investigation, Phase 9—Fare structure, CCH Aviation L. Rep. ¶ 22,137 (CAB 1974); Domestic Structure, Order No. 72–8–50 (Aug. 10, 1972); Domestic Passenger-Fare Investigation, Phase 5—Discount Fares, CCH Aviation L. Rep. ¶ 22,096 (CAB1972).

[22] *See* Establishment of Adequate Railroad Revenue Levels, 358 I.C.C. 844 (1978) and 359 I.C.C. 270 (1978). The rules were codified in 49 CFR 1109.25 (1979). In 1981, the ICC repealed those particular rules but continued to determine rate of return on a generic, industry-wide basis. See *Standards for Railroad Revenue Adequacy*, 364 I.C.C. 803 (1981).

[23] A recent informal staff survey of the Commission's ALJs reveals that, of the total resources ecpended by all parties in recent unsettled electric rate cases (up to the time of the initial decision), between ten and fifteen percent is estimated to have been associated with the rate of return issue.

[24] A waiver provision for exceptional cases is provided, however. See *infra.*

constant maturity Treasury bonds for 1982; and

(4) Calculate the implied equity risk premium for each risk class.

These results would be applicable to the 1983–1984 biennium. In principle this biennium should commence on January 1, 1983 and end on December 31, 1984. If this proceeding is not concluded by January of 1983, however, the initial biennium may be truncated at the front end. The transitional rule set out in proposed §37.13 would provide for this eventuality.

Subsequent biennia would begin in January of odd-numbered years beginning with 1985, and each preceding even-numbered year would serve as the base period for the generic proceedings. However, the Commission intends to retain the flexibility to accelerate or postpone these generic proceedings as conditions warrant. For example, highly volatile capital markets might provide sufficient reason to accelerate the commencement of the next scheduled proceeding. Timely public notice would be given of any acceleration or postponement.

In order to provide all parties with ample notice and the opportunity to synchronize rate filings with subsequent proceedings, the Commission wishes to standardize the key dates. Absent acceleration or postponement, subsequent proceedings would be conducted in even-numbered years. Initial comments addressing risk classification and base year rates of return would be accepted no later than November 15 of the base year, and reply comments would be due on December 31. The Commission would promulgate its rule by March 31 of the following year. In April of that year, as explained below, the implied equity risk premiums set out in the rule would begin to be used to determine generic rates of return applicable for the first quarter. Each succeeding quarter, the rate would be similarly adjusted.

2. *Risk classification.* a. *The proposed rule.* The first step in determininbg generic rates of return would be to divide jurisdictional electric utilities into three classes according to relative investment risks. Although the Commission recognizes that no two utilities share precisely the same degree of risk, the electric utility industry has traditionally been characterized as having a high degree of risk homogeneity. Variations in risk within each of the three risk classes, therefore, should generally be small. To attempt to take account of the marginal differences in the cost of equity capital associated with these small risk differences would substantially complicate the proposed procedure in order to achieve what would probably be largely illusory improvements in the accuracy of the end result. We believe, therefore, that the division of the industry into more numerous risk classes would serve no practical purpose.[25]

The proposed rule does not specify the risk measures to be used for classifying the jurisdictional electric utilities. Although the Commission now intends to rely principally on beta coefficients for this purpose,[26] any single automatic mechanism that could be employed for risk classification most likely would suffer from shortcomings. One problem with nearly all popular risk measures is that they are not observable for all companies. Bond ratings are not available for the smaller jurisdictional utilities that have no publicly issued long-term debt. Similarly, any measure that relies on stock market data, *e.g.*, a beta coefficient, is not available for non-traded utilities, such as wholly-owned subsidiaries of other companies. Another shortcoming of several potentially useful risk measures is that they are based solely on historical performance and may not reflect the market's current perceptions of investment riskiness.

For practical reasons, then, the Commission must supplement the risk classification process by relying on a second criterion or set of criteria in those cases in which the primary criterion or criteria are not observable or do not reasonably reflect current risk. The secondary criterion or criteria might be used either to define an objective risk measure or to serve as the basis for the exercise of an informed judgment by the Commission.

b. *An alternative proposal.* Because the electric utility industry is relatively homogeneous with respect to risk, it should not be assumed that the three risk classes contemplated by the proposed rule will necessarily be of equal size: the industry's homogeneity may result in a large average risk class and much smaller high and low risk classes. Nevertheless, the proposed rule does assume that risk differences are sufficiently large to justify division of the industry into three separate risk classes. Although we now believe that this assumption is reasonable, subsequent analysis may demonstrate otherwise.

The market costs of equity for electric utilities may fall within such a narrow range that the division of the industry into risk classes using any of the available techniques would not likely improve the fairness or reasonableness of generically determined rates of return. If this appears to be the case, the final rule may eschew a tripartite division of the industry, and focus on the industry as a whole. The Commission would then establish a single base year rate of return which would be set equal to an estimate of the industry's average market cost of common equity. Of course, it a utility's circumstances were thought to be sufficiently unusual, a party could request a waiver from the rule and, if granted, the utility's rate of return would be litigated in the hearing process along with other cost of service issues.[27] Comments are invited regarding this alternative proposal.

3. *Base year rates of return and implied equity risk premiums.* Upon classification of all jurisdictional electric utilities as either high, average or low relative risk, the Commission would estimate the average cost of equity capital for each relative risk class based on either an analysis of aggregate data for each class or an average of the analyses of individual utilities in the class. Although several methodologies are discussed below, the proposed rule does not incorporate any particular approach for estimating the cost of equity. The Commission intends to articulate fully in the preamble to each final rule the factual and analytical basis for the determination made.[28]

The final step in each generic proceeding would then be to calculate the equity risk premium implied by each base year rate of return. For the risk-free rate of return, the Commission intends to use the base year twelve-month average interest rate on 10-year constant maturity Treasury bonds, as published by the Federal Reserve Bank.[29] This readily available series is

[25] Indeed, as discussed in the next section, we have some question as to whether even the division of the industry into three risk classes is justified given the industry's relative risk homogeneity and the imprecision of the available techniques for determining the cost of equity capital.

[26] Beta coefficients are discussed below in Part IV-A of this Notice.

[27] A discussion of waivers follows in the next section.

[28] The basic procedure thus is somewhat analogous to that employed by the Federal Power Commission in establishing national rates for producer sales of natural gas in that the notice of proposed rulemaking will not set forth a proposed rate nor propose a particular methodology in computing the rate. The basis for the Commission's final determination, however, will be fully supported in the final rule. Cf. Order instituting national rate proceeding, 52 FPC 1693, 1964. (December 4, 1974).

[29] Published monthly in the Federal Reserve Statistical Release, Series G.13 (415).

generally published within the first week of the month following the month for which the interest rates apply and has been used for similar purposes by this Commission in the past.[30]

To illustrate the implied equity risk premium calculation, suppose that the base year rates of return for the low, average and high relative-risk classes were found to be 14, 15 and 16 percent, respectively. If during that year the Treasury bond series yielded an average interest rate of 11 percent, risk premiums of 3, 4 and 5 percent would be established for the three classes in the Commission order.

C. Quarterly Updating of Generic Rates of Return

The implied equity risk premiums established in the generic proceedings would be used to adjust generic rates of return on a calendar quarter basis. Immediately following the close of each quarter, the Commission would publish the generic rates of return applicable for that quarter.[31] Those rates of return would be derived by adding the average of the monthly interest rates on 10-year constant maturity Treasury bonds for the quarter to the implied equity risk premiums established in the most recent generic proceeding.

The Commission is aware of the debate concerning the extent to which equity risk premiums may change over time. The proposed rule does not assume that these premiums will remain constant over the course of a biennium. The Commission, however, believes that in general the proposed procedure should produce rates of return that reasonably reflect current market conditions over the course of the biennium. If at some point that appears not to be the case, the Commission, as noted earlier, could choose to accelerate the next biennial proceeding.

D. Generic Rates of Return in Individual Rate Cases

1. *General procedure.* The proposed rule is intended to effectively sever the rate of return issue from all *contested* rate proceedings. Otherwise, however, the procedure for processing electric rate cases would remain essentially unchanged.[32] Rate filings could include whatever rate of return the filing party considered most appropriate. Based on current standards the Commission would determine whether to accept the filing, and, if so, the appropriate suspension period. If a rate were accepted, upon completion of the suspension period the filed rate would be collected subject to refund until either it was superseded by a later filing or the Commission reached a final decision in the case. If the parties reached a settlement regarding the rate of return, the generic rate of return determined pursuant to the proposed rule would have no effect on the case. Only in those cases in which the rate of return issue was not settled would generic rates of return be used.[33]

For cases in which generic rates of return are to be applied, the proposed rule distinguishes between those cases whose rates are locked-in [34] by the time of the Commission decision and those whose rates are open-ended, i.e., will continue or commence prospectively. For cases involving locked-in rates, the Commission would set the allowed rate of return equal to the simple average of the generic rates of return applicable to a utility's risk class for the quarters spanned by the locked-in period. The generic rates of return for the first and last quarters would be included in the average only if the locked-in period covered at least one month and fifteen days of each quarter, respectively. In addition, the last quarter would be included only if the generic rates of return for that quarter were issued prior to the issuance of the Commission order setting rates for the filing utility.[35]

For cases involving rates that have not been locked-in, the Commission would in general set two allowed rates of return. One would be used to establish the rate retrospectively allowed over the period revenues had been collected subject to refund and thus to determine refund amounts. This refund period rate of return is analogous to the locked-in rate of return just discussed and would be calculated in the same way. The other rate of return would be used to establish the rate collected prospectively. The proposed rule prescribes an allowed rate of return for prospective rate purposes equal to the simple average of the applicable generic rates of return for the two quarters most recently available at the time of the issuance of the Commission order setting rates for the filing utility. For those cases in which the rate does not become effective until a final decision is issued, this prospective rate of return would be the only one included in the Commission order.[36]

For both locked-in and open-ended cases, Commission orders under the proposed rule would, where appropriate, use the most recently available quarterly generic rates of return even if they had been issued after the close of the record in the case. While this principle is not new to the Commission,[37] its scope is expanded by the proposed rule. In past decisions, the Commission has been willing to adjust record-developed rates of return to reflect changes in market conditions since the close of the hearing record, but only to the extent that the new rate of return fell within the record-supported zone of reasonableness.[38] The proposed rule places no such constraint on the ultimately allowed rates of return.[39]

All alternative to the procedure just described would be to base rates of return for both locked-in and prospective rates on the average of the applicable generic rates of return for the quarters spanned by the future test year.[40] Although the Commission

[30] *See* Opinion No. 139, Nantahala Power and Light Co., Docket No. ER76-828, 19 FERC ¶ 61,152, at 61,286, n. 58 (May 14, 1982). *See also* Specified Reasonable Rate of Return, 18 CFR 2.15 (1981) (used for adjusting annually the rate of return used for computing amortization reserves for hydroelectric project licenses).

[31] This would be done a week or two into the following quarter, when the Treasury bond rate for the third month of the preceding quarter becomes available.

[32] An exception to this generalization relates to requests for waiver from the generic rule.

[33] For most cases, it is contemplated that in settlement negotiations the staff would use a generically determined rate of return. However, the Commission recognizes that in some cases the public interest may require the staff to employ some other rate of return.

[34] *See* definition of "locked-in", *supra*, note 17.

[35] For example, if a locked-in period ends on March 1, and the Commission issues its final opinion in the case on March 15, the January-March quarterly generic rate of return would not be included in the average, even though the locked-in period spanned more than half of the quarter. The reason is that the generic rates of return for the January-March quarter would not be available until April—after the opinion.

[36] In cases where the ALJ's initial decision becomes a final Commission decision in accordance with Rule 708 of the Commission's Rules of Practice and Procedure, the utility shall make a compliance filing incorporating the applicable generic rate of return in the approved rate.

[37] *See*, e.g., Opinion No. 44, Pub. Serv. Co. of Indiana, *supra*, *mimeo* at 26 (change in interest rates occurring after the close of the record but during the period rate was in effect considered); Opinion No. 82, *supra*, Missouri Utilities Co., 10 FERC ¶ 61,297, at 61,600; Opinion No. 85, El Paso Elec. Co., *supra*, 11 FERC ¶ 61,168, at 61,357–61,358.

[38] *See* Opinion No. 44, Pub. Serv. Co. of Indiana, *supra*, *mimeo* at 26 (result placed at the upper end of the determined zone of reasonableness); Opinion No. 82, Missouri Utilities Co., *supra*, 10 FERC ¶ 61,297, at 61,600 (result placed at the upper end of the range found by intervenor's witness to be appropriate); Opinion No. 85, El Paso Elec. Co., *supra*, 11 FERC ¶ 61,168, at 61,357–61,358 (result placed at the upper end of the zone established by staff and adopted by the ALJ).

[39] Except that the filed rate doctrine will continue to limit the total revenue increase granted by the Commission to the amount requested in the filing. Complying with this doctrine may require a reduction in the otherwise applicable generic rate of return.

[40] For those cases in which the future test year had not yet elapsed by the time of the Commission

historically has not limited its consideration of the rate of return issue to test year data, unlike other cost of service issues,[41] it is interested in whether there is now a sufficient basis, e.g., the use of future test years, for doing so. The Commission thus invites comments regarding the advisability of adopting a policy of treating the rate of return issue the same as other costs of service by limiting its consideration to the future test year.

2. *Waiver provisions.* The Commission believes that the proposed procedure would produce fair rates of return resulting in just and reasonable rates in most cases. The proposed rule, however, also provides a procedure for seeking a waiver of the generic rate of return in certain unusual cases.[42] The Commission stresses that it anticipates that waivers would be granted rarely and only upon a proper showing.

Requests to reclassify a utility into a different risk class could be made on the grounds that events had occurred since the issuance of the generic rate of return rule which justified reclassification. The base year rates of return for each risk class would not themselves be at issue. A waiver request of this kind also would not be appropriate for claims based on information or argument that was considered by the Commission in the generic proceeding or should have been presented in that proceeding. In many cases, it should be possible to rule on this type of petition on the basis of the pleadings. In appropriate instances, the question could be set for hearing as part of the rate case.

A party could also request a waiver on the grounds that unusual circumstances warrant a rate of return that is different than the applicable generic rate of return. Upon the granting of this type of waiver, the rate of return issue would be set for hearing.

The Commission emphasizes that the intent of the proposed rule is to deal with rate of return issues in the generic proceeding only. Parties seeking to contest the classification of a utility or the determination of the base year rate of return may do so both in the rulemaking proceeding or, if they feel their concerns are not adequately addressed, through judicial review. The Commission does not intend, however, to allow the rate of return determination to be attacked collaterally on rehearing of the underlying rate case. Accordingly, proposed section 37.9(b) states that the Commission will not entertain arguments concerning the rate of return applied to a filing pursuant to the rule in any request for rehearing of the Commission order setting rates for that filing.

3. *Efficiency incentives.* The Commission initiated this rulemaking because we believe that the case-by-case approach to setting allowed rates of return has failed to produce satisfactory results in a timely and efficient manner. At the same time, we are also concerned that our overall cost-plus approach to setting wholesale electric rates provides few incentives for utilities to operate efficiently. Some 20 years ago, a leading student of regulation observed that: * * *

> regulation creates an environment in which incompetence is rewarded and efficiency is penalized because the determination of total revenue requirements on a cost-plus basis assures the company that all expenses will be covered while at the same time eliminating the possibility that any gains from greater productivity can be retained. [43]

It appears that this observation may be equally true today.

The Commission therefore has initiated a study of the feasibility of establishing a system of rewards and penalties that would create incentives for more efficient utility performance.[44] Several state commissions have initiated such programs. For example, the rate of return for two major Michigan utilities is tied to their system availability.[45] Although the feasibility and form of any similar incentive program for this Commission remain to be determined, it appears that a generic rate of return might facilitate the establishment of such a program by providing a well-defined base point that could then be adjusted according to each utility's success in meeting specified performance targets. It does not appear to be feasible to complete the necessary research and analysis in time to incoporate an explicit incentive program in the present rulemaking. However, the Commission solicits comments concerning how the generic rate of return procedure might be modified in the future to provide performance incentives.

IV. The Initial Generic Rates of Return: Analytic Issues

The proposed rule does not specify any methodology for dividing electric utilities into risk classes or for determining the cost of equity capital for each risk class. However, in this rulemaking the Commission proposes not only to establish a procedure for determining generic rates of return for the 1983–1984 biennium. This section of the notice is concerned with the methodologies that the Commission is now considering in the initial application of the proposed generic procedure.

A. Risk Classification

The Commission's ultimate goal is to set rates of return that reasonably reflect the market cost of equity capital to electric utilities. The division of jurisdictional utilities into risk classes, therefore, should be based on the capital market's perception of their relative riskiness. The Commission now intends to rely principally on beta coefficients as the measure of relative risk, but it is also prepared to use other objective risk measures and its own judgement where appropriate.

1. *Background.* a. *Accounting measures of risk.* Risk is typically defined as the inability to predict the outcome of future events with certainty. In an investment context, it may be viewed simply as the chance that expected returns will not be realized or, alternatively, as the chance of realizing returns less than expected. The traditional approach to the evaluation of investment risk focuses on the two major sources of uncertainty to a company: business risk and financial risk. Business risk relates to the uncertainty of expected income flows to the company. This uncertainty may be viewed as a function of the variability in a company's operating income over time, and such statistical techniques as standard deviation and standard error can be used to measure this variability for some defined period.

Financial risk is the uncertainty introduced by the method of financing

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order, the allowed rate of return would be set equal to the average of the applicable generic rates of return for the most recently available two quarters.

[41] *See* Opinion No. 609, Union Electric Company, Docket No. E–7525, 47 FPC 144, 156 (1972): Capitalization costs differ from other costs. It has generally been observed that the costs of * * * other factors of production change in reasonably predictable directions over periods of time and, in turn, tend to be . . . offset by predictable countervailing changes in technology, efficiency, and market growth. The same cannot be said of capital costs * * *. We shall therefore continue to * * * accord to financing costs the different and separate treatment that we think they deserve.

[42] Petitions for waiver should be filed in accordance with the applicable Commission procedural rules.

[43] H. Trebing, *Toward An Incentive System of Regulation*, 72 Public Utilities Fortnightly 22 (Aug. 18, 1963).

[44] *Prepared Statement of C. M. Butler, III, Chairman, Federal Energy Regulatory Commission, Before the Subcommittee on Energy Conservation and Power of the House Committee on Energy and Commerce*, 97th Cong., 2d Sess., Hearings on Least-Cost Energy Strategy, 11–15 (April 23, 1982).

[45] Schneidewind and Campbell, *Michigan Incentive Regulation: The Next Step*, in *Challenges For Public Utility Regulation in the 1980's*, 397–415 (1981).

an investment. It represents that portion of total company risk, over and above business risk, which results from using debt. Financial risk arises because the use of debt requires a company to pay fixed interest charges prior to paying dividends to common stockholders. The fixed and senior nature of interest charges increases the risk of equity in two ways. First, the greater the debt burden, the greater the risk that the company will default on its interest payments and be forced into bankruptcy. Second, the greater the percentage of debt in a company's capital structure, the more uncertain are common stockholder's expected returns, because of the increased volatility of the residual earnings available to them with any given change in operating income.

Perhaps the most frequently used measure of financial risk is the equity ratio: the percentage of common equity in a company's capital structure. Another common measure is the interest coverage ratio, which relates the earnings available for debt service to a company's required interest payments.

b. *Market measures of risk.* Developments in the field of finance over the past thirty years have shifted the focus of investment risk analysis from companies' financial statements to the risk-return tradeoff established by investors in the capital markets. The basic assumption is that investors as a group are risk averse and thus require a higher expected return for taking more risk. Other things being equal, therefore, investors who are suddenly faced with the prospect of increased risk would bid down a security's price until it offered an expected rate of return sufficiently high to compensate for the new perceived risk.

The modern approach to investment risk analysis makes use of standard statistical techniques to quantify risk by relating it to the expected variability of returns, i.e., the extent to which realized returns are likely to diverge from expected returns. If the distribution of market returns is assumed to be approximately normal, then risk can be measured by the standard deviation (or variance) of returns.[46] The larger the standard deviation, i.e., the greater the spread in the probability distribution of possible returns, the riskier the investment. In practice, the standard deviation of realized market returns over some past period has often been used as a proxy for the current risk of an investment.

The development of portfolio theory, however, led to the view that the risk of an individual investment should be assessed not on the basis of possible deviations from its expected return but rather in relation to its marginal contribution to the overall risk of a portfolio of investments.[47] Specifically, portfolio theory deals with how diversification can reduce risk by selecting securities not just on the basis of the variability of these individual securities' returns but on their covariability[48] with each other. In this way, a portfolio of securities can be made to be less risky than the average of the risks of the individual securities in it. The risk of the portfolio would then be measured by the standard deviation of the portfolio's expected return.

The use of the standard deviation of market returns, whether applied to an individual security or in a portfolio context, represents an attempt to measure total investment risk. But the advent of capital asset pricing theory resulted in a different perception of investment risk and its relation to expected returns.[49] According to this theory, not all of the investment risk of an individual security is relevant in determining the premium for bearing risk. It is asserted that investment risk can be separated into two components: systematic risk and unsystematic risk. The former is that portion of investment risk caused by factors affecting the prices of all securities: the latter is the investment risk which is unique to a firm or industry. It is contended that unsystematic risk can be eliminated by the diversification of securities in a portfolio, while the systematic or market-related risk of an individual security is not affected by combining it with other securities in a well-diversified portfolio. In a well-diversified portfolio, therefore, unsystematic risk is reduced to zero, and only systematic or undiversifiable risk remains. Since the unsystematic part of investment risk can be eliminated through diversification, it is maintained that the market does not provide investors with any additional premium for assuming this type of risk. The only part of investment risk for which compensation will be offered is systematic risk, which cannot be reduced through diversification.

Systematic risk has been quantified by what has become known as the beta coefficient. The beta of a security (or portfolio) measures the variability of its returns relative to those of the market as a whole.[50] Whereas the standard deviation is a measure of absolute risk, the beta is thus a measure of relative risk. If a security has a beta of 1.0, its return on average will track the market return. If it has a beta of 2.0, it will on average be twice as volatile as the market. If the market's return goes up (or down) 10 percent, the security's return will go up (or down) 20 percent. If the security has a beta of 0.5, it will on average be half as volatile as the market, i.e., half as risky. If the market return goes up (or down) by 10 percent, the security's return will go up (or down) by only 5 percent. The betas of regulated electric utilities are generally below 1.0 and under captial asset pricing theory would therefore be considered less risky than the average security, as represented by the overall market.

2. *Proposed risk measure.* The task of making distinctions among companies based upon perceived or measured differences in investment risk is fraught with difficulties, especially for an industry as homogeneous as the electric utility industry. Nevertheless, the Commission must address the risk issue, either explicitly or implicitly, in almost every rate case it decides. Usually, various financial and operating factors are mentioned as being suggestive of either high or low risk, thereby justifying either a higher or lower rate of return. These factors, however, are very often determinants of risk rather than measures of risk. As a consequence, it is usually not possible to assess their quantitative impact, if any, on investors' required rates of return. Therefore, the Commission believes that in general better results are likely to be achieved through explicit reliance on quantitative measures of market investment risk, notwithstanding the shortcomings of those measures. The Commission also has tentatively concluded that beta coefficients can be usefully employed as

[46] The variance is obtained by squaring the deviations of a random variable from its mean and then computing the average of these squared deviations. The standard deviation is the square root of the variance.

[47] *See* Markowitz, Harry M., *Portfolio Selection, Efficient Diversification of Investments* (New York: John Wiley and Sons, Inc., 1959).

[48] Covariability is the degree of linear dependence between two random variables, i.e., the extent to which the size and direction of changes in one random variable are associated with the size and direction of changes in the other. The covariance is the statistical measure of this relationship.

[49] *See* Sharpe, William F., "Capital Asset Prices: A Theory of Market Equilibrium Under Conditions of Risk," *The Journal of Finance*, XIX (September 1964), 425–442.

[50] Betas are derived by time a series linear regression analysis where the dependent variable is the security's return and the independent variable is the market return. The slope of the regression line, i.e., the coefficient of the independent variable, is the beta. In reduced unadjusted form, a security's beta equals the covariance between the returns of the security and the returns of the market, divided by the variance of the market returns.

a guide in the risk classification procedure. However, the Commission also intends to employ its own judgment when known circumstances point to a result different than a mechanically applied beta risk measure would suggest. The Commission invites comments on the use of beta coefficients for assigning jurisdictional electric utilities to the proper risk class.

At present, the Commission anticipates calculating beta coefficients using the market data of electric utility companies. These data reflect the risks of each company as a whole and thus do not distinguish between the risks attributable to a utility's jurisdictional and nonjurisdictional operations. In most cases, however, the nonjurisdictional risks relate to a utility's retail electric operations, and it seems reasonable to assume, based on the nature of the electric utility business, that there is in general no significant difference between the investment risk of an electric utility's wholesale and retail operations.

Some electric utility companies, however, have engaged in extensive diversification. In such cases, the Commission intends to consider whether the company's electric utility operations warrant a different risk classification than is indicated solely by the company's beta. Finally, in those cases where the jurisdictional electric utility is a subsidiary without publicly traded common stock, the Commission intends to use the beta for the parent company subject again, however, to the exercise of its judgment where appropriate.

3. *Alternative risk measures.* Although the Commission now believes that beta coefficients are generally the best available objective risk measure, the Commission has considered and will continue to consider other risk measures which appear to be useful. Therefore, we invite comments on the risk measures outlined below which the Commission also believes to have merit. Commenters should bear in mind, however, that no measure of risk or combination of measures will produce complete accuracy in all cases. In this rulemaking the Commission is seeking a means of classifying jurisdictional electric utilities that is both reasonably reflective of investment risk and administratively practicable. In addition, the following list is not intended to be exhaustive. Commenters are thus invited to suggest other risk measures along with supporting analyses.

a. *Standard deviation of market returns.* In the event that the evidence demonstrates that the market prices of electric utilities reflect unsystematic as well as systematic risk, this measure of risk might be used either alone or in combination with beta.

b. *Accounting beta.* This risk measure addresses the cyclicality of a company's earnings, i.e., the tendency for these earnings to move, or covary, with earnings in the economy generally. Although the accounting beta can be calculated in different ways, it is frequently computed by regressing a company's return on common equity on the return on common equity of an index such as the Standard and Poor's 500 Stock Index. It is thus the accounting counterpart to the market beta risk measure inasmuch as it is an indication of the systematic risk associated with a company's accounting earnings.

c. *Standard deviation of returns on common equity.* The variability of returns on common equity over time, as measured by the standard deviation, reflects the total risk of a company's accounting earnings, both its systematic and unsystematic components. In more traditional terms, it might be viewed as a risk measure which incorporates both business risk and financial risk.

d. *Standard error of operating income.* This measure is an indication of a company's business risk and reflects the volatility of operating income about a trendline, rather than about a mean value. Standard error is used in place of standard deviation because long term growth in operating income normally follows a secular trend and only the variability about such trend is perceived to represent risk.[51]

e. *Equity ratio.* Defined as the percentage of common equity in a company's capital structure, this is a measure of financial risk and has often been used by the Commission in determining allowed rates of return.

f. *Interest coverage ratio.* This is also a measure of financial risk. It is the ratio of a company's pre-tax income to its long-term interest charges. In recent years, it has frequently been computed by excluding AFUDC (the allowance for funds used during construction) from pre-tax income since AFUDC does not represent actual cash available to meet interest payments.

g. *Internal cash flow ratio.* This would be calculated as the ratio of internally generated cash from operations (after dividend payments) to the level of construction expenditures. Although perhaps not typically viewed as such, it seems reasonable to characterize this ratio as a measure of financial risk.

The Commission recognizes that there may be no single universal risk measure which is operationally superior to all others. However, commenters who propose the use of more than one risk measure should explain how the Commission should choose between the proposed measures in assigning a particular utility to the appropriate risk class or, if more than one measure is to be applied to a single utility, how they should be combined.

In conclusion, commenters are requested to specify the risk class into which particular utilities should be placed for the 1983–1984 biennium and the basis for this classification. The Commission will welcome this type of comment, particularly for those utilities which may represent unusual cases.

B. Base Year Rates of Return

Once jurisdictional electric utilities have been segmented into three risk classes, it is necessary to determine the base year rate of return for each class. The Commission proposes to set these rates of return equal to its best estimate of the market costs of equity capital during the base year. In addition, the Commission now intends to rely principally on a discounted cash flow (DCF) analysis to obtain estimates of the market costs of equity. However, it is also prepared to supplement its DCF analysis with any other analytical techniques which appear useful.

By "cost of equity capital" the Commission means the minimum expected return that investors require before they will invest in common stock, adjusted for the company's costs incurred in selling such stock. It is apparent, therefore, that the cost of equity capital is a market-oriented concept. There is no simple way of reliably estimating the market-determined cost of equity. Investors' required rates of return are unobservable, and the measurement of expectations is intrinsically difficult. As with considerations of risk, however, it is a task which cannot be avoided in light of the Commission's regulatory responsibility to allow each jurisdictional utility a reasonable opportunity to earn a fair rate of return.

1. *Cost of equity estimation methods.* From a conceptual standpoint, there appear to be two alternative ways of deriving estimates of the investors' required rate of return. The first is the risk premium approach, which directly estimates the required return by separating it into its three component parts: a risk-free real return reflecting

[51] That standard error is typically defined as:

$$se = \sqrt{\Sigma(y-y')^2/(N-2)},$$

where y and y' represent the logs of the variable value and its trendline estimate, respectively, and N represents the number of annual data points.

the time value of money, compensation for expected inflation, and compensation for risk. Since nominal yields on U.S. Treasury bonds serve as a good proxy for the sum of the first two parts, the most critical and controversial issue in this approach is one of determining the appropriate equity risk premium.

A specialized version of the risk premium approach is the capital asset pricing model. According to this model, the investors' required rate of return can be represented as the sum of a risk-free rate of return (K_f) and a risk coefficient (β) times the difference between the market-required rate of return (K_m) and K_f. Thus, we have:

$$K = K_f + \beta (K_m - K_f),$$

where the expression in parenthesis, $K_m - K_f$, is the market risk premium and β, the beta coefficient discussed earlier, is a measure of risk relative to the market.

The second estimation procedure derives the investors' required rate of return indirectly through an estimate of their expected rate of return as reflected in observable market data. In highly competitive capital markets, investors bid the market prices of securities up or down until the expected rate of return is not only the same for all securities of comparable risk, but is also equal to investors' required rate of return. The approach which addresses investors' expected rate of return is called the discounted cash flow, or DCF method.

The DCF method assumes that the market value of an asset is a function of the income it is expected to produce over time. In the case of a common stock investment, the income consists of periodic dividends plus the proceeds from the sale of the stock at some future time. Since the future stock price is also a function of the expected cash flow from dividends, one can express the stock's current value entirely in terms of expected future dividends. The expected rate of return implicit in such a flow of dividend payments is the discount rate which equates the present value of the dividends with the current market price of the stock.

In its general form, the DCF model may be expressed as:

$$P = \frac{D_1}{1+k} + \frac{D_2}{(1+k)} 2 + \ldots + \frac{D_t}{(1+k)^t} + \ldots$$

where:

P = current market price,

D_t = expected dividend in year t, and

k = investors' expected/required rate of return.

With a few simplifying assumptions,[52] this equation can be reduced to:

$$p = \frac{d_1}{K-g}$$

and rewritten as: $k = \frac{D_1}{P} + g.$

where:

g = expected growth rate in dividends and

D_1 = expected dividend during the coming year.

This formulation is often referred to as the constant growth DCF method. It has three inputs: market price, dividends, and expected growth in dividends. For any company whose common stock is traded on a major stock exchange, the first two inputs can be obtained readily. The expected growth in dividends, however, must be estimated, and it is not known with certainty how investors actually develop their growth expectations. For this reason, one is invariably compelled to assess investor expectations on the basis of an analysis of historical data, adjusted to reflect current conditions.

2. *Proposed cost of equity estimation method.* The prior discussion is not, of course, exhaustive in its coverage of all the cost of equity estimation methods which have been used in regulatory proceedings. Since there are either conceptual or practical flaws associated with all cost of equity estimation methods, the Commission must exercise its judgment both in selecting an estimation method or methods and in deciding how to implement any chosen method.

The Commission now intends to place primary reliance on the DCF method in deriving estimates of the cost of equity capital for each risk class. Despite the measurement error inherent in this method, the Commission believes that it offers the best chance of yielding reliable results. As discussed above, the most difficult implementation problem associated with the DCF method is the estimation of investors' expected growth in dividends. However, it appears that this problem may be more manageable when the subject company is a regulated electric utility, since investors might reasonably expect the growth rate of dividends to fall within a relatively narrow range.

[52] The necessary simplifying assumptions are: (1) Dividends are expected to grow at a constant rate into the future; and (2) the expected/required rate of return is greater than the expected dividend growth rate.

Furthermore, any measurement error associated with dividend growth estimates should be mitigated by applying the DCF analysis to a broad sample of comparable risk electric utilities. This, of course, is precisely what is intended in this generic rate of return proceeding. The DCF-derived cost of equity estimates for each utility within a risk class could be averaged to produce the cost of equity estimate applicable to the risk class. Alternatively, a DCF analysis could be applied to aggregate risk class data.

a. *Dividend yield.* Although the dividend yield is easily computed if the stock is publicly traded, there are a few issues relating to its calculation which can cause differences, albeit usually small ones, in the end result. To begin with, one must define the period of time over which the dividend yield will be measured. The Commission intends to use the base year for this purpose and to compute the yield by averaging the monthly dividend yields for the year. Monthly dividend yields would be computed by dividing the indicated dividend for a particular month by the average of the high and low prices for that month.

A more subtle issue involves the assumptions that different DCF models implictly make about how dividends are compounded. The DCF model presented above is the discrete formulation and assumes that dividends are paid and compounded annually. An alternative formulation of the DCF model is:

$$k = \frac{D_o}{P} + g.$$

where

D_o = current indicated dividend.

This version of the model assumes that dividends are paid and compounded continuously. Since dividends generally are in fact paid only quarterly, the investors' required rate of return would lie somewhere between the results produced by these two models. Comments are invited addressing whether one model is preferred over the other, whether an average of the two models' results should be used, or whether a quarterly compounding model should be developed.

b. *Expected dividend growth rate.* It appears reasonable to assume that, in the absence of reliable knowledge of the future, investors would evaluate past growth trends in establishing their future growth expectations. However, investors may not expect historical

trends to persist unchanged into the future, and the simple extrapolation of historical trends could thus produce misleading results. But upside and downside estimation errors may tend to cancel out in the averaging process for determining base year rates of return. Nevertheless, under some circumstances there could be a systematic tendency for simple extrapolation of past growth trends to produce an average estimate that is too high or too low. The Commission will therefore need to employ judgment in deriving the base year rates of return.

In assessing future dividend growth, data for five-year and ten-year growth rates in dividends, earnings, and book value have been used most frequently. The Commission is currently inclined to employ historical dividend growth rates over both five- and ten-year periods. In determining the average base year rate of return for each risk class, the Commission also is considering either giving more weight to utilities with relatively stable dividend growth rates or eliminating utilities with unstable dividend growth rates from the averaging process. This adjustment is based on the assumption that investors are more likely to incorporate stable growth rates in their growth expectations since they would generally be more confident that the trends would continue into the future. Comments are invited discussing the relative merits of extrapolating the alternative data series (dividends, earnings, and book values), the appropriateness of the five- and ten-year periods, and the advisability of making an adjustment to take into account growth rate stability.

Another commonly used approach to estimate investors' dividend growth expectations is to analyze the bases for dividend growth. Dividends are ultimately tied to earnings, and earnings can be represented as the product of book value and rate of return on common equity. Any growth in book value thus should, other things being equal, lead to increases in both earnings and dividends. Growth in book value in turn arises from two principal sources: retained earnings and the sale of common stock at prices above book value. Internal growth resulting from retained earnings is a function of the rate of return on common equity and the retention rate.[53] External growth resulting from the sale of common stock is a function of the magnitude of the stock sales and the price at which the stock is sold relative to book value. Such a formulation for the expected dividend growth rate can be expressed as: $g=br+sv$,

where

g = expected dividend growth rate,
b = expected retention rate,
r = expected rate of return on common equity,
s = expected growth rate in common equity from new common stock sales, and
v = expected percentage of new common stock sold accruing to current stockholders.[54]

The Commission intends to use this analytic approach together with the extrapolative approach to estimate a utility's expected dividend growth rate. In implementing this approach, the Commission now intends to compute the first component, br, by multiplying the past five-year average retention rate by the past five-year average earned return on common equity. The quantification of the second component, sv, is particularly troublesome. It is clear that a mechanical extrapolation of recent years' data frequently produces a negative number, reflecting the sale of common stock at prices below book value. However, there seem to be two different views as to the appropriateness of employing this result in the analytic DCF approach. The first would contend that recent substantial dilution would cause investors to expect at least some dilution over the foreseeable future and that the use of a negative sv is thus reasonable when attempting to estimate investors' dividend growth expectations. If this position were adopted, there would, of course, remain the difficult problem of how to quantify this component. The other view would suggest that the simplified DCF model assumes that investors behave as if they expect a constant perpetual growth in dividends and that it doesn't seem reasonable that investors would expect dilution to continue into perpetuity. Over the long term, they would more likely expect new common stock to be sold at prices around book value, although in some periods prices might range above book value and in other periods, like those experienced recently, below book value. Under this view, it is assumed that sv is zero and that expected near term dilution, in fact, might be reflected in the estimated br component. Comments are invited discussing these two views and the general manner in which the Commission should apply this analytic approach.

In addition to those comments already invited, the Commission also solicits comments which include DCF analyses of the market cost of equity for the 1982 base year for each of the three risk classes, together with a similar analysis for the electric utility industry on average.[55]

c. *Flotation costs.* The cost of equity capital includes the costs incurred in selling common stock. These flotation costs, though normally of minor consequence, affect the net proceeds received when new common stock is sold and are not accounted for elsewhere in a utility's cost of service.

The costs are essentially of two types. The first is the issuance cost, consisting primarily of underwriting fees, including certain legal and publishing expenses. The second and more controversial component is the market pressure "cost" that results when the price of a stock falls between the time of the announcement of a new issue and the date of the actual sale, presumably because of the anticipation of the impending incremental supply of common stock.[56]

It is apparent, therefore, that these flotation costs are company-specific and will vary depending upon such factors as the size and frequency of new common stock issues. Furthermore, the need to estimate these costs is not specific to any particular cost of equity estimation method. Regardless of the methodology employed, an allowance for these costs is necessary to derive the cost actually faced by a company in raising equity capital. A question thus arises as to how the Commission should deal with these costs in the context of this rulemaking.

There are at least three alternative approaches which the Commission might consider. First, the Commission could refuse to address the issue at all, based on the relatively small quantitative impacts of these costs and the measurement error associated with estimating the cost of common equity.

[53] The retention rate is the ratio of the earnings retained in the business to total earnings available to common stockholders. It thus is equal to (1 minus dividend payout ratio).

[54] Also referred to as the equity accretion rate, this variable can be expressed as: $v=1-B/P$, where B/P is the expected ratio of book value to net proceeds from new stock sales, each on a per share basis. Therefore, if investors expect new shares to be sold at prices which provide net proceeds greater (less) than the book value at the times of the sale, B/P will be less (greater) than one, and v and sv will be positive (negative). *See* Gordon, Myron J., *The Cost of Capital to a Public Utility*, MSU Public Utilities Studies, 1974, p. 32.

[55] If the 1982 base year has not yet elapsed, analyses of the 1982 market costs of equity should be based on the most recent available data for 1982.

[56] This decline in the price of the stock is to be distinguished from any change in its price resulting from expectations concerning the return the compay will earn on the incremental investment financed by the stock sale. The decline referred to in the text is caused solely by the anticipated increase in the number of shares available in the market.

Second, the Commission could estimate the average flotation cost for jurisdictional electric utilities and incorporate it into the generically determined base year rates of return. Finally, the Commission could specify a formula which would calculate a flotation cost adjustment for each jurisdictional utility by taking into account each utility's specific circumstances. Comments are invited discussing the relative merits of these three alternatives and any others the Commission should consider.

3. Alternative cost of equity estimation methods. While the Commission presently intends to place primary reliance on the DCF method for purposes of estimating the market costs of equity capital for the 1982 base year, it is not unmindful of the value of using other methods as a check on the results reached through the DCF method. Although we believe that a risk premium approach might be useful for this purpose, there are many versions of such an approach, from a basic interest rate plus an estimated premium at one extreme to the capital asset pricing model at the other. We therefore invite comments suggesting particular risk premium techniques which could be helpful in corroborating the results of DCF analyses. Such comments should also specifically address the relative merits of the capital asset pricing model as a corroborative method.

We also believe that market-book ratios can be helpful in evaluating the reasonableness of DCF-derived cost of equity estimates. If the allowed return on common equity is set equal to the market cost of equity, and investors expect that it will be earned, the market price of the common stock will tend to approximate its book value. Therefore, the relationship between earned rates of return on common equity and market-book ratios can indicate whether the earned rates of return are above or below the market cost of equity. Caution is required, however, since for any one utility the most recent earned return on common equity may be very different from the return investors expect the utility to earn. Since the market-book ratio reflects this latter return, the earned return on common equity can sometimes present a distorted picture of the actual market cost of equity. Such distortions should be minimized, however, if observations are averaged for a large number of utilities. Comments are invited discussing the usefulness of this type of check on the Commission's DCF results.

Finally, the Commission recognizes that financial theory has been steadily evolving in recent years. As a result, new developments in the field will likely emerge from time to time. The Commission will reconsider its primary reliance on the DCF method if and when it finds a more suitable method. Comments are invited, therefore, discussing any cost of equity estimation methods which might help the Commission achieve its stated objectives in this generic rate of return rulemaking.

V. Certification of No Significant Impact on a Substantial Number of Small Entities

The Regulatory Flexibility Act [57] requires certain statements and analyses of proposed rules if the proposed rules will have "a significant impact on a substantial number of small entities." With respect to the effect of the proposed rule on electric utilities subject to the rule, the proposal is intended to institute a more efficient and accurate procedure to determine the rate of return than the one currently being used by the Commission. The proposed generic procedure set forth here will eliminate the need for such utilities to address the rate of return issue in individual rate proceedings. With respect to the effect on customers of the subject electric utilities, it appears that the proposed rule will not affect the level of jurisdictional rates, either in the short term or the long term, since the rule is intended to produce more accurate rates of return. In addition, to the extent that the generic procedures promote more efficiency and reduce resource expenditures in determining rates of return, both the jurisdictional electric utility and other affected parties will benefit. Consequently, the Commission finds that the proposed rule will not have a significant economic impact on a substantial number of entities.

VI. Public Comment Procedures

Interested parties are invited to submit written comments on the proposed rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before November 15, 1982. Comments should refer to Docket No. RM80-36 on the outside of the envelope and all documents submitted to the Commission. Because of the complexity and importance of the issues presented by the rulemaking, the Commission intends that those participating in this proceeding should be able to examine and reply to initial comments made in response to this notice. Such reply comments must be submitted on or before December 31, 1982.

Each party submitting comments should include his or her name and address and also the name, mailing address and telephone number of one person to whom communications concerning the proposal may be addressed. Fourteen conformed copies should be submitted along with the original. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426 (202/357-8055), during regular business hours.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities.

(Federal Power Act, 16 U.S.C. 824d, 824e, 824f, and 824g (1976); Department of Energy Organization Act, 42 U.S.C. 7171, 7172 and 7173(c) (Supp. II, 1978); Administrative Procedure Act, 5 U.S.C. 553 (1976))

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

1. The Table of Contents in 18 CFR Chapter I is revised by adding the following entry:

CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION, DEPARTMENT OF ENERGY

* * * * *

SUCHAPTER B—REGULATIONS UNDER THE FEDERAL POWER ACT

* * * * *

PART 37—GENERIC DETERMINATION OF RATES OF RETURN ON COMMON EQUITY FOR ELECTRIC UTILITIES

2. A new Part 37 is added to 18 CFR Chapter I to read as follows:

PART 37—GENERIC DETERMINATION OF RATES OF RETURN ON COMMON EQUITY FOR ELECTRIC UTILITIES

Sec.

[57] 5 U.S.C. 601-612 (Supp. IV 1981).

Sec.

Authority: 16 U.S.C. 824d, 824e, 824f, and 824g (1976). 42 U.S.C. 7171, 7172 and 7173(c) (Supp. II 1978). 5 U.S.C. 553 (1976).

§ 37.1 Purpose.

The purpose of this Part is to effectively sever rate of return as a contested issue from individual rate cases before the Commission. This part establishes the procedures for placing each electric utility subject to the Commission's jurisdiction into one of three classes of relative risk, for determining a rate of return applicable to each class, and for applying such rates of return in the individual rate cases of each electric utility.

§ 37.2 Definitions.

For purposes of this Part:

(a) "Base year", unless otherwise specified by the Commission, means the twelve month period beginning on January 1 of each even-numbered year.

(b) "Electric utility" means any company which owns or operates facilities for, or engages in, the generation, transmission, distribution, or sale of electric energy subject to the jurisdiction of the Commission.

(c) "Cost of equity capital" means the minimum expected return that investors require before they will invest in common stock, adjusted for the company's costs incurred in selling such stock.

(d) "Implied equity risk premium" means the computed difference between the base year rate of return for each relative-risk class and the average for the base year of the monthly interest rates on 10-year constant maturity Treasury bonds as published by the Department of Treasury.

(e) "Locked-in rate" means that the rate in a pending filing has been superseded by a different rate requested in a subsequent filing involving the same buyer and seller.

(f) "Open-ended rate" means that the rate has not been locked-in by a subsequent rate filing.

(g) "Rate of return" means the rate of return on common equity.

§ 37.3 Biennial generic proceedings.

(a) Base year rates of return and implied equity risk premiums for electric utilities are to be determined biennially through informal rulemaking proceedings by the Commission under 5 U.S.C. 553.

(b) The biennial proceedings shall include the following steps:

(1) The division of all electric utilities into three relative-risk classes;

(2) The determination of the base year rate of return for each relative-risk class; and

(3) The calculation of the implied equity risk premium for each relative-risk class.

(c) Each biennial proceeding shall commence upon the issuance of a notice of proposed rulemaking. Absent an accelerated or postponed schedule, proceedings shall be commenced in each base year with comments due on November 15 of that year, reply comments due on December 31 of that year, and the final rule due on March 31 of the following year. The final rule shall set forth the relative-risk classes, and the base year rate of return and implied equity risk premium for each class. For each calendar quarter during the biennium, the Commission shall thereafter publish the generic rates of return applicable to each class beginning with the first quarter following the base year.

§ 37.4 Risk classification.

Each final rule shall classify each electric utility into one of three relative-risk classes:

(1) High relative-risk;

(2) Average relative-risk; or

(3) Low relative-risk.

§ 37.5 Base year rate of return determination.

After the classification of each electric utility by relative-risk under § 37.4 of this Part, the Commission shall determine a base year rate of return which shall be set equal to an estimate of the average cost of equity capital for each relative-risk class.

§ 37.6 Implied equity risk premium calculation.

After determining the base year rate of return for each relative-risk class under §37.5 of this Part, the Commission shall calculate for each such class the implied equity risk premium for the base year.

§ 37.7 Determination of generic rates of return.

Following the close of each calendar quarter beginning after the base year, the Commission shall publish the generic rates of return applicable to each relative-risk class for that quarter. Such generic rates of return shall be computed by adding the average of the monthly interest rates on 10-year constant maturity Treasury bonds for that quarter to the base year implied equity risk premium for each relative-risk class.

§ 37.8 Exclusion of rate of return issue in hearings.

Except as provided in § 37.12 of this Part, facts and arguments regarding the rate of return issue will not be entertained in pleadings and hearings under Part 385 of the Commission's regulations.

§ 37.9 Application of generic rates of return in individual rate cases.

(a) Absent acceptance of the rate of return requested by an electric utility in a rate filing or settlement of the rate of return issue by the parties in a rate case, the rate of return for an electric utility filing shall be set as follows:

(1) *Application to filings with locked-in rates.* For purposes of determining rates for a locked-in period, the rate of return allowed for the filing shall be the simple average of the generic rates of return determined under this Part for the relative-risk class of the electric utility for the quarters spanned by the locked-in period. Generic rates of return for the first and last quarters are to be included in the average only if the locked-in period covers at least one month and fifteen days of each of these quarters. In addition, the last quarter is to be included in the average only if the generic rate of return for that quarter is issued prior to the issuance of the Commission order setting rates for the filing utility.

(2) *Application to filings with open-ended rates.* (A) For purposes of determining the refund amount in the event that rates are being collected subject to refund, the applicable rate of return shall be that determined in accordance with paragraph § 37.9(a)(1).

(B) For purposes of determining rates which will be collected prospectively, the rate of return allowed shall be the simple average of the generic rates of return for the relative-risk class of the electric utility for the two quarters most recently available at the time of the issuance of the Commission order setting rates for the filing utility.

(b) *Rates of return in decisions on rehearing.* The Commission will not entertain argument concerning the rate of return applied to an electric utility filing pursuant to this rule in any request for rehearing of the Commission order setting rates for that filing.

§ 37.10 Electric utilities by relative-risk class.

(a) Electric utilities classified as high relative-risk are those listed in Appendix A.

(b) Electric utilities classified as average relative-risk are those listed in Appendix B.

(c) Electric utilities classified as low relative-risk are those listed in Appendix C.

(d) Appendices A, B and C shall be revised as appropriate in the final rule issued at the end of each biennial proceeding.

§ 37.11 Base year rates of return and implied equity risk premiums.

The base year rates of return and the implied equity risk premiums for each relative-risk class are specified in Appendix D.

§ 37.12 Waivers.

(a) Petitions to waive applicability of this Part in whole or in part must be filed in accordance with Subpart B of Part 385 of the Commission's regulations.

(b) The Commission, in response to a petition or upon its own motion, may grant a waiver only if the Commission determines that:

(1) Events have occurred since the issuance of the biennial rule which warrant reclassification of a particular electric utility into a different relative-risk class; or

(2) Unusual circumstances warrant a rate of return for a particular electric utility which is different than the applicable generic rate of return.

§ 37.13 Transitional rule.

(a) The final rule for the 1983–1984 biennium shall establish implied equity risk premiums only for calendar quarters beginning on or after the effective date of this Part.

(b) The provisions of this Part shall apply to all electric utility rate filings made more than 30 days after publication of this rule in the **Federal Register.**

Appendix A—Electric Utility Companies With FERC Rate Schedules: May 1982

Alabama Power Co.
Alcoa Generating Corp.
Allied Paper & Light Co.
American Municipal Power—Ohio, Inc.
Appalachian Power Company
Arizona Public Service Company
Arkansas Power & Light Company
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Beach Bottom Power Company
Black Hills Power & Light Company
Blackstone Valley Electric Company
Boston Edison Company
Brazos River Authority
Brown-New Hampshire, Inc.
CP-National
Cambridge Electric Light Company
Canal Electric Company
Cardinal Operating Company
Carolina Power & Light Company
Central Hudson Gas & Electric Corp.
Central Illinois Light Company
Central Kansas Power Company
Central Louisiana Electric Company, Inc.
Central Power & Light Company
Central Telephone & Utilities Corp.
Central Vermont Public Service Corp.
Cincinnati Gas & Electric Company
Citizens Utilities Company
Cleveland Electric Illuminating Company
Cliffs Electric Service Company
Columbus & Southern Ohio Electric Company
Commonwealth Edison Company
Commonwealth Edison Company of Indiana, Inc.
Commonwealth Electric Company
Connecticut Light & Power Company
Connecticut Valley Electric Company, Inc.
Connecticut Yankee Atomic Power Company
Conowingo Power Company
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power & Light Company
Detroit Edison Company
Duke Power Company
Duquesne Light Company
Eastern Edison Company
Edison Sault Electric Company
El Paso Electric Company
Electric Energy, Inc.
Empire District Electric Company
Endbehr Corporation
Fitchburg Gas & Electric Light Company
Florida Power Corporation
Florida Power & Light Company
Florida Public Utilities Company
Georgia Power Company
Granite State Electric Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company
Hartford Electric Light Company
Holyoke Power & Electric Company
Holyoke Water Power Company
Idaho Power Company
Illinois Power Company
Indiana-Kentucky Electric Corp.
Indiana & Michigan Electric Company
Indianpolis Power & Light Company
Interstate Power Company
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company
Iowa Power & Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kanawha Valley Power Company
Kansas City Power & Light Company
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company
Kimberly-Clark Corp.
Lake Superior District Power Company
Lockhart Power Company
Long Island Lighting Company
Long Sault, Inc.
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Maine Electric Power Company
Maine Public Service Company
Maine Yankee Atomic Power Company
Massachusetts Electric Company
Metropolitan Edison Company
Michigan Power Company
Minnesota Power & Light Company
Minnesota Power Cooperative, Inc.
Mississippi Power & Light Company
Missouri Edison Company
Missouri Power & Light Company
Missouri Public Service Company
Missouri Utilities Company
Monongahela Power Company
Montana-Dakota Utilities Company
Montana Light & Power Company
Montana Power Company
Montaup Power Company
Mount Carmel Public Utility Company
Nantahala Power & Light Company
Narragansett Electric Company
Nevada Power Company
New England Power Company
New Mexico Electric Service Company
New Orleans Public Service Company
New York State Electric & Gas Corp.
Newport Electric Corporation
Niagara Mohawk Power Corporation
North Central Power Company
Northern Indiana Public Service Company
Northern States Power Company (Minn.)
Northern States Power Company (Wisc.)
Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Ohio Valley Electric Corporation
Ohio Valley Transmission Corporation
Oklahoma Gas & Electric Company
Old Dominion Power Company
Orange & Rockland Utilities, Inc.
Otter Tail Power Company
Pacific Gas & Electric Company
Pacific Power & Light Company
Pennsylvania Electric Company
Pennsylvania Power & Light Company
Philadelphia Electric Company
Philadelphia Power & Electric Company
Portland General Electric Company
Potomac Edison Company
Potomac Electric Power Company
Preston County Coke Company
Public Service Company of Colorado
Public Service Company of Indiana, Inc.
Public Service Company of New Hampshire
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Company Electric & Gas Company
Puget Sound Power & Light Company
Rochester Electric Light and Power Company
Rockland Electric Company
Rumford Falls Power Company
Safe Harbor Water Power Corporation
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sho-Me Power Corporation
Sierra Pacific Power Company
South Beloit Water, Gas & Electric Company
Southern Carolina Electric & Gas Company
Southern California Edison Company
Southern Service, Inc.
Southern Electric Generating Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company
Southwestern Public Service Company
Superior Water, Light & Power Company
Susquehanna Electric Company
Susquehanna Water, Light & Power Company

Tampa Electric Company
Tapoco, Inc.
Texas-New Mexico Power Company
Toledo Edison Company
Tuscon Electric Power Company
Union Electric Company
Union Light, Heat & Power Company
UGI Corporation
United Illuminating Company
Upper Peninsula Generating Company
Utah Power & Light Company
Vermont Electric Power Company
Vermont Marble Company
Vermont Yankee Nuclear Power Company
Virginia Electric & Power Company
Washington Water Power Company
West Penn Power Company
West Texas Utilities Company
Western Colorado Power Company
Western Massachusetts Electric Company
Wheeling Electric Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation
Wisconsin River Power Company
Yadkin, Inc.
Yankee Atomic Electric Company
York Haven Power Company

[FR Doc. 82-23873 Filed 8-30-82; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 75P-0322]

Canned Peas and Canned Dry Peas; Proposal To Amend Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Proposed rule

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the standard of identity for canned peas to reinstate magnesium hydroxide, magnesium oxide, and magnesium carbonate as optional ingredients. FDA is also proposing to amend the standard of identity for canned dry peas to exclude, by cross-reference, these compounds. This action is based on a petition for reconsideration filed by a law firm.

DATES: Comments by November 1, 1982; voluntary compliance may begin August 31, 1982.

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

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 7, 1977 (42 FR 29014), FDA published a proposal to amend the U.S. standards of identity, quality, and fill of container for canned peas (21 CFR 155.170) and canned dry peas (21 CFR 155.172), to adopt, insofar as practicable, both the Recommended International Standard for Canned Green Peas (Codex standard) and a proposal by the Corn Refiners Association. Comments were to be received by August 8, 1977.

FDA proposed to delete the use of special process chemicals, including certain magnesium compounds used in a special process of peas known as the Blair process, to aid in retaining color. This action was based on information that these chemicals were no longer used in the United States. No comments contradicted this information.

FDA, therefore, issued a final rule in the **Federal Register** of June 27, 1980 (45 FR 43394). No objections were received. The confirmation of the effective date for compliance with all provisions of the amended U.S. standards was published in the **Federal Register** of April 10, 1981 (46 FR 21359).

Subsequently, FDA received a petition dated June 12, 1981, from a law firm representing a company conducting research in food preservation and marketing. The petition requested that the agency reconsider, under 21 CFR 10.33, its decision to delete magnesium hydroxide, magnesium oxide, and magnesium carbonate as optional ingredients from the standard of identity of canned peas and to stay the effective date of the final regulation with regard to these compounds. By notice published in the **Federal Register** of July 7, 1981 (46 FR 35086), FDA stayed the effective date of the amendment of the standard of identity to delete these magnesium compounds as optional ingredients. Subsequently, the petitioner submitted information indicating that there is an interest on the part of a canned pea packer in using magnesium compounds in canned peas. Therefore, FDA believes that reasonable grounds have been presented for reinstating the provision for the use of magnesium hydroxide, oxide, and carbonate as optional ingredients in canned peas and is so proposing. A copy of the petition and further support for the proposal are on file in the Dockets Management Branch (address above).

In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA has reviewed this proposed rule to determine its impact on small entities including small businesses. Because this proposal would increase the number of optional food ingredients in canned peas and would impose no new requirements on food manufacturers, the agency therefore certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no adverse significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 155

Canned vegetables, Food standards, Vegetables.

PART 155—CANNED VEGETABLES: CANNED PEAS AND CANNED DRY PEAS

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 155 be amended as follows:

1. In § 155.170, by redesignating paragraph (a)(2)(xii) as (a)(2)(xiii) and adding new paragraph (a)(2)(xii) to read as follows:

§ 155.170 Canned peas.

(a) * * *

(2) * * *

(xii) Magnesium hydroxide, magnesium oxide, magnesium carbonate, or any mixture or combination of these in such quantity that the pH of the finished canned peas is not more than 8, as determined by the glass electrode method for the hydrogen ion concentration.

* * * * *

2. In § 155.172, by redesignating paragraph (a)(2) as (a)(3) and by adding new paragraph (a)(2) to read as follows:

§ 155.172 Canned dry peas.

(a) * * *

(2) The optional ingredients specified in § 155.170 (a)(2)(xii) shall not be used.

* * * * *

Use of the optional ingredients that are the subject of this proposal may begin immediately because FDA did not remove these compounds from the list of optional ingredients for any reason other than a belief that they were no longer being used in canned peas.

Interested persons may, on or before November 1, 1982 submit to the Dockets Management Branch written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be

seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 23, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23707 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 182 and 184

[Docket No. 78N-0018]

GRAS Status of Papain

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively affirming the papain is generally recognized as safe (GRAS) as a direct human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review conducted by the agency. FDA is publishing this document as a tentative final rule because of a change in food-grade specifications and because the agency is not including levels of use or food categories that appeared in the proposal. The agency is offering an opportunity to comment on these changes.

DATE: Comments on the revisions made to the regulation and issued as part of this tentative final rule by November 1, 1982.

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

FOR FURTHER INFORMATION CONTACT: Vivian Prunier, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 21, 1978 (43 FR 31349), FDA published a proposal to affirm that papain is GRAS for use as a direct human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review of papain, the tetratogenic evaluation, and the report of the Select Committee on GRAS Substances (the Select Committee) on papain have been made available for public review in the Dockets Management Branch (address above). Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of papain, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient use for this substance, other than for the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of papain approved by issuance of an appropriate final rule under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert the sanction at any future time.

No reports of prior-sanctioned uses for papain were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for a use of papain under conditions different from those set forth in this tentative final rule has been waived.

After publication of the proposal, additional studies were brought to the agency's attention. Kambara et al. ("Survey of compounds which have been tested for carcinogenic activity" (1972-1973), Public Health Publication No. 149) reported that rats receiving a combined treatment of papain and *p*-dimedthylaminoazobenzene developed hepatic and other carcinomas, while rats receiving papain alone were unaffected. The agency concludes that *p*-dimedthylaminoazobenzene, a known carcinogen, was responsible for the carcinomas observed in this study, and that papain is not implicated as a carcinogen.

Additionally, two teratology studies by Singh and Devi (*Indian Journal of Medical Research*, 67:499 (1978) and *Indian Journal of Experimental Biology*, 16:1256 (1978)) reported placental damage, retarded growth, and death of fetuses in rats receiving papain orally or by intraperitoneal injection during gestation. The agency's evaluation of these teratology studies shows that: (1) The studies are of doubtful validity because of deficiencies in experimental design and conduct; (2) because papain was administered by injection in some tests, certain results of those tests are not relevant to a safety evaluation of a food ingredient; (3) a separate teratology study, which was reported in the proposal and was conducted by an independent laboratory under contract to FDA, showed no discernible effect from comparable doses of papain in mice and rates on nidation or on maternal or fetal survival and produced no evidence of deformation of offspring. The preponderance of scientific information on papain shows a wide margin of safety for food uses. Therefore, the agency concludes that in its appropriate to affirm the GRAS status of papain.

Eight comments were received in response to the proposal. The comments and the agency's replies are summarized below.

1. One comment requested the removal of papain from the GRAS list. The comment explained that papain, when used in beer, is not heat inactivated before consumption. The comment argued that this use may pose a hazard to health because papain has been shown to produce teratogenic effects, as demonstrated by one of the studies of Singh and Devi cited above. In addition, the comment cited studies by Thomas (*Journal of Experimental Medicine*, 104:245-252 (1956)), Hulth and Westerborn (*Journal of Bone and Joint Surgery*, 41B:836-847 (1959)), Merkow and Lalich (*Journal of Bone and Joint Surgery*, 43A:679-686 (1961)), and Johnson (*Growth*, 42:27-30 (1978)), showing that injection of papain affected skeletal formation in immature animals.

The agency has evaluated the safety information, including consumer exposure data on papain, and finds that consumers are exposed to very small quantities of active enzyme in beer. The Select Committee considered the use of papain in beer and other foods and concluded that the amount of active papain in food is so small that it does not pose a dietary hazard.

FDA has reviewed the teratology study cited in the comment and has discounted it for the reasons discussed above. FDA and the Select Committee have found that studies, such as the remaining studies cited in the comment, in which the test substance is administered by injection and effects are noted at the site of injection, are not relevant for the evaluation of the health effects that may result from the ingestion of the substance. Furthermore, humans probably do not absorb any active papain remaining in ingested food because the substance would be inactivated by gastric acid and intestinal enzymes. Therefore, the

agency concludes the use of papain in beer is safe.

2. Five comments concerned the proposed method of manufacture of papain. The comments suggested that the described method of manufacture be stated in general terms, so that other currently used methods, such as multifiltration, would be included. One respondent also requested that the method of manufacture provide for the use of GRAS stabilizers and other processing aids.

The agency agrees with this comment. Consequently, FDA has modified the tentative final rule to include multifiltration in the purification of papain. The agency further advises that existing GRAS or food additive regulations provide for the use of certain ingredients as stabilizers and other processing aids. Therefore, there is no need to identify or specifically provide for the use of such substances in the description of the manufacturing method.

3. Two comments opposed the inclusion of current good manufacturing practice (CGMP) conditions of use and requested that both levels of use and food categories be removed from the regulation. Other respondents requested that papain be permitted for use in soaking poultry at 0.04 percent and in dietetic food at 0.1 percent. In addition, comments mentioned other uses that the agency had not listed in the proposal (e.g., to modify proteins in crackers, snack foods, and grain products; to modify or hydrolyze fish protein).

The agency has evaluated the comments and all available information and agrees that: (1) A wide margin of safety exists for papain; (2) the use of papain in certain foods is self-limiting because the addition of excessive amounts of this ingredient would result in a degree of protein hydrolysis that would produce products of unacceptable texture; (3) papain is generally thermally or chemically inactivated before consumption of the food; (4) a meaningful set of percentage-by-weight levels of use cannot be developed because of the varying activity levels of papain preparation; and (5) papain is used in more food categories than previously reported. Based on these findings, the agency concludes that it is not necessary to specify food categories or levels of use in the final rule. Therefore, the agency has decided to affirm tentatively the GRAS status of papain when it is used under current good manufacturing practice conditions of use in accordance with § 184.1(b)(1) (21 CFR 184.1(b)(1). To make clear, however, that the affirmation of the GRAS status of papain is based on the evaluation of limited uses, the regulation sets forth the technical effects that FDA evaluated.

In the judgment of FDA, its decision not to include levels of use and food categories in the regulation affirming the GRAS status of this substance does not represent a major change from the proposed regulation. The levels of use included in the proposal were never intended to be specific limitations, and the proposal did not preclude the use of papain in any food category. However, to afford interested persons the opportunity to comment on the agency's decision, FDA is issuing this tentative final rule under § 10.40(f)(6) (21 CFR 10.40(f)(6)). FDA will review any comments relevant to the removal of the levels of use and food categories that it receives within the 60-day comment period and will issue in the **Federal Register** either an announcement that this tentative final rule has become final or an announcement of modification to this regulation made on the basis of the new comments.

In the future, FDA will propose to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b)(1). The agency intends to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

FDA has also modified this final rule to reflect publication of specifications for papain in the new Food Chemicals Codex, 3d Ed. No major differences exist between the specifications in the first supplement of the 2d Ed., as references in the proposal, and those adopted in the 3d Ed. The only changes made in the 3d Ed. were that specifications for aflatoxin and pseudomonas contamination will not affect the safety of food-grade papain in commerce. However, the agency is offering an opportunity for comment on this change.

The format of the regulation included in this tentative final rule is different from that in previous GRAS affirmation regulations. FDA has modified paragraph (c) of § 184.1585 to make clear the agency's determination that GRAS affirmation is based upon current good manufacturing practice conditions of use, including the technical effects listed. This change has no substantive effect, but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environmental. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this tentative final rule would have on small entities including small businesses. Because the tentative final rule imposes no new restrictions on the use of this ingredient, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this tentative final rule, and the agency has determined that the final rule, if promulgated from this tentative final rule, is not a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follows:

§ 182.1585 [Removed]

1. In Part 182 by removing § 182.1585 *Papain.*

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

2. In Part 184 by adding new § 184.1585, to read as follows:

§ 184.1585 Papain.

(a) Papain (CAS Reg. No. 9001–73–4) is a proteolytic enzyme derived from *Carcia papaya* L. Crude latex containing the enzyme is collected from slashed unripe papaya. The food-grade product is obtained by repeated filtration of the

crude latex or an aqueous solution of latex or by precipitation from an aqueous solution of latex. The resulting enzyme preparation may be used in a liquid or dry form.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 107–110, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter; processing aid as defined in § 170.3(o)(24) of this chapter; and the texturizer as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

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

Interested persons may on or before November 1, 1982 submit to the Dockets Management Branch (address above), written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 4, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23700 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 182 and 184

[Docket No. 78N-0071]

GRAS Status of Carbonates and Bicarbonates

AGENCY: Food and Drug Administration.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively affirming that calcium carbonates, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate, sodium sesquicarbonate, and ground limestone are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency. FDA is publishing this document as a tentative final rule because it adopts a change in specifications for calcium carbonate and because the agency is not including the levels of use or, in some instances, the food categories and technical effects that appeared in the proposal. The agency is offering an opportunity to comment on these changes.

DATE: Comments on the revisions made to the regulations and issued as part of this tentative final rule by November 1, 1982.

ADDRESS: Written comments may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Leo F. Mansor, Bureau of Foods (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–8950.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 13, 1982 (43 FR 25438), FDA published a proposal to affirm that calcium carbonate, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate, and sodium sesquicarbonate are GRAS for use as direct human food ingredients, and that sodium carbonate and sodium bicarbonate are GRAS for us as indirect human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on carbonates and bicarbonates, reports of mutagenic tests on potassium carbonate and sodium bicarbonate, reports of teratogenic tests on potassium carbonate, sodium bicarbonate, and sodium carbonate, and the report of the Select Committee on GRAS Substances (the Select Committee) on Carbonates and bicarbonates have been made available for public review in the Dockets Management Branch (address above). Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of calcium carbonate, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate, and sodium sesquicarbonate, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these substances, other than for the proposed conditions of use. Persons asserting additional or extended uses, in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these carbonate, bicarbonate, and sesquicarbonate salts recognized by issuance of an appropriate final rule under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior-sanction in response to the proposal would constitute a waiver of the right to assert such sanction at any future time.

No reports of prior-sanctioned uses for calcium carbonate, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate, and sodium sesquicarbonate were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of calcium carbonate, potassium bicarbonate, potassium carbonate, sodium bicarbonate, sodium carbonate, and sodium sesquicarbonate under conditions different from those set forth in this tentative final rule has been waived.

Ten comments were received in response to the proposal. A summary of the comments and the agency's conclusions follow:

1. Eight comments requested additional uses and increased levels of use for some uses proposed for bicarbonate and carbonate salts. The largest requested change was a six-fold increase in the level of use proposed for products containing chocolate.

The agency has considered the requests for expanded and increased levels of use and finds that the requested levels are consistent with those reported by the industry to be current good manufacturing practice (CGMP). Because the GRAS status of these bicarbonate and carbonate salts is based on a history of safe use in food,

FDA has reconsidered its proposal to list CGMP levels of use and food categories for these substances. Contrary to the interpretation underlying the comments, FDA has never intended to establish specific limits on the use of these salts.

FDA has decided not to include in the GRAS affirmation regulations for bicarbonate and carbonate salts the food categories and levels of use reported in the National Academy of Sciences/National Research Council 1971 food survey for these ingredients. In addition, because the number of technical uses for some of these ingredients is extensive, the agency has decided not to include the technical effects in some of these regulations. Both the Federation of American Societies for Experimental Biology and the agency have concluded that a large margin of safety exists for these substances, and that a reasonably foreseeable increase in the level of consumption of these bicarbonate and carbonate salts will not adversely affect human health. To make clear, however, that the affirmation of the GRAS status of sodium sesquicarbonate is based upon the evaluation of relatively limited current uses, the regulation includes the technical effect and food use of this ingredient that FDA evaluated.

In the judgment of FDA, its decision not to include descriptions of the individual CGMP uses evaluated does not represent a major departure from the proposed regulations. The levels of use included in the proposal were never intended to be specific limitations, and the proposal was not intended to preclude the use of these bicarbonate and carbonate salts in any food category. However, to afford interested persons the opportunity to comment on the agency's decision, FDA is issuing this tentative final rule under § 10.40(f)(6) (21 CFR 10.40(f)(6)). FDA will review any comments relevant to the removal of the levels of use, food categories, and technical effects that it receives within the 60-day comment period and will issue in the **Federal Register** either an announcement that this tentative final rule has become final or an announcement of modification to this regulation made on the basis of the new comments.

In the future, FDA will propose to adopt a general policy restricting the circumstances in which it will specifically describe conditions of use in regulations affirming substances as GRAS under 21 CFR 184.1(b)(1) or 186.1(b). The agency intends to amend its regulations to indicate clearly that it will specify one or more of the current good manufacturing practice conditions of use in regulations for substances affirmed as GRAS with no limitations other than current good manufacturing practice only when the agency determines that it is appropriate to do so.

2. Five comments requested that the final rule acknowledge new methods, or clarify the proposed methods, or preparing the carbonates as follows:

a. Calcium carbonate—made by precipitation of calcium carbonate from calcium hydroxide in the carbonization process.

b. Potassium bicarbonate—made by treating a solution of potassium carbonate or potassium hydroxide with carbon dioxide.

c. Potassium carbonate—(i) made by passing carbon dioxide through a potassium hydroxide solution to yield potassium carbonate and water; (ii) made by treating potassium hydroxide with carbon dioxide to form potassium bicarbonate, which is then heated to yield potassium carbonate, carbon dioxide, and water.

d. Sodium bicarbonate—made by treating a solution of sodium carbonate and sodium bicarbonate with carbon dioxide.

e. Sodium sesquicarbonate—made by double refining of trona ore, which is naturally occurring impure sodium sesquicarbonate.

In addition, one comment requested that ground limestone be considered a GRAS form of calcium carbonate, because ground limestone is listed that way in the Food Chemicals Codex.

The agency has evaluated the comments concerned with the methods of preparation and has found that they will produce food-grade salts. Consequently, the agency has modified the tentative final rule to include the additional manufacturing methods requested. Also, the agency has added a provision (21 CFR 184.1409) that permits the use of ground limestone for the same uses as calcium carbonate, provided that the ingredient meets the specifications for ground limestone included in the Food Chemicals Codex, and that it is labeled as such.

3. One comment requested that § 184.1(a) (21 CFR 184.1(a)) be expanded to permit ingredients affirmed as GRAS for direct addition to food to be used, under § 173.315 (21 CFR 173.315), in the washing or to assist in the lye peeling of fruits and vegetables.

The request for this expansion of § 184.1(a) is unnecessary. Permission to use GRAS ingredients to assist in the lye peeling of fruits and vegetables is already provided in § 173.315(a)(1).

4. One comment pointed out an apparent discrepancy in the GRAS regulations that permits the use of sodium bicarbonate in cotton and cotton fabrics packaging materials but not paper and paperboard materials, while § 176.170 (21 CFR 176.170) permits the use of all GRAS substances in paper and paperboard.

The agency acknowledges that there have been apparent discrepancies in the regulations for these ingredients. In the past, when a substance has been listed in Part 182 (21 CFR Part 182) as GRAS for both direct and indirect uses, FDA has proposed separate GRAS affirmation regulations in Parts 184 and 186 to govern direct and indirect GRAS uses, respectively. Under § 184.1(a), however, ingredients affirmed as GRAS for direct food use in Part 184 are considered to be GRAS for indirect uses without a separate listing in Part 186. Based on § 184.1(a), FDA has reconsidered its traditional practice and has concluded that the duplicative listing in Part 186 is unnecessary and, as a general rule, may cause confusion. Thus, unless safety considerations make it necessary to impose specific purity specifications or other restrictions on the indirect use of a GRAS substance, FDA will no longer list in Part 186 substances that are affirmed as GRAS for direct use in Part 184. In keeping with this change in policy, FDA is not proposing a separate listing in Part 186 for the indirect uses of sodium carbonate and sodium bicarbonate. The indirect uses of these ingredients would be authorized under §§ 184.1(a), 184.1736, and 184.1742.

In the case of sodium carbonate and sodium bicarbonate, FDA believes that the general requirements that indirect GRAS ingredients be of a purity suitable for their intended use in accordance with § 170.30(h)(1) (21 CFR 170.30(h)(1)) and used in accordance with current good manufacturing practice are sufficient to ensure the safe use of these ingredients. Therefore, the agency has not proposed any specific purity specifications for their indirect use.

Although the policies discussed in the two preceding paragraphs are not inconsistent with FDA's current regulations, FDA published a proposal in the **Federal Register** of June 25, 1982 (47 FR 27817) to amend its procedural regulations in Parts 184 and 186 to reflect these policies.

FDA has modified this final rule to reflect publication of specifications for these ingredients in the new Food Chemicals Codex, 3d Ed. Except for calcium carbonate, no differences exist between the specifications in the 2d Ed,

as referenced in the proposal, and those adopted in the 3d Ed. The change adopted for calcium carbonate raised the limit of impurity for fluoride from 40 parts per million in the 2d Ed. to 50 parts per million in the 3d Ed. FDA is of the opinion that this change will not contribute any significant increase of fluoride in the diet and will not affect the safety of food-grade calcium carbonate. However, the agency is offering an opportunity for comment on this change.

The notice of proposed rulemaking provided for the removal of § 182.5191 *Calcium carbonate.* Since that time, Part 182 has been modified to provide separate listings for calcium carbonate as a dietary supplement and a nutrient under Part 182. (See the **Federal Register** of September 5, 1980 (45 FR 58837).) FDA has no data upon which to judge the exposure from use of calcium carbonate as a dietary supplement. Without such exposure data, the agency cannot at this time affirm the GRAS status of calcium carbonate for this use. Therefore, FDA is not taking any action on the listing of calcium carbonate in § 182.5191 as a dietary supplement. The agency is removing the nutrient use in § 182.8191 (21 CFR 182.8191), because this use is being affirmed as GRAS in Part 184.

The format of the regulations included in this tenatative final rule is different from that in the proposal and in previous GRAS affirmation regulations. FDA has modified paragraph (c) of §§ 184.1191, 184.1409, 184.1613, 184.1619, 184.1736, 184.1742, and 184.1792 to make clear the agency's determination that these ingredients may be used in food with no limitations other than current good manufacturing practice, including the food categories and the technical effects listed for the individual ingredients. This change has no substantive effect but is made merely for clarity.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect this tentative final rule would have on small entities including small businesses. Because the tentative final rule imposes no new restrictions on the use of these ingredients, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this tentative final rule, and the agency has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Indirect food ingredients; Food ingredients; Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.70 [Amended]

a. In § 182.70 *Substances migrating from cotton and cotton fabrics used in dry food packaging* by removing the entries for "Sodium bicarbonate" and "Sodium carbonate."

§ 182.90 [Amended]

b. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing the entry for "Sodium carbonate."

§§ 182.1191, 182.1613, 182.1619, 182.1736, 182.1742, 182.1792, and 182.8191 [Removed]

c. By removing § 182.1191 *Calcium carbonate*, § 182.1613 *Potassium bicarbonate*, § 182.1619 *Potassium carbonate*, § 182.1736 *Sodium bicarbonate*, § 182.1742 *Sodium carbonate*, § 182.1792 *Sodium sesquicarbonate*, and § 182.8191 *Calcium carbonate.*

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

2. Part 184 is amended:

a. By adding new § 184.1191, to read as follows:

§ 184.1191 Calcium carbonate.

(a) Calcium carbonate ($CaCO_3$, CAS Reg. No. 471–34–1) is prepared by three common methods of manufacture:

(1) As a byproduct in the "Lime soda process";

(2) By precipitation of calcium carbonate from calcium hydroxide in the "Carbonation process"; or

(3) By precipitation of calcium carbonate from calcium chloride in the "Calcium chloride process".

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 46, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

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

(d) Prior sanctions for this ingredient different from the uses established in this section, or different from that set forth in Part 181 of this chapter, do not exist or have been waived.

b. By adding new § 184.1409, to read as follows:

§ 184.1409 Ground limestone.

(a) Ground limestone consists essentially (not less than 94 percent) of calcium carbonate ($CaCO_3$) prepared by the crushing, grinding, and classifying of naturally occurring limestone.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 173, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

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

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

c. By adding new § 184.1613, to read as follows:

§ 184.1613 Potassium bicarbonate.

(a) Potassium bicarbonate ($KHCO_3$, CAS Reg. No. 298–14–6) is made by the following processes:

(1) By treating a solution of potassium hydroxide with carbon dioxide;

(2) By treating a solution of potassium carbonate with carbon dioxide.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 239, which is

incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as formulation aid as defined in § 170.3(o)(14) of this chapter; nutrient supplement as defined in § 170.3(o)(20) of this chapter; pH control agent as defined in § 170.3(o)(23) of this chapter; and processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

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

d. By adding new § 184.1619, to read as follows:

§ 184.1619 Potassium carbonate.

(a) Potassium carbonate (K_2CO_3, CAS Reg. No. 584–08–7) is produced by the following methods of manufacture:

(1) By electrolysis of potassium chloride followed by exposing the resultant potassium to carbon dioxide;

(2) By treating a solution of potassium hydroxide with excess carbon dioxide to produce potassium carbonate;

(3) By treating a solution of potassium hydroxide with carbon dioxide to produce potassium bicarbonate, which is then heated to yield potassium carbonate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 240, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used in food as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter; nutrient supplement as defined in § 170.3(o)(20) of this chapter; pH control agent as defined in § 170.3(o)(23) of this chapter; and processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

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

e. By adding new § 184.1736, to read as follows:

§ 184.1736 Sodium bicarbonate.

(a) Sodium bicarbonate ($NaHCO_3$, CAS Reg. No. 144–55–8) is prepared by treating a sodium carbonate or a sodium carbonate and sodium bicarbonate solution with carbon dioxide. As carbon dioxide is absorbed, a suspension of sodium bicarbonate forms. The slurry is filtered, forming a cake which is washed and dried.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 278, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

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

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

f. By adding new § 184.1742, to read as follows:

§ 184.1742 Sodium carbonate.

(a) Sodium carbonate (Na_2CO_3, CAS Reg. No. 497–19–8) is produced (1) from purified trona ore that has been calcined to soda ash; (2) from trona ore calcined to impure soda ash and then purified; or (3) synthesized from limestone by the Solvay process.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 280, which are incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used in food as an antioxidant as defined in § 170.3(o)(3) of this chapter; curing and pickling agent as defined in § 170.3(o)(5) of this chapter; flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter; pH control agent as defined in § 170.3(o)(23) of this chapter; and processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

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

g. By adding new § 184.1792 to read as follows:

§ 184.1792 Sodium sesquicarbonate.

(a) Sodium sesquicarbonate ($Na_2CO_3 \cdot NaHCO_3 \cdot 2H_2O$, CAS Reg. No. 533–96–0) is prepared by: (1) Partial carbonation of soda ash solution followed by crystallization, centrifugation, and drying; (2) double refining of trona ore, a naturally occurring impure sodium sesquicarbonate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 299, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100, L St. NW., Washington, DC 20408.

(c) in accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. This affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in cream at levels not to exceed current good manufacturing practice. Current good manufacturing practice utilizes a level of the ingredient sufficient to control lactic acid prior to pasteurization and churning of cream into butter.

(d) Prior sanctions for this ingredient different from the uses established in

this section do not exist or have been waived.

Interested persons may on or before November 1, 1982, file with the Dockets Management Branch (address above), written comments regarding this tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 10, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23717 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 720

[Docket No. 79P-0049]

Proposed Codification of Agency Policy for Responding to Requests for Confidentiality of Cosmetic Ingredient Identities

AGENCY: Food and Drug Administration.

ACTION: Proposed codification of agency policy.

SUMMARY: The Food and Drug Administration (FDA) is proposing to formalize and codify the procedure the agency now follows in processing requests for confidentiality of cosmetic ingredient identities. This policy will be included in the Code of Federal Regulations. In any case where FDA denies a request for confidentiality, the agency will offer the petitioners an opportunity to submit additional supportive data or to rebut the agency's tentative finding before a final determination is made. This action is based on a petition filed by the Cosmetic, Toiletry, and Fragrance Association.

DATE: Comments by November 1, 1982.

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

FOR FURTHER INFORMATION CONTACT: Heinz J. Eiermann, Bureau of Foods (HFF-440), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1530.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 26, 1971 (36 FR 16934), FDA published a proposed statement of policy responding to and partially based on two petitions filed by the Cosmetic, Toiletry, and Fragrance Association (CTFA). CTFA's petitions requested the publication and codification of procedures for (1) the voluntary registration of cosmetic manufacturing establishments and (2) the voluntary filing of cosmetic product ingredient statements. In the **Federal Register** of April 11, 1972 (37 FR 7151), FDA published a final statement of policy establishing and codifying these procedures, including a mechanism for accepting confidential information and exempting it from public disclosure (21 CFR 720.8).

In 1973, FDA established cosmetic ingredient labeling requirements, codified at 21 CFR 701.3 et seq., under the authority of the Fair Packaging and Labeling Act (15 U.S.C 1454) (October 17, 1973; 38 FR 28912). Section 5(c)(3) of the Fair Packaging and Labeling Act gives FDA the authority to require the declaration on consumer cosmetic product lables of all ingredients, except those that are determined by FDA to be trade secrets (15 U.S.C. 1454(c)(3)). An ingredient that is a trade secret need not be declared on the product label and, conversely, an ingredient that is not a trade secret must be identified on the label if the product is introduced into interstate commerce (21 CFR 701.3(a)).

As part of the comprehensive regulations implementing the provisions of the Freedom of Information (FOI) Act, FDA published in the **Federal Register** of December 24, 1974 (39 FR 44602) procedures for the presubmission review of requests for confidentiality of voluntarily submitted data or information. When FDA published its FOI regulations (21 CFR Part 20), it revised § 720.8, to incorporate the presubmission review procedures described in § 20.44 into the existing filing procedures for cosmetic product ingredients and raw material composition. Under § 720.8, a firm may request from FDA a determination that a cosmetic ingredient is a trade secret and is thus exempt from public disclosure. If FDA determines that trade secret status is not warranted, the petitioner may withdraw the records for which confidentiality was denied. Section 720.8 (21 CFR 720.8) provides that a determination that an ingredient does not warrant trade secret status is a final agency decision subject to judicial review.

On May 17, 1976, Zotos International, Inc. (Zotos), requested trade secret status for an ingredient used in one of its products. FDA denied this request in a letter dated December 23, 1976. On February 7, 1977, Zotos filed a legal challenge to the agency's denial of its request for confidentiality.

The court concluded that FDA's procedures did not afford Zotos due process because FDA did not provide petitioners a means "of engaging in a reasonably focused dialogue with the agency concerning the major points at issue in a trade secret request," and directed FDA to modify its practices in order to provide petitioners an opportunity to address the government's position before the agency's final determination denying the exemption. *Zotos International, Inc.* v. *Kennedy*, 460 F. Supp. 268 (D.D.C. 1978).

On February 7, 1979, CTFA submitted a citizen petition (Docket No. 79P-0049/CP) requesting that the procedure in 21 CFR 720.8(a) for reviewing requests for confidentiality of cosmetic ingredients be amended. In particular, CTFA proposed that, in the event FDA tentatively denied a request for trade secret status, the agency grant the petitioner a minimum time period of 30 days during which the firm could furnish additional information or data in support of its request. CTFA also requested that FDA give the petitioner an opportunity for a closed regulatory hearing under 21 CFR Part 16 before making a final determination on the issue. Following the Zotos decision, FDA began to provide firms with a 30-day period for responding to the agency's tentative determination denying trade secret status. This proposal merely formalizes and codifies that policy and extends the time frame.

FDA rejects CTFA's proposal that the agency grant a closed regulatory hearing to firms requesting confidentiality for a cosmetic ingredient. Neither the Federal Food, Drug, and Cosmetic Act nor the Fair Packaging and Labeling Act requires such a hearing, and such a procedure would result in significant and unnecessary delays in the processing of requests for confidentiality. Further, under the policy detailed in this notice, the petitioner has an opportunity to submit any additional pertinent data or information to FDA before the agency makes its final determination on the request, thus satisfying due process requirements.

The agency believes that the two-step procedure, described below and now being followed by FDA, responds to the February 7, 1979 citizen petition from CTFA and satisfies the courts' directives in the *Zotos* case. The policy describes how FDA handles requests for confidentiality of cosmetic ingredients. The policy also provides a clear description of the type of necessary data

or other information that will justify a finding that FDA may exempt a cosmetic ingredient from the requirement of label disclosure. The agency anticipates that, under this policy, a firm will be able to submit all necessary data in support of its request, thus permitting FDA to base its determination of confidentiality on that information and any other data available to FDA. FDA will issue a tentative denial of a request only after a firm has submitted all the information necessary for FDA to fully evaluate the request. If a firm submits insufficient information to FDA, and the agency thus cannot make a decision about confidentiality, the agency will return the request in its entirety to the petitioner and will notify the firm what additional data the agency will require to complete its evaluation.

FDA has made certain minor editorial changes in § 720.8(a) that do not change the substance of that subsection, has revised § 720.8(b), and has added new paragraphs (c), (d), (e), and (f) to fully explain the policy.

The agency has determined under 21 CFR 25.24(b)(12)(proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, FDA has considered the effect that this proposed policy would have on small entities including small businesses and has determined that because the effect of this proposal is to formalize FDA's current policy for reviewing requests for confidentiality of cosmetic ingredients considered to be trade secrets, and because this policy does not diminish the protection now accorded firms requesting trade secret status for cosmetic ingredients, no significant small business economic impact will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the proposed policy does not involve major economic consequences as defined by the Order.

List of Subjects in 21 CFR Part 720

Confidentiality of statements, Information requested, Voluntary registration of cosmetic formulations.

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT AND COSMETIC RAW MATERIAL COMPOSITION STATEMENTS

Therefore, under the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 602, 701(a), 704, 52 Stat. 1054 as amended, 1055, 67 Stat. 477 as amended (21 U.S.C. 362, 371(a), 374)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.11 (see 47 FR 16010; April 14, 1982)), it is proposed that Part 720 be amended in § 720.8 by revising paragraphs (a) and (b) and adding new paragraphs (c), (d), (e), and (f), to read as follows:

§ 720.8 Confidentiality of statements.

(a) Data and information contained in, attached to, or included with Forms FD–2512, 2513, 2514, and amendments thereto are submitted voluntarily to the Food and Drug Administration. Any request for confidentiality of a cosmetic ingredient submitted with such forms or separately will be handled in accordance with the procedure set forth in § 20.44 of this chapter and paragraphs (b), (c), (d), (e), and (f) of this section. The request for confidentiality will also be subject to the provisions of § 20.111 of this chapter, as well as to the exemptions in Subpart D of Part 20 of this chapter, and the limitations on exemption in Subpart E of Part 20 of this chapter.

(b) Any request for confidentiality for the identity of a cosmetic ingredient should contain a full statement in a well-organized format of the factual and legal grounds, including all data and other information, on which the petitioner relies, as well as representative information known to the petitioner that is unfavorable to the petitioner's position. The statement of the factual grounds should include, but should not be limited to, scientific or technical data, reports, tests, and other relevant information addressing the following factors that FDA will consider in determining whether the identity of an ingredient qualifies as a trade secret:

(1) The extent to which the identity of the ingredient is known outside petitioner's business;

(2) The extent to which the identity of the ingredient is known by employees and others involved in petitioner's business;

(3) The extent of measures taken by the petitioner to guard the secrecy of the information;

(4) The value of the information about the identity of the claimed trade secret ingredient to the petitioner and to its competitors;

(5) The amount of effort or money expended by petitioner in developing the ingredient; and

(6) The ease or difficulty with which the identity of the ingredient could be properly acquired or duplicated by others. The request for confidentiality should also be accompanied by a statement that the identity of the ingredient for which confidentiality is requested has not previously been published or disclosed to anyone.

(c) The Food and Drug Administration (FDA) will return to the petitioner any request for confidentiality that contains inadequate data. FDA will also notify the petitioner what kinds of additional information are necessary to enable the agency to proceed with its review of the request.

(d) If, after evaluating all the data necessary to reach a decision on whether an ingredient qualifies as a trade secret, FDA tentatively decides to deny the request, the agency will inform in writing the person requesting the determination that FDA is tentatively denying the request. FDA will also set forth the grounds that it relied upon in making this determination. The firm may withdraw the records for which FDA has tentatively denied a request for confidentiality or may submit within 60 days from the date of receipt of the written notice of the tentative denial, additional relevant information, data, and arguments and request that the agency reconsider its decision in light of the additional material as well as that information originally submitted.

(e) If the firm submits new data and information in response to FDA's tentative denial of trade secret status, the agency will consider that material as well as the initial submission before making its final determination.

(f) A final determination that an ingredient is not a trade secret within the meaning of § 20.61 of this chapter constitutes final agency action that is subject to judicial review under 5 U.S.C. Chapter 7. If suit is brought within 30 calendar days after such a determination, FDA will not disclose the records involved or require that the disputed ingredient or ingredients be disclosed in labeling until the matter is finally determined in the courts. If suit is not brought within 30 calendar days after such determination and the firm does not withdraw the records for which a request for confidentiality has been denied, the records involved will be made a part of FDA files and will be available for public disclosure upon request.

Interested persons may, on or before November 1, 1982 submit to the Dockets

Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 23, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 82-23891 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 33 [1]

Employment Assistance for Adult Indians; Establishment of New Part

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Reproposed rule.

SUMMARY: The purpose of this new part is to describe a program to assist adult Indians to obtain employment. This program contains support service options which includes vocational and employment counseling, housing and community adjustment assistance, job referrals, and financial assistance in moving to an urban or non-urban labor market or job site. It may also include financial assistance for transportation to the place of anticipated employment, subsistence until receipt of a full paycheck from employment, and emergency medical and dental care for an initial adjustment period. This program has been in existence in some form since 1948 but has never been described in the Code of Federal Regulations.

Another purpose is the elimination of grant expenditures for home purchase. This feature of the program is proposed to be eliminated because of the need to spend available funds for items of greater priority, and because the home purchase feature was more in harmony with the previous program emphasis on off-reservation relocation than with present trends to emphasize services on and near reservation areas.

DATE: Written comments must be received on or before September 30, 1982.

ADDRESS: Written comments should be directed to: Assistant Secretary—Indian Affairs, Attention: Division of Job Placement and Training, Office of Indian Services, 1951 Constitution Avenue NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Robert F. Delaware, Division of Job Placement and Training, telephone number (202) 343-8427.

SUPPLEMENTARY INFORMATION: A notice of the proposed new part was published in the **Federal Register**, October 14, 1977, at 42 FR 55229. Comments on the proposed rule were solicited and 70 responses were received. Due to the long period of time between publication of the proposed rule and preparation of the final rule, it has been determined that this part should be republished as a reproposed rule. Comments previously received have been incorporated into this rule as well as changes that were agreed to in a national meeting of Bureau of Indian Affairs staff and tribal contractors held in Seattle, Washington, August 8-10, 1978. This meeting was attended by 63 Bureau of Indian Affairs Employment Assistance staff persons and 17 tribal contractors. The proposed rule published on October 14, 1977, was discussed item by item along with the written comments received and the changes agreed to are reflected in the reproposed rule following these comments.

1. Only three written comments supported keeping the program for home purchase grants. Participants at the national meeting agreed to the elimination of the home purchase program because of the need to spend available funds for items of greater priority and because the program was not in harmony with present trends to emphasize services on or near reservation areas.

2. The handicapped adult Indian was not specifically mentioned in the proposed rule. This suggestion by two commentors was not adopted as the regulations do not preclude the handicapped from being accepted into the program. The regulations eliminate discriminatory practices to any applicant or class of applicants.

3. The definition for "Agency Office" was added and lettered (a). The definition for "Appeal" was relettered (b). The definition for "Applicant" was relettered (c). The definition for "Application" was relettered (d). The definition for "Area Director" was relettered (e). The definition for "Contract Office" was added and lettered (f). Twenty comments were received objecting to the proposed definition of "Indian," § 33.1(f), which had deleted the ¼ Indian blood quantum and based eligibility on being an enrolled member of a Federally recognized tribe. These comments were accepted in part and § 33.1(f) was amended to read, "'Indian' means any person who is a member, or a one-fourth degree or more blood quantum descendent of a member, of any Indian tribe." The amended definition in (f) was relettered (g). Four comments were received on letting the tribes make the decision as to what constitutes "near reservation" but since the definition was written in line with the definitions set forth in the regulations under the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), no further changes were made in this definition. The definition for "Near reservation" was relettered (i). The definition for "Indian tribe" was added and lettered (h). The definition for "Reservation" was relettered (j). The definition for "Superintendent" was added and lettered (k). The definition for "Tribal governing body" was relettered (l). A comment from the Sacramento Area was accommodated by inserting the word "Rancheria" between the words "Pueblo" and "or" in § 33.1(j). A comment from the Creek Agency in Oklahoma to add the phrase "or nation, including former reservations or nations" was not adopted as this suggestion appears to be covered in the clause "including former reservations in Oklahoma" in § 33.1(j).

4. Section 33.2, Scope of the Employment Assistance Program was amended to correct a typographical error by inserting the word "provides" between the words "program" and "services." This section was amended to add the word "including" between the words "§ 33.4" and "vocational." A comment from the Billings Area suggested deleting this entire section, however, this suggestion was not adopted.

5. Comments on § 33.3, Filing Applications, concerning agency responsibilities for accepting and funding applications from those Indians residing at locations other than their home reservation recommended that the applicant be funded by the agency nearest his/her residence. A provision that "the applicant must be approved and funded by his/her home agency," was deleted. As rewritten, this provision follows present practices. The word "contractor" was also added to accommodate those programs contracted by the tribes. The last sentence of § 33.3 was changed to read

[1] Due to a recodification of 25 CFR Chapter I (March 30, 1982; 47 FR 13326), Part 33 was assigned to another regulation. If this proposed rule is adopted, it will be renumbered as Part 26.

"For clarity and uniformity, application forms used will be in accordance with the requirements of the Paperwork Reduction Act, Sec. 3504(h) of Public Law 96–511." Paragraphs (a) and (b) were added to § 33.3. A new section 33.3, Information Collection, is added and reserved to fulfill Office of Management and Budget requirements under 44 U.S.C. 3507. Section 33.3 is hereby renumbered § 33.4.

6. Section 33.4, Selection of Applicants, was amended and changed as follows: Paragraph (a) was changed to "Applicants must be adult Indians residing on or near Indian reservations." Paragraph (b) was changed by deleting the word "substantially." Paragraph (c) was changed to read "Selection of applicants shall be made without regard to sex or marital statuts." Paragraph (d) was revised by deleting the citation of § 33.4 and inserting "§ 33.5(b)(1)." Eleven comments were received concerning § 33.4(e) and (f) recommending minor changes in terminology. Subsections (e) and (f) were reorganized as the content of many of these provisions are more subjective judgments rather than regulations and will be addressed in the Bureau of Indian Affairs Manual (BIAM) following final publication of this rule. Subsection 33.4(e) was deleted in its entirety and subsection (f) was relettered (e). Section 33.4, Selection of Applicants, is hereby renumbered § 33.5.

7. Nine comments were received on § 33.5(b)(2), suggesting clarification. It was amended to limit the use of funds for specific cases for those persons who have relocated through the Employment Assistance program "until permanent employment is found and/or the need is met." In subsection 33.5(c), the word "known" was deleted and the word "anticipated" was inserted in its place. Comments on § 33.5(d) suggested minor changes that were not adopted. Five comments were received on § 33.5(e), but the suggested changes were minor and were not adopted. Subsection 33.5(f) was added to cover any unusual case that may arise under this section. Reference to "health care and dental coverage" was amended to read "emergency medical and dental coverage" in § 33.5(d). Reference to "Indian Health Services" was deleted altogether in § 33.5(d). Section 33.5, Program Services and Client Participation, is hereby renumbered § 33.6.

8. Nine comments were received on § 33.6, but the suggested changes were minor and were not adopted. A change that had to be made as the result of a program audit was the inclusion of a last paragraph in this section that reads as follows: "Financial assistance shall not be used to supplement the income of a person already employed." Section 33.6, Financial Assistance for Program Participants, is hereby renumbered § 33.7.

9. Section 33.7, Appeals, is hereby renumbered § 33.8.

The reason for renumbering of the Sections is because of the information collection process contained in § 33.4, Filing Applications.

The information collection requirements contained in § 33.4 have been submitted to the Office of Management and Budget for approval as required under 44 U.S.C. 3507. These requirements will not become effective until approved by the Office of Management and Budget.

All financial benefits and contracts associated with this program are dependent upon the availability of funds.

The primary author of this document is Robert F. Delaware, Acting Chief, Division of Job Placement and Training, Office of Indian Services, Bureau of Indian Affairs, (202) 343–8427.

The Department of the Interior has determined that these reproposed regulations are not a major federal action within the scope of the National Environmental Policy Act of 1969, 42 U.S.C. 4233 (2) (c).

The Department of the Interior has determined that this document is not a major rule and will not have a significant economic effect on a substantial number of small entities and does not require a regulatory analysis under Executive Order 12291.

List of Subjects in 25 CFR Part 33

Grant program—Indians, Transportation expenses, Employment assistance—Indians, Community development and employment—Manpower.

With the above changes incorporated, it is proposed to add a new Part 33 to Subchapter E, Chapter I, of Title 25 of the Code of Federal Regulations to read as follows:

PART 33—EMPLOYMENT ASSISTANCE FOR ADULT INDIANS

Subpart A—Definitions, Scope of the Employment Assistance Program and Information Collection

Sec.
33.1 Definitions.
33.2 Scope of the Employment Assistance Program.
33.3 Information collection (Reserved).

Subpart B—Administrative Procedures

33.4 Filing applications.
33.5 Selection of applicants.
33.6 Program services and client participation.
33.7 Financial assistance for program participants.

Subpart C—Appeals

33.8 Appeals.

Authority: 42 Stat. 208; 25 U.S.C. 13.

Subpart A—Definitions, Scope of the Employment Assistance Program and Information Collection

§ 33.1 Definitions.

(a) "Agency Office" means the current organization unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian tribes.

(b) "Appeal" means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in Part 2 of this chapter.

(c) "Applicant" means an individual applying under this part.

(d) "Application" means the process through which a request is made for assistance or services.

(e) "Area Director" means the Bureau official in charge of an Area Office.

(f) "Contract Office" means the office established by a tribe or tribes who have a contract to administer the Employment Assistance Program.

(g) "Indian" means any person who is a member, or a one-fourth degree or more blood quantum descendent of a member, of any Indian tribe.

(h) "Indian tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony, 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 federally recognized as eligible by the Secretary for the special programs and services provided by the Bureau of Indian Affairs to Indians because of their status as Indians.

(i) "Near reservation" means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary upon recommendation of the local Bureau superintendent, which recommendation shall be based upon agreement with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as:

(1) Number of Indian people native to the reservation residing in the area,

(2) Geographical proximity of the area to the reservation, and

(3) Administrative feasibility of providing an adequate level of services to the area. The Assistant Secretary shall designate each area and publish the designations in the **Federal Register.**

(j) "Reservation" means any federally recognized Indian tribe's reservation, Pueblo, Rancheria or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(k) "Superintendent" means the Superintendent or Officer in Charge of any one of the Agency offices of the Bureau of Indian Affairs or his/her authorized representative.

(l) "Tribal governing body" means the recognized governing body of an Indian tribe.

§ 33.2 Scope of the Employment Assistance Program.

The Employment Assistance program provides services to eligible Indians, as provided in § 33.5, including vocational counseling and employment services on reservations and at other home areas, in communities near reservations, and in off reservation areas. Support services designed to enable individuals to obtain and retain employment are also included, as provided in § 33.6.

§ 33.3 Information collection [Reserved]

Subpart B—Administrative Procedures

§ 33.4 Filing applications.

(a) Application for Employment Assistance services must be filed at Bureau of Indian Affairs agency offices, or at facilities under contract with the Bureau or contract offices which are located on or near reservations or other geographic areas of eligibility. Applications are approved by the Agency Superintendent or designated contractor. An eligible applicant need not apply at the office serving primarily his/her original home area or tribal group, but may apply or be funded and receive services at the servicing office closest to his/her residence at the time of application.

(b) For clarity and uniformity, application forms used will be in accordance with the requirements of the Paperwork Reduction Act, section 3504(h) of Pub. L. 96–511.

§ 33.5 Selection of applicants.

(a) Applicants must be adult Indians residing on or near Indian reservations.

(b) An applicant must be unemployed or underemployed in order to receive employment services.

(c) Selection of applicants shall be made without regard to sex or marital status.

(d) Only those applicants who declare a desire and intent to accept and retain full time permanent employment at the employment location chosen shall be selected, with the exception of those individuals particpating in the temporary summer placement program as provided in § 33.6(b)(1).

(e) Repeat employment services involving expenditure of grant funds are to be determined on an individual basis, considering ability, prior performance, need and motivation. No client shall automatically be entitled to funded repeat services. No more than two (2) funded repeat services for a client shall be allowed. Approval of requests for repeat services within a six month period from the ending date of the last funded service shall be based upon special needs. Employment services involving no expenditure of financial grants shall be extended to eligible clients as often as requested and considered appropriate.

§ 33.6 Program services and client participation.

(a) When a request is made for employment services, the applicant shall be offered assistance to assess his/her job skills and work experience and to relate these to available employment opportunities. In many cases, applicants for placment services will already possess training, skills, and/or experience sufficient for entry into job placement. In other cases, applicants may be encouraged to consider further education or training options as a preliminary to permanent employment. In any case, vocational counseling appropriate to the individual situation shall be made available.

(b) Services may be provided either with or without the expenditure of financial grants depending upon the type of service requested and the need for financial assistance. Funds shall not be provided to finance temporary employment except for the following:

(1) High school or college students participating in summer placement programs to gain work experience and temporary income may receive limited funding as needed to enable such persons to secure and hold summer jobs.

(2) Persons who have moved to an off reservation area for permanent employment, through services of the Employment Assistance program, may at times be required to accept temporary employment until permanent employment is available. Such persons may receive funds as needed within established limitations and justifiable circumstances until permanent employment is found and/or the need is met.

(c) Permanent employment shall normally be defined as employment which is generally anticipated to be of one year or more in duration. Employment in the construction or other trades where moving from one job to another is generally required of persons engaged in such occupations shall be considered as permanent employment.

(d) In those cases where applicants apply and are selected for employment services in off-reservation urban locations, a variety of services may be provided, based upon individual client needs and requests for assistance. These may include advice in rental of housing, shopping, money management, community adjustment, counseling, applying for and seeking employment, financial assistance, as well as emergency medical and dental coverage for up to six months from the date of entry into this program. For maternity benefits, health coverage may be provided up to fifteen months after entry into this program, if not otherwise covered. Continuing non-financial assistance as needed, particularly with repeat job placements and counseling, shall remain indefinitely available.

(e) Assistance as needed may be provided to enable clients who move for employment to an off reservation urban or non-urban area to accept a specific job offer. In such cases, however, transportation or financial assistance may be provided only after confirmation has been obtained from the employer, giving details of employment, including the following:

(1) Job title,

(2) Beginning wage,

(3) Date to start work,

(4) First payday,

(5) First full payday, and

(6) A statement that the job is anticipated to be of a permanent nature. Financial assistance may be provided for transportation to interviews when such interviews ar verified as required for job placement.

§ 33.7 Financial assistance for program participants.

(a) Individuals or families with a family member participating in the Employment Assistance program may be granted financial assistance as needed, based upon rates established by the Area Director for the respective areas or jurisdictions within those areas.

(b) Not more than thirty (30) percent of the funds available for any program year in any service delivery area may be used to pay for the costs of

administration in that area, the remaining seventy (70) percent of funds available may be used to provide for the following supportive services:

(1) Medical examination,

(2) Transportation to the place of employment,

(3) Job interviews,

(4) Subsistence while seeking employment until the date of the first full paycheck from employment,

(5) Personal appearance,

(6) Housewares,

(7) Furniture,

(8) Health care,

(9) Dental care,

(10) Outpatient services related to mental health,

(11) Tools needed for employment,

(12) Special financial assistance for large family and solo parent clients, and

(13) Emergency assistance in accordance with the schedules and amounts established by the Area Director. Emergency assistance is allowed in cases where verified emergencies justify such grants. Circumstances to be considered in determining emergencies shall include situations which seriously disrupt the progress of program goals for permanent employment and satisfactory social and community adjustment, or matters relating to illness or death.

(c) Marital status of applicants is not a consideration for determining eligibility for services, but this factor is a consideration for determining appropriate subsistence grants. Proof of a legal relationship requiring support shall be required as a basis for application of family subsistence rates. In the case of married persons, proof of marriage shall be required to satisfy this requirement.

(d) Financial assistance shall not be used to supplement the income of a person already employed.

Subpart C—Appeals

§ 33.8 Appeals.

The decision of any Bureau official under this part can be appealed pursuant to the procedures in 25 CFR Part 2.

(Catalog of Federal Domestic Assistance, Program No. 15.108 Indian Employment Assistance)

Kenneth L. Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-23857 Filed 8-30-82; 8:45 am]

BILLING CODE 4310-02-M

25 CFR Part 34 [1]

Vocational Training for Adult Indians; Proposed Revision of Program Description

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Reproposed rule.

SUMMARY: The purpose of this revision is to fully describe the eligibility criteria required for participation in the Bureau's program for Vocational Training for Adult Indians and to explain procedures for filing applications for this program. Such information is not fully provided in the present edition of Part 34. In addition, certain changes in eligibility criteria are proposed, defining the term "near reservation" as it shall apply to eligibility, replacing a blood quantum requirement with membership in a tribe, and elimination of grant expenditures for home purchase which was never reflected in the previous 25 CFR Part 34, but was for a time included as a client benefit. Other program changes include provision of expenditures for emergency medical and dental health care, a requirement for proof of dependent relationships to justify family subsistence rates, provision for part-time training, and ensuring that eligibility criteria does not discriminate on the basis of sex.

DATE: Written comments must be received on or before September 30, 1982.

ADDRESS: Written comments should be directed to: Assistant Secretary—Indian Affairs, Attention: Division of Job Placement and Training, Office of Indian Services, 1951 Constitution Avenue, N.W., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Robert F. Delaware, Division of Job Placement and Training, telephone number (202) 343-8427.

SUPPLEMENTARY INFORMATION: A notice of the proposed revised rule was published in the **Federal Register**, October 14, 1977, at 42 FR 55231. Comments on the proposed revised rule were solicited and were received. Due to the long period of time between publication of the proposed revised rule and preparation of the final rule it has been determined that this part should be republished as a reproposed rule. On August 8–10, 1978, a national meeting was held in Seattle, Washington. This meeting was attended by 63 Bureau of Indian Affairs Employment Assistance Staff persons and 17 tribal contractors. The proposed revised rule published on October 14, 1977, was discussed item by item along with the written comments received and the changes agreed to are reflected in the reproposed revised rule following these comments.

1. Three commentors supported keeping the program for home purchase grants. The general consensus of the national meeting group was to eliminate the home purchase program because of the need to spend available funds for items of greater priority and the program was not in harmony with present trends to emphasize services on or near reservation areas. The home purchase program is eliminated as a program benefit.

2. Two commentors asked why the handicapped adult Indian was not specifically mentioned in the proposed revised rule and suggested that this should be included. Comments from the national meeting suggested this should not be adopted since handicapped persons are not precluded from being accepted into the program and the regulations eliminate discriminatory practices to any applicant or class of applicants. The suggestion of the national meeting group was adopted.

3. Section 34.1, Definitions, was rewritten to include "Agency Office" and "Contract Office" and are lettered (a) and (e) respectively. The definition for "Appeal" was relettered (b). The definition for "Applicant" was relettered (c). The definition for "Application" was relettered (d). Section 34.1(d), is relettered (f) and was rewritten to adopt a more comprehensive definition of what constitutes "full time" training as suggested by Muskogee Area Office. This spells out in detail hours of attendance in classroom training. The definition for "Area Director" was relettered (g). The definition for "Assistant Secretary" was relettered (h). Section 34.1(g) was relettered (i) and amended to read " 'Indian' means any person who is a member, or a one-fourth degree or more blood quantum descendent of a member, of any Indian tribe." An accompanying definition of "Indian tribe" was adopted at the national meeting and lettered (j) to support the amended definition of "Indian" in (i). The definition for "Near reservation" was relettered (k). The definition for "Reservation" was relettered (l) and the word "Rancheria" was inserted between the words "Pueblo" and "or" at the suggestion of the Sacramento Area Office. The definition for "Superintendent" was added and lettered (m). The definition for "Tribal governing body" was

[1] Due to a recodification of 25 CFR Chapter I (March 30, 1982; 47 FR 13326), this proposed rule, if adopted, will be renumbered as Part 27.

relettered (n). Changes were made as recommended by commentors and those in attendance at the national meeting.

4. Comments concerning § 34.3 (a) and (b) were received. Those comments concerning agency responsibilities for accepting and funding applications from those Indians residing at locations other than their home reservation recommended that the applicant be funded by the agency nearest his/her residence. The provision that "the applicant must be approved and funded by his/her home agency" was deleted. As rewritten, this provision follows present practices. The word "contractor" was also added to (a) to accommodate those programs contracted out to tribal groups. Section 34.3(b) was changed to read "For clarity and uniformity, application forms used will be in accordance with the Requirements of the Paperwork Reduction Act, Section 3504(h) of Pub. L. 96–511." Changes were also made to clarify the statement of location of offices at which application can be made. A new § 34.3, Information Collection, is added and reserved to fulfill Office of management and Budget requirements under 44 U.S.C. 3507. Section 34.3, filing applications, is hereby renumbered § 34.4.

5. Section 34.4(a) was amended by inserting the phrase "or descendent of enrolled members" between the words "members" and "of" and by deleting the phrase "under the jurisdiction of the Bureau of Indian Affairs." In § 34.4(b), the word "Indian" was deleted between the words "that" and "high school." Comments concerning paragraphs (e), (f) and (g) suggested that those paragraphs contained subjective judgments rather than regulations and should be addressed in the Bureau of Indian Affairs Manual (BIAM) following final publication of this revised rule. Upon advice from the Office of the Solicitor, these sections were determined to be eligibility requirements and must, under Bureau policy, Federal statute and the Supreme Court decision, *Morton* v. *Ruiz*, 415 U.S. 199, 236, 1974, be promulgated pursuant to the Administrative Procedures Act, (5 U.S.C. 552(a)(1)(D)) in the **Federal Register** rather than in the Bureau manual. Accordingly paragraphs (e), (f) and (g) are included as they appeared in the proposed revised rule. Section 34.4, Selection of Applicants, is hereby renumbered § 34.5.

6. In § 34.5 the only change recommended and adopted was the insertion of the phrase "or contract" between the words "Bureau of Indian Affairs" and "Office." This was done to accommodate those programs contracted out. Section 34.5, Satisfactory Progress during Training, is hereby renumbered § 34.6. Section 34.6, Approval of Courses for Vocational Training at Institutions, is hereby renumbered § 34.7. Section 34.7, Approval of Apprenticeship Training, is hereby renumbered § 34.8. Section 34.8 Approval of On-The-Job Training, is hereby renumbered § 34.9.

7. Subsection 34.9(a) was amended by deleting the phrase "health care, dental care, out-patient services related to mental health will be provided on an emergency basis only, for all other health services the Indian Health Service may be contacted" and inserting the phrase, "emergency medical and dental care." Reference to mental health was deleted since it could have an adverse effect on applicants. Subsection (b) was added giving to Agency Superintendents or Contracting Officers Representatives authorization to make exceptions on a case-by-case basis determined by unique need. Section 34.9, Financial Assistance for Trainees, is hereby renumbered § 34.10. Section 34.10, Contracts and Agreements, is hereby renumbered § 34.11. Section 34.11, Appeals, is hereby renumbered § 34.12.

The reason for renumbering of the sections is because of the information collection process contained in § 34.4, Filing Applications.

The information collection requirements contained in § 34.4 have been submitted to the Office of Management and Budget for approval as required under 44 U.S.C. 3507. These requirements will not become effective until approved by the Office of Management and Budget.

All financial benefits and contracts associated with this program are dependent upon the availability of funds.

The primary author of this document is Robert F. Delaware, Acting Chief, Division of Job Placement and Training, Office of Indian Services, Bureau of Indian Affairs, (202) 343–8427.

The Department of the Interior has determined that these reproposed regulations are not a major federal action within the scope of the National Environmental Policy Act of 1969, 42 U.S.C. 4223(2)(c).

The Department of the Interior has determined that this document is not a major rule and will not have a significant economic effect on a substantial number of small entities and does not require a regulatory analysis under Executive Order 12291.

List of Subjects in 25 CFR Part 34

Adult education, Grant programs—education, Grant programs—Indians, Indian education, Manpower training programs, and Vocational education.

With the above changes incorporated, it is proposed to revise Part 34, Subchapter E, Chapter I, of Title 25 of the Code of Federal Regulations to read as follows:

PART 34—VOCATIONAL TRAINING FOR ADULT INDIANS

Subpart A—Definitions, Scope of the Vocational Training Program and Information Collection

Sec.
34.1 Definitions.
34.2 Scope of the vocational training program.
34.3 Information collection [Reserved].

Subpart B—Administrative Procedures

34.4 Filing applications.
34.5 Selection of applicants.
34.6 Satisfactory progress during training.
34.7 Approval of courses for vocational training at institutions.
34.8 Approval of apprenticeship training.
34.9 Approval of on-the-job training.
34.10 Financial assistance for trainees.
34.11 Contracts and agreements.

Subpart C—Appeals

34.12 Appeals.

Authority: Sec. 1, Pub. L. 84–959, 70 Stat. 986 as amended by Pub. L. 88–230, 77 Stat. 471 (25 U.S.C. 309).

Subpart A—Definitions, Scope of the Vocational Training Program and Information Collection

§ 34.1 Definitions.

(a) "Agency Office" means the current organization unit of the Bureau which provides direct service to the governing body or bodies and members of one or more specified Indian Tribes.

(b) "Appeal" means a written request for correction of an action or decision claimed to violate a person's legal rights or privileges as provided in Part 2 of this chapter.

(c) "Applicant" means an individual applying under this part.

(d) "Application" means the process through which a request is made for assistance or services.

(e) "Contract Office" means the office established by a Tribe or Tribes who have a contract to administer the adult vocational training program.

(f) "Full time" institutional training is:

(1) An institutional trade or technical course offered on a clock-hour basis below the college level, involving shop practices as an integral part thereof when a minimum of thirty (30) hours per

week of attendance is required with not more than 2½ hours of rest periods per week allowed.

(2) An institutional vocational course offered on a clock-hour basis below the college level in which theoretical or classroom instruction predominates when a minimum of twenty-five (25) hours per week net of instruction is required, or

(3) An institutional undergraduate vocational course offered by a college or university on a quarter or semester-hour basis when a mimimum of twelve (12) semester credit hours or its equivalent is required.

(g) "Area Director" means the Bureau official in charge of an Area Office or his/her authorized representative.

(h) "Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs or his/her authorized representative.

(i) "Indian" means any person who is a member, or a one-fourth degree or more blood quantum descendent of a member, of any Indian tribe.

(j) "Indian tribe" means any Indian tribe, Band, Nation, Rancheria, Pueblo, Colony, 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 federally recognized as eligible by the Secretary for the special programs and services provided by the Bureau of Indian Affairs to Indians because of their status as Indians.

(k) "Near reservation" means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary upon recommendation of the local Bureau superintendent, which recommendation shall be based upon agreement with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services, on the basis of such general criteria as:

(1) Number of Indian people native to the reservation residing in the area,

(2) Geographical proximity of the area to the reservation, and

(3) Administrative feasibility of providing an adequate level of services to the Area. The Assistant Secretary shall designate each area and publish the designations in the Federal Register.

(l) "Reservation" means any Federally recognized Indian tribe's reservation, Pueblo, Rancheria, or Colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.

(m) "Superintendent" means the Superintendent or Officer in Charge of any of the Agency offices of the Bureau of Indian Affairs or his/her authorized representative.

(n) "Tribal governing body" means the recognized governing body of an Indian tribe.

§ 34.2 Scope of the vocational training program.

The purpose of the vocational training program is to assist Indian people to acquire the job skills necessary for full time satisfactory employment. Within that framework, the program provides testing, vocational information and counseling services to assist program participants to make career choices relating personal assets to training option and availability of jobs in the labor market. The program provides for institutional training in business, vocational or trade schools, or other institutions offering vocational programs, as provided in § 34.7. Apprenticeship and on-the-job training are also provided. For the full time participant, institutional or on-the-job training courses shall not exceed twenty-four (24) months in length, with the exception that Registered Nurses training may be for periods not to exceed thirty-six (36) months. Individual program recipients may not receive more than twenty-four (24) months of full time institutional training, except that Registered Nursing students may receive not more than thirty-six (36) months of institutional training. Part time participants shall receive no more than the full time equivalent of twenty-four (24) months of institutional training.

§ 34.3 Information collection [Reserved].

Subpart B—Administrative Procedures

§ 34.4 Filing applications.

(a) Applications for adult vocational training services must be filed at Bureau of Indian Affairs agency offices, or at facilities under contract with the Bureau or contract offices located on or near reservations or other geographic areas of eligibility. Applications are approved by the Agency Superintendent or designated contractor. An eligible applicant need not apply at the office serving primarily his/her original home area or tribal group, but may apply or be funded and receive services at the servicing office closest to his/her residence at the time of application.

(b) For clarity and uniformity, application forms used will be in accordance with the Requirements of the Paperwork Reduction Act, Sec. 3504(h) of Pub. L. 96–511.

§ 34.5 Selection of applicants.

(a) Applicants must be adult Indian enrolled members or descendents of enrolled members of Federally recognized tribes. They must be residing on or near Indian reservations.

(b) Normally, eligible individuals shall be at least eighteen (18) years of age, except that high school graduates or married Indians shall be eligible at the age of seventeen (17) years. Also, while the program is designed primarily for persons between the ages of eighteen (18) and thirty-five (35), persons over the age of thirty-five (35) shall be eligible, assuming training and permanent employment to be otherwise feasible in terms of health and physical capability.

(c) An applicant must be in need of training in order to obtain reasonable and satisfactory employment or to advance in employment already held, and in need of financial assistance in order to obtain such training. It must also be feasible for the applicant to pursue training.

(d) Selection of applicants shall be made without regard to sex.

(e) Only one partner of a marriage shall receive first priority for training services. Such person shall be selected by the couple as the individual to receive first priority. Second priority for training, based upon availability of funds, shall be extended to the other spouse. Non-Indian spouses shall not be eligible for training.

(f) No more than two (2) repeat training services will be allowed. Repeat training services will be on a lower priority than the initial service and will be determined on an individual basis, considering need, ability, prior performance and present motivation of the applicant. In order to be in need of repeat institutional training, applicant must be unemployed or underemployed. Also, the previous training skill must be substantially below the skill acquisition potential of the applicant, or it must be considered unmarketable. Time spent towards on-the-job training programs will be deducted from the possible maximum of institutional training eligibility.

(g) Only those applicants who willingly declare intent to accept full time employment as soon as possible after completion of training shall be selected. Plans may subsequently change, but the intent of the training program is preparation for employment, and this must be the initial intent of program participants. The program is not meant to serve as a preliminary to immediate further education.

§ 34.6 Satisfactory progress during training.

An individual who enters training pursuant to the provisions of this part is required to make satisfactory progress in training. Individuals in institutional vocational training courses are required to give evidence of progress by authorizing the institution attended to provide grade and/or progress reports to the appropriate Bureau of Indian Affairs or contract office. Program participants shall maintain a reasonable standard of conduct. Failure to meet these requirements due to reasons within the trainee's control may result in termination of training benefits.

§ 34.7 Approval of courses for vocational training at institutions.

(a) A course of vocational training at any institution, public or private, offering vocational training may be approved by the Assistant Secretary; *Provided:*

(1) The institution is accredited by a recognized national or regional accrediting association;

(2) The institution is approved for training by a state agency authorized to make such approvals; and

(3) It is determined that there is reasonable certainty of employment for graduates of the institution in their respective fields of training.

(b) Part-time practical work experiences included in the school curriculum during training time in many vocational courses are considered as valuable learning experience and are specifically allowed and encouraged.

(c) Vocational training courses offered through Indian tribal governments need not be accredited but must show reasonable expectation of leading to employment and be approved by the agency office.

§ 34.8 Approval of apprenticeship training.

A program of apprenticeship training may be approved when such training:

(a) Is offered by a corporation or association which has furnished such training to bona fide apprentices for at least one year preceding participation in this program;

(b) Is under the supervision of a State apprenticeship agency, a State Apprenticeship Council, or the Federal Apprenticeship Training Services;

(c) Leads to an occupation which requires the use of skills that normally are learned through training on the job and employment which is based upon training on the job rather than upon such elements as length of service, normal turnover, personality, and other personal characteristics; and

(d) Is identified expressly as apprenticeship training by the establishment offering it.

§ 34.9 Approval of on-the-job-training.

(a) On-the-job training may be approved when such training is offered by a corporation, small business, association, tribe or tribal enterprise which provides an on-the-job training program offering definite potential for skilled permanent employment. Skilled employment shall be construed to be a job skill outlined by a contractual agreement between the Bureau of Indian Affairs and the contractor and based upon recognized occupational standards such as, but not limited to, the Dictionary of Occupational Titles.

(b) Yearly on-the-job training contractual agreements with a specific contractor shall not be renewed beyond the second year without review and written approval from the Assistant Secretary—Indian Affairs. Extension of contracts exceeding two years will be based upon a contractors demonstrated expansion of the enterprise, need for additional trainees and placement of trainees completing the program.

§ 34.10 Financial assistance for trainees.

(a) Individuals or families with a family member entering full-time training under this part may be granted financial assistance as needed, based upon rates established by the Area Director for the respective areas, or jurisdictions within those areas. Persons in training on a part-time basis may receive financial assistance only for necessary tuition, books, tools, supplies, transportation and child care. Trainees may be assisted to secure educational grants from other sources for which they qualify. Such income shall be considered in computing amounts of financial assistance to be provided by the Bureau of Indian Affairs. Marital status of trainees is not a consideration for determining eligibility for training, but this factor is a consideration in determining appropriate subsistence grants. Proof of a legal relationship requiring support shall be required as a basis for application of family subsistence rates. In the case of married persons, proof of marriage shall be required to satisfy this requirement. Financial assistance may be provided for the following:

(1) Transportation to interviews when such interviews are absolutely required for acceptance for training,

(2) Transportation to the place of training,

(3) Medical examination,

(4) Subsistence after training until the first full paycheck from employment has been received,

(5) Personal appearance and housewares,

(6) Furniture,

(7) Emergency medical and dental care,

(8) Tuition and related training costs,

(9) Tools for employment,

(10) Child care,

(11) Shipment of household goods,

(12) Security deposits and other required expenses as deemed necessary, and

(13) Emergency assistance in accordance with the schedules and amounts established by the Area Director. Emergency assistance is allowed in certain cases where verified emergencies justify such grants. Factors or circumstances to be considered in determining emergencies shall include situations which seriously disrupt the progress of program goals, or matters relating to illness or death. In the case of married persons, for maternity benefits, health coverage may be provided up to fifteen (15) months after arrival, if not otherwise covered.

(b) Not more than thirty (30) percent of the funds available for any program year in any service delivery area may be used to pay for the costs of administration and for paragraph (a)(1)–(7), (9)–(13), above, in that area, the remaining seventy (70) percent of funds available will be used for paragraph (a)(8) of this section, tuition and related training costs.

§ 34.11 Contracts and agreements.

Training facilities and services required for programs of vocational training may be arranged through contracts or agreements with agencies, establishments or organizations. These may include:

(a) Indian tribal governing bodies;

(b) Appropriate Federal, State or local government agencies;

(c) Public or private schools which have a recognized reputation in vocational education as successfully obtaining employment for graduates in the fields of training approved by the Assistant Secretary or his/her authorized representative for purposes of the program;

(d) Educational firms to operate residential training centers; or

(e) Corporations and associations or small business establishments with apprenticeship or on-the-job training programs leading to skilled employment.

Subpart C—Appeals

§ 34.12 Appeals.

The decision of any Bureau official under this part can be appealed pursuant to the procedures in 25 CFR Part 2.

(Catalog of Federal Domestic Assistance Program No. 15.108 Indian Employment Assistance)

Kenneth L. Payton,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 82-23856 Filed 8-30-82; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-276-81]

Certain Amounts Refunded in Reinsurance Transactions; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the treatment of certain amounts refunded in reinsurance transactions and the allocation of certain items in modified coinsurance transactions.

DATES: The public hearing was originally scheduled for August 19, 1982. A notice appearing in the **Federal Register** for Tuesday, August 10, 1982, rescheduled the hearing for September 21, 1982.

FOR FURTHER INFORMATION CONTACT: Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: By a notice appearing in the **Federal Register** for Thursday, July 8, 1982 (47 FR 29692), it was announced that a public hearing on the proposed regulations relating to treatment of certain amounts refunded in reinsurance transactions and the allocation of certain items in modified coinsurance transactions would be held on August 19, 1982, beginning at 10:00 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. By a notice appearing in the **Federal Register** for Tuesday, August 10, 1982 (47 FR 34576), it was announced that the public hearing had been rescheduled for September 21, 1982.

The public hearing scheduled for September 21, 1982, has been cancelled.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving government regulations appearing in the **Federal Register** for November 8, 1978.

By direction of the Commissioner of Internal Revenue:

Donald E. Osteen,

Acting Assistant Director, Legislation and Regulations Division.

[FR Doc. 82-23897 Filed 8-30-82; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. H-049]

Respiratory Protection

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

ACTION: Notice of clarification.

SUMMARY: On May 14, 1982, OSHA published an advance notice of proposed rulemaking concerning respiratory protection standards (47 FR 20803). The list of sections affected included certain maritime standards which were cited as 29 CFR 1915.82, 1916.82, and 1917.82. As of May 20, 1982, OSHA consolidated the shipyard standards. In particular, parts 1916 and 1917 were deleted and section 1915.82 was recodified as § 1915.152 (47 FR 16984, April 20, 1982). This notice is being published to help assure that all readers of the May 14, 1982, advance notice concerning the respiratory protection standards are fully aware that the maritime standards under consideration are § 1915.152 as well as section 1918.102, which was not affected by the recodification published on April 20, 1982.

FOR FURTHER INFORMATION CONTACT: James Foster, 523-8148.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

(Sec. 6. Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR 1911; 33 U.S.C. 941; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C., this 26th day of August 1982.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 82-23860 Filed 8-30-82; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 886 and 914

Abandoned Mine Land Reclamation Program; Grant Application From the State of Indiana

AGENCY: Office of Surface Mining Reclamation Enforcement (OSM), Interior.

ACTION: Receipt of the Abandoned Mine Land Reclamation (AMLR) Grant Application from the State of Indiana.

SUMMARY: On June 15, 1982, the State of Indiana submitted to OSM its proposed AMLR grant application under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State grant application.

DATE: Written comments on the application must be received on or before 5:00 p.m., September 30, 1982.

ADDRESSES: Copies of the full text of the proposed Indiana grant application are available for review during regular business hours at the following locations: Office of Surface Mining Reclamation and Enforcement, Indiana Field Office, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 524, Indianapolis, Indiana 46204.

Written comments should be sent to: Richard D. NcNabb, Director, Indiana Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 524, Indianapolis, Indiana 46204.

FOR FURTHER INFORMATION CONTACT: Richard D. NcNabb, Director, Indiana Field Office, (317) 269-2646.

SUPPLEMENTARY INFORMATION: On June 15, 1982, OSM received an AMLR grant application from the State of Indiana. The purpose of this submission is to implement the State reclamation program as codified in 30 CFR, Chapter VII, Subchapter T, Part 914 as published in the **Federal Register**, 47 FR 32108, on July 26, 1982.

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the

purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation under the program are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State and Federal law.

Each State having within its borders coal mined lands eligible for reclamation under Title IV of SMCRA may submit to the Secretary a State reclamation grant application to implement the provisions of the approved State Reclamation Plan. However, grants for reclamation may be issued only to States with an approved Title V Regulatory Program and an approved Title IV Reclamation Program.

A State Reclamation Plan for Indiana was submitted to the Secretary on December 7, 1981, and approved on July 26, 1982, which demonstrated the capability of the State to administer an AMLR program in accordance with Title IV of SMCRA. In approving the State Plan, the Secretary determined that the State had the necessary State legislation to implement the provisions of the Plan.

This notice describes the nature of the proposed projects and sets forth information concerning public participation in the Director's determination of whether or not the submitted application should be approved.

Approval of the application would result in the implementation of approved projects for the reclamation of abandoned mine lands in Indiana.

All written comments must be mailed or hand carried to the Indiana Field Office above.

The comment period will close at 5:00 p.m. on September 30, 1982. Comments received after that time may not necessarily be considered. During the comment period representatives of the Indiana Field Office will be available to meet between 8:00 a.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AMLR grant application.

Persons wishing to meet with representatives of the Field Office Director during this time period may place such requests with Richard D. McNabb, Field Office Director, telephone (317) 269–2646, at the Indiana Field Office above.

Meetings may be scheduled at the Indiana Field Office between 9:00 a.m. and noon and 1:00 p.m. and 4:00 p.m. Monday through Friday excluding holidays.

OSM intends to continue to discuss the State's application with representatives of the State throughout the review process.

In order to comply with the requirements of the National Environmental Policy Act, OSM will assess the environmental effects of all State reclamation projects. The primary basis for this assessment will be the environmental information provided in the project grant application.

The Indiana AMLR Application can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The application meets all the requirements of the OSM, AMLR program provisions and the required Federal circulars.

4. The State has an approved regulatory program and an approved State reclamation plan.

The following constitutes a summary of the contents of the submission:

1. Designation of authorized State Agency to administer the program,

2. Objectives and need for the assistance,

3. Project ranking and selection,

4. Coordination with other reclamation programs,

5. Results and benefits expected,

6. Plan of action pertaining to the scope,

7. Monthly or quarterly projections of accomplishments to be achieved,

8. Kinds of data to be collected and maintained,

9. Criteria used to evaluate the results and success of the projects,

10. Key individuals to be employed,

11. Precise location of the project and area to be served,

12. Budgetary calculations for each project,

13. Description of the public's participation in planning and preparation of the grant application,

14. A complete environmental assessment for each project.

Reclamation projects and their locations included in the application are:

Clay County

Boyce (subsided entries, barren spoil, gob)
Galbraith Mine (water-filled shafts)
Grigsby Mine (drift entries, 20 subsidence holes)
Name unknown #128 (open portal)
Turner Mine (highwall, barren spoil, toxic spoil, acid drainage)

Greene County

Calora #2/Northwest Mine (subsidence)
Filbert Mine (highwalls, water-filled pit)
Linton #5 Mine (water-filled, subsided shaft)
Midland West Mine (vertical shaft, drainage)
Midvale (Midland South Mine) (vertical opening, shaft, gob)
Name Unknown #155 (shafts)
Name Unknown #156 (shaft, gob, mine buildings)
Name Unknown #165 (shaft)
Summit Mine (subsided mine shafts, concrete structures)

Perry County

Name Unknown #114 (vertical openings)
Paulin #117 (open drift entry)
Paulin Mine #135 (shaft)
Sulphur Springs #2 Mine (subsidence, mine openings)

Pike County

Augusta Mine (highwall, water-filled pit)
Name Unknown #145 (highwall)
Name Unknown #11 (highwall, water-filled pit)
Name Unknown #143 (highwalls)
Name Unknown #142 (highwalls, water-filled pit)
Winslow Mine (openings, portal, gob, hazardous structure)

Sullivan County

Cummins Mine (open slope portal)
Hymera Mine (open air shaft)
Name Unknown #144 (highwall)
Name Unknown #150 (highwall, water-filled pit)
Name Unknown #151 (highwall)
Name Unknown #153 (water-filled shaft)
Penna Mine (mine shaft)

Vermillion County

Black Diamond (shaft, mine buildings, gob)
Crown Hill No. 4 (shafts)
Dering No. 7 (slope portal, barren spoil, slurry)
Interstate (shafts)
Keller No. 1 (subsided shaft)
Shirkie (shaft)
West Clinton (shafts)

Vigo County

Burnett Mine (water-filled shaft)
Burnett #1 (water-filled shaft)
Darwin Road Mine (highwalls)
Domestic Block Mine (water-filled shaft)
Dresser Mine (shaft, abandoned buildings)
Gibson (water-filled slope entry)

Green Valley Mine (shaft, concrete pits)

Minshall/Coal Bluff Mine (shaft, barren spoil, gob, slurry)
National Mine (shafts, hazardous structure)
Sugar Creek Mine (West Terre Haute) (water-filled shaft)
Sugar Valley Mine (highwall)
Walnut Hill (vertical shaft)

Warrick County

Baker Mine #99 (steep inclines into water-filled pits)
Baker Mine #139 (air shaft)
Big Four Mine (subsidence)
Boonville Mine (highwall)

Chandler Mine (coal refuse, deteriorating structures)
Degonia Mine (highwall, tipple)
Michum Mine (subsidence)
Name Unknown #87 (water-filled shaft)
Name Unknown #97 (highwall, water-filled shaft)
Name Unknown #100 (highwalls)
Walton (Decker Mine) (water-filled shaft, barren spoil, hazardous structure)

List of Subjects

30 CFR Part 886

Coal mining, Grant programs natural resources, Reporting requirements, Surface mining, Underground mining.

30 CFR Part 914

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: August 25, 1982.

J. Steven Griles,

Acting Director, Office of Surface Mining.

[FR Doc. 82-23887 Filed 8-30-82; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; New Hampshire Revisions—Ozone Attainment Plan

[A-1-FRL 2188-4]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this document is to propose approval of revisions to the State Implementation Plan (SIP) for New Hampshire which deal with compliance schedules for major Group I sources of Volatile Organic Compound (VOC) emissions. These revisions were submitted by the State in response to a condition for approval of the 1979 Ozone SIP. The intended effect of this action is to reduce VOC emissions in New Hampshire, thereby decreasing the amount of Ozone formed in the atmosphere over the State.

DATE: Comments must be received on or before September 30, 1982.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Acting Chief, State Air Programs Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203.

Copies of the New Hampshire submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Region I, State Air Programs Branch, Room 1903, JFK Federal Building, Boston, Massachusetts 02203; and Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, New Hampshire 03301.

FOR FURTHER INFORMATION CONTACT: Alan E. Dion, (617) 223-5630.

SUPPLEMENTARY INFORMATION: In the April 11, 1980 **Federal Register** (45 FR 24869) EPA approved the Ozone Attainment Plan for the Merrimack Valley—Southern New Hampshire Interstate Air Quality Control Region, with the condition that the State submit the compliance schedules for major Group I VOC sources as source-specific SIP revisions. On May 2, 1980, May 16, 1980, November 20, 1981 and January 8, 1982 the State submitted operating permits containing compliance schedules for the nine affected sources. On June 7, 1982 EPA announced the availability of these revisions and took final action to approve six of them.

In that notice EPA advised the public that it was deferring the effective date of its approval for 60 days (until August 7, 1982) to provide an opportunity to submit comments on the revision. EPA announced that, if within 30 days of the publication of the approval notice it received notice that someone wished to submit adverse or critical comment, it would withdraw the approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period. EPA also published a general notice announcing this special procedure on September 4, 1981 (46 FR 44476).

Prior to the close of the comment period EPA received comments from the Conservation Law Foundation concerning two of these approvals. Therefore, in accordance with the procedure described above, EPA is today taking final action elsewhere in today's **Federal Register** to withdraw its June 7, 1982 approval of this revision to the New Hampshire Ozone SIP, and in this notice is proposing to approve the revision. A detailed description of the revision and EPA's rationale for proposing approval are found at 47 FR 24552 (June 7, 1982). However, EPA has also received information from the State which indicates that the compliance schedules which drew comments have been revised by the sources involved. EPA will consider further information on these compliance schedules, along with all other comments, in assessing whether these schedules are approvable. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received on or before September 30, 1982.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

The Administrator's decision to approve or disapprove the plan revision will be based on whether it meets the requirements of Sections 110(a)(2) (A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51. This revision is being proposed pursuant to Section 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Dated: August 4, 1982.

Lester A. Sutton, P.E.,

Regional Administrator, Region I.

[FR Doc. 82-23844 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-3-FRL-2175-1]

Commonwealth of Virginia; Section 107—Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Virginia has revised its list of air quality attainment designations for four areas within the Commonwealth with respect to Ozone (O_3). The Commonwealth has requested that the designations for Roanoke, Peninsula and Southeastern areas and Stafford County be changed from nonattainment of primary standards to attainment under Section 107(d) of the Clean Air Act.

EPA proposes to approve this change as submitted by the Commonwealth of Virginia. The purpose of this notice is to solicit public comment on the proposed action. All other Section 107 designations for the Commonwealth of Virginia not discussed in this notice remain intact, 43 FR 40502, 1978, 45 FR 43412, 1980; 46 FR 55257, 1981.

DATE: Comments must be submitted on or before September 30, 1982.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public

inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs & Energy Branch, Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Attn: Ms. Eileen M. Glen.

Virginia State Air Pollution Control Board, Room 801, Ninth Street Office Building, Richmond, Virginia 23219. Attn: Mr. John M. Daniel, Jr.

All comments on the proposed revision submitted on or before September 30, 1982 will be considered and should be submitted to Mr. James E. Sydnor at the EPA Region III address stated above.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen M. Glen at the Region III address stated above or call 215/597-8187.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d)(1) of the Clean Air Act (Act) requires the States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained the National Ambient Air Quality Standards. The Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as required by section 107(d)(2) of the Act. On March 3, 1978, the Administrator promulgated nonattainment designations for the Commonwealth of Virginia for Ozone (O_3), 44 FR 8962. These designations were effective immediately and public comment was solicited. On September 12, 1978, in response to the comments received, the Administrator revised and amended some of the original designations, 43 FR 40502. The Act also provides that a State from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). The criteria and policy guidelines governing these revisions and the Administrator's review of them are the same that were used in the original designations and which are summarized in the **Federal Register** on March 3, 1978, 43 FR 8962, September 11, 1978, 43 FR 40412; and September 12, 1978, 43 FR 40502. The Commonwealth of Virginia has revised its designations list and, on December 16, 1981, submitted these revisions to EPA. The monitoring data supporting this redesignation was submitted to EPA's SAROADS system on April 7, 1982.

Proposed O_3 Redesignation

The Commonwealth of Virginia has revised the O_3 designations for the areas cited below from "Does not meet primary standards" to "Cannot be classified or better than national standards".

Nonattainment area	Localities included
Roanoke	Roanoke City, Salem City, Roanoke County.
Stafford County	Stafford County.
Peninsula	Hampton City, Newport News City.
Southeastern	Chesapeake City, Norfolk City, Portsmouth City, Suffolk City, Virginia Beach City.

Pursuant to this revision, the Commonwealth submitted air quality data supporting the redesignation. EPA has evaluated the data. All sites used to demonstrate attainment meet the siting criteria as required by 40 CFR Part 58, Appendix E. All data was quality assured as required by regulation for the period in question.

EPA considers the ozone standard to be attained when the expected number of days per calendar year with maximum hourly concentrations above the ozone standard is equal to or less than 1. The Roanoke and Southeastern Virginia areas showed no violations during the three years of data provided, 1979 through 1981. The Stafford County and Peninsula areas each had one violation during the three-year period of 1979 through 1981. Therefore, EPA is proposing to approve the above redesignations.

On May 27, 1981 the Commonwealth requested that those portions of the January 11, 1979 revision of Chapter 10 relative to Items 2 through 5 for the Southeastern and Peninsula areas be withdrawn. They do not propose to evaluate, adopt, or implement any future transportation measures.

Now, because two of the areas are able to attain the ambient air quality standard before December 31, 1982 without the implementation of any transportation control measures, EPA can also propose approval of the Deletions to Chapter 10, Transportation Source Measures for Southeastern and Peninsula areas.

Conclusion

EPA is proposing to approve the redesignation of the Roanoke, Stafford County, Peninsula and Southeastern areas from "Does not meet primary standards" to "Cannot be classified or better than national standards." EPA is also proposing approval of the withdrawal of transportation control measures for the Southeastern and Peninsula areas.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, particulate matter, Carbon monoxide, Hydrocarbons.

(Authority: 42 U.S.C. §§ 7401-7642)

Dated: June 22, 1982.

Peter N. Bibko,

Regional Administrator.

[FR Doc. 82-23839 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Progam

AGENCY: Public Health Service (PHS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the Health Professions Student Loan (HPSL) program. These proposed revisions would strengthen the regulations regarding recordkeeping and collection procedures and establish performance standards against which a health professions school's delinquency rate would be measured.

DATE: As discussed below, comments are invited. To be considered, comments must be received by October 15, 1982.

ADDRESSES: Written comments should be addressed to the Director, Bureau of Health Personnel Development and Service (BHPDS), 5600 Fishers Lane, Parklawn Building, Room 6A-05, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development and Evaluation, BHPDS, Room 8A-41, 5600 Fishers Lane, Parklawn Building, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Alice M. Swift, 301 443–4550.

SUPPLEMENTARY INFORMATION: In a recent report of findings to the Congress, the General Accounting Office (GAO) identified a number of deficiencies in the manner in which schools and the Federal Government administer the HPSL program. The major areas of concern were the lack of compliance by schools with "due diligence" requirements in loan collections, excess cash balances in the schools' revolving loan funds and deficient recordkeeping. The GAO findings were supported by a BHPDS analysis of a number of assessments conducted at participating schools during the past year. On December 8, 1981, the Senate Committee on Governmental Affairs held hearings on the high delinquency rates in the HPSL and Nursing Student Loan programs. The GAO findings were cited and the Committee expressed grave concern.

In March of 1982, the Department responded to concerns raised by the BHPDS analysis, the GAO findings and the Senate Committee by issuing to all participating schools a memorandum designed to assist schools in correcting these deficiences. A BHPDS Action Plan outlined several changes that the BHPDS proposed to implement and indicated that those reflecting new compliance requirements would appear in the **Federal Register** for public comment.

The proposed revisions are summarized below according to the section numbers and titles of the regulations.

Section 57.205 Health professions student loan funds.

Schools would be required to join credit bureaus (see proposed section 57.210(b)(1)(iii)). The proposed revision of § 57.205 would permit schools to charge the costs associated with membership in credit bureaus to the Fund.

Section 57.206 Eligibility and selection of health professions student loan applicants.

The Secretary proposes to require HPSL applicants who have previously attended institutions of higher education to submit a financial aid transcript. Such a transcript would provide the school with information in order to assure that maximum allowable loan limits are not exceeded; assist the school in planning how best to use HPSL funds; assist schools in determining the level of funding needed by the students; aid borrowers in planning how to manage their indebtedness; and provide the school with information regarding the creditworthiness of the students.

Section 57.208 Health professions student loan promissory note.

The Secretary proposes to require that promissory notes contain a clause which will allow the acceleration of delinquent loans at the school's option. The revised promissory note form provided by the Secretary will include the acceleration provision.

Section 57.210 Repayment and collection of health professions student loans.

The Secretary proposes to amend § 57.210(a)(3) to require that schools establish monthly repayment schedules for borrowers. The regulations now allow a borrower to choose the repayment schedule from those in use by the school. The Department believes that a monthly repayment schedule would assist the borrower in managing his/her debt by providing for smaller payments; provide the schools with monthly contact which should minimize the problem of having to locate delinquent borrowers; and make available a consistent source of funds for lending to other students.

The Secretary also proposes to permit schools to grant forbearance when extraordinary circumstances such as unemployment, poor health or other personal problems affect the borrower's ability to repay according to the repayment schedule. See proposed § 57.210(a)(4). When a borrower demonstrates evidence of extraordinary circumstances which temporarily affect his/her ability to make payments, granting forbearance could prevent the borrower's defaulting.

Section 57.210(b) requires that schools exercise "due diligence" in the collection of student loans. The present regulation does not specify what collection efforts are necessary to satisfy the due diligence requirement, although recommended procedures are described in detail in the *Student Financial Aid Guidelines* distributed to all participating schools. The Secretary proposes to strengthen the due diligence requirements by amending § 57.210(b) to: (1) Require the use of collection agents by the schools; (2) mandate litigation when it is appropriate and (3) require membership in credit bureaus and notification of such bureaus of all delinquent accounts. These proposed steps are expected to assist the schools in increasing the collection of delinquent loans. The revised paragraph would also make clear that a school which fails to exercise due diligence in the collection of a loan is required to reimburse the Fund for any amounts uncollected because of that failure.

Section 57.213a (new) to follow § 57.213 Loan cancellation reimbursement.

Section 741(i) of the Act provides that where all or any part of a loan or interest is cancelled for practice in a shortage area, for death or for disability, the Secretary shall pay the school its proportionate share of the amount cancelled. The Secretary proposes to include a new section in the regulations which will address the statutory provision and the impact of fund availability on the reimbursement of funds to the schools.

Section 57.215 Records, reports, inspection, and audit.

In order for both the Secretary and the schools to monitor the program more carefully, the Secretary proposes to require the submission of quarterly reports on the status of the program. In addition, the Secretary proposes to require that schools retain repayment records of borrowers for a period of 5 years after loans have been repaid.

The Secretary proposes to reduce recordkeeping requirements by eliminating the requirement that records of applicants who are denied loans be retained for 5 years after a student ceases to be a full-time student.

Section 57.216a (new) to follow § 57.216 Performance standards.

The Secretary proposes to establish a standard of performance which would require all participating schools to achieve a delinquency rate of not more than 5 percent by March 31, 1983, and each succeeding March 31 thereafter. Schools which fail to achieve this delinquency rate by the March 31 date will be subject to the non-compliance provisions of § 57.218 of the final regulations governing this program, published May 18, 1979. Under these provisions, the Secretary would make no new payments of Federal capital contributions, allow no new loans to be made from revolving funds, and require the return of all money collected until the Secretary determines that the school is no longer in failure of compliance. The Secretary will review the Quarterly report, proposed by this Notice, to determine when there is no longer any failure of compliance.

This proposed standard is based on the general rate of delinquency anticipated by the commercial banking community; an analysis of data from the Annual Operating Reports (AOR) submitted by the schools as of June 30, 1981; and a review of the problems that

schools are having in the management of the program and the ease with which many of the problems could be corrected.

The selection of the 5 percent standard is consistent with trends in the commercial banking community. According to the staff of the research division of the Federal Reserve Board, at the end of Fiscal Year 1981, nationally, commercial banks experienced a delinquency rate of 3.2 percent on secured and unsecured personal loans, 1.8 percent on secured auto loans and 2.5 percent on unsecured credit card loans. Moreover, Dr. Richard Peterson, an economist at the Purdue University Graduate School of Management who has studied consumer credit risk by occupation, notes in his working paper No. 17, 1978, that professionals, including doctors and lawyers, generally have a lower delinquency rate on loans than the population at large.

Since schools have somewhat limited expertise in loan collection compared to the commercial banking community, the Secretary proposes a standard of 5 percent.

Using an approach that accounts overdue by more than 90 days should be considered delinquent and by including retired loans, a formula was developed for calculating borrower and delinquency rates as of June 30, 1981 which was applied to data contained on the AORs submitted for the same ending date. For those schools that had a delinquency rate in excess of the proposed standard, a review of the AOR data indicates that a significant portion of the delinquency is the result of inadequate management on the part of schools, rather than borrowers being unwilling to fulfill their financial obligations. For example, many schools have not paid sufficient attention to maintaining accurate records of those individuals who are in residency training or some other deferrable activity, and thus, these individuals are being counted as delinquent when in fact they have a legitimate reason for not making payments. With improved management systems this deficiency should be easily correctable.

Another contributor to the high rate of delinquency is the number of uncollectible loans which schools are carrying on their books and not attempting to remove through a write-off procedure. Schools are required to take one of two actions regarding accounts considered to be uncollectible: show evidence of due diligence, in attempting collection, in which case permission may be granted for write-off; or reimburse the loan fund for the amount of the loan. By taking one of these actions, loans classified as uncollectible may be removed from the books, resulting in a further reduction in the delinquency rate.

In applying the 5 percent performance standard, the Secretary proposes to define a delinquent account as one more than 30 days overdue, and to establish a uniform formula for computing the borrower and dollar delinquency rates. The Secretary also proposes to exclude retired loans from the new formula since including them obscures current collection efforts.

To consider delinquent accounts that are overdue more than 30 days is consistent with practice in the commercial banking community and with the Department of the Treasury requirement for aging of accounts. In order for a school to maintain a low delinquency rate, it must begin to pursue borrowers as soon as they become late in their payments. Such a strategy results in few delinquencies in excess of 30 days.

The Department certifies that these regulations will not have a significant economic impact on a substantial number of small entities and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. The new recordkeeping requirements resulting from these regulations will impose a total response burden of 6600 hours, or an average of 21 hours per school. This response burden is minor and will not have a significant economic impact on either small or large schools.

The Department has also determined that this rule is not a "major rule" under Executive Order 12291; therefore, a regulatory impact analysis is not required. As is discussed above, the reporting requirements will have minor impact on schools. Additionally, the impact on students is relatively small. As of June 30, 1981, 12 percent of all borrowers were delinquent, representing approximately $11.5 million. This NPRM would require schools to achieve delinquency rates of not more than 5 percent by March 31, 1983. The Department does not have a specific estimate of the cost of debt collection activities, but believes these are equally small, therefore the proposed rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

The existing reporting and recordkeeping requirements have been cleared by OMB and given approval number 0915–0044. The new reporting and recordkeeping requirements contained in sections 57.206 and 57.215 of these regulations require OMB approval under the Paperwork Reduction Act of 1980, and will be submitted for clearance.

List of Subjects in 42 CFR Part 57

Dental health, Grant programs—health, Education of disadvantaged, Health facilities, Educational facilities, Health professions, Educational study programs, Loan programs—health, Emergency medical services, Medical and dental schools, Grant programs—education, Scholarships and fellowships, Student aid.

Dated: July 21, 1982.

James F. Dickson,

Acting Assistant Secretary for Health.

Approved: August 9, 1982.

Richard S. Schweiker,

Secretary.

It is proposed to amend 42 CFR Part 57 as follows:

PART 57—HEALTH PROFESSIONS STUDENT LOAN PROGRAM

Accordingly it is proposed to amend Part 57 as follows:

§ 57.205 [Amended]

1. a. Paragraph (a)(3) of § 57.205 is revised to read as follows:

(a) * * *

(3) Costs of litigation; costs associated with membership in credit bureaus; and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans.

b. Paragraph (b)(2) of § 57.205 is revised to read as follows:

(b) * * *

(2) Costs of litigation; costs associated with membership in credit bureaus; and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans.

2. Paragraph (a) of § 57.206 is amended by adding a new paragraph (a)(3), to read as follows:

§ 57.206 [Amended]

(a) * * *

(3) An applicant who has previously attended an institution of higher education must submit a financial aid transcript which includes at least the following data:

(i) Applicant's name and social security number;

(ii) Amounts and sources of loans and grants previously received by the applicant for study at an institution of higher education;

(iii) Whether the applicant is in default on any of these loans, or owes a refund on any grants;

(iv) Certification from each institution previously attended by the applicant that the applicant has received no financial aid, if applicable; and

(v) From each institution previously attended, the signature of an official authorized by the institution to sign such transcripts on behalf of the institution.

* * * * *

3. Paragraph (a) of § 57.208 is amended by redesignating paragraph (a)(2) to (a)(3) and adding a new paragraph (a)(2) to read as follows:

§ 57.208 Health professions student loan promissory note.

(a) * * *

(2) Each promissory note must contain an acceleration clause provided by the Secretary, which will permit the acceleration of delinquent loans at the school's option.

* * * * *

4. a. Paragraph (a)(3) of § 57.210 is revised to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

(a) * * *

(3) Subject to the provisions of paragraph (b)(3) of this section, a student borrower must establish a monthly repayment schedule with the school. However, a student borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

* * * * *

b. Section 57.210 is amended by adding a new paragraph (a)(4) to read as follows:

(a) * * *

(4) A school may grant forbearance whenever extraordinary circumstances such as unemployment, poor health or other personal problems temporarily affect the borrower's ability to make scheduled loan repayments.

* * * * *

c. Subparagraph (b)(1) of § 57.210 is revised to read as follows:

* * * * *

(b)(1) Each school at which a fund is established must exercise due diligence in the collection of all health professions student loans due the fund. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, the school will be required to reimburse the Fund the full amount of principal and interest that remains uncollected because of that failure. In the exercise of due diligence, a school must at least:

(i) Use collection agents;

(ii) Institute legal proceedings against borrowers after all other attempts at collection have failed, provided that such litigation is appropriate; and

(iii) Become a member of a credit bureau and notify the credit bureau of all delinquent accounts.

* * * * *

5. A new § 57.213a, to read as set out below, is added after § 57.213, and the Table of Contents is revised accordingly.

§ 57.213a Loan cancellation reimbursement.

In the event that insufficient funds are available to the Secretary in any fiscal year to enable him to pay to all schools their proportionate shares of all loans and interest cancelled under this subpart for practice in a shortage area, death, or disability:

(a) each school will be paid an amount bearing the same ratio to the total of the funds available for that purpose as the principal of loans cancelled by that school in that fiscal year bears to the total principal of loans cancelled by all schools in that year; and

(b) any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of the assets of the school's Fund under section 743 of the Act.

6. Section 57.215 is revised to read as follows:

§ 57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds that the Secretary may find necessary to carry out the purposes of the Act and these regulations. The school also must comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit and inspection. Effective July 1, 1982, each school must submit a quarterly report as required by the Secretary on the status of the institution's loan fund(s).

(b) The following student records must be retained by the school for 5 years after an individual student ceases to be a full-time student:

(1) Approved student applications for health professions student loans;

(2) Documentation of the financial need of the applicants; and

(3) Copy of financial aid transcript(s).

(c) The following repayment records for each individual borrower must be retained for at least 5 years from the date of retirement of a loan:

(1) The amount and date of each loan;

(2) The amount and date of each payment or cancellation;

(3) Records of periods of deferment;

(4) Date, nature and result of each contact with the borrower or proper endorser in the collection of an overdue loan;

(5) Copies of all correspondence to or from the borrower and endorser;

(6) Copies of all correspondence with a collection agency related to the individual borrower;

(7) Copies of all correspondence with a credit bureau related to an individual borrower; and

(8) Copies of all correspondence relating to uncollectible loans which have been written off by the Federal Government or repaid by the school.

(d) The school must also retain other records as the Secretary may prescribe. In all cases where questions have arisen as a result of a Federal audit, the records must be retained until resolution of all questions.

7. A new § 57.216a, to read as set out below, is added after § 57.216, and the Table of Contents revised accordingly.

§ 57.216a Performance standard.

By March 31, 1983, and on each March 31 thereafter, each school must have either a borrower or dollar delinquency rate (as calculated below) of not more than 5 percent. All accounts overdue by more than 30 days must be considered delinquent.

(a) *Borrower delinquency rate.* The borrower delinquency rate for each school must be calculated by dividing the number of the school's delinquent borrowers by the total number of the school's borrowers whose loans are in repayment status.

(b) *Dollar delinquency rate.* The dollar delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

* * * * *

(Sec. 215 of the PHS Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); Secs. 740–744 of the PHS Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920 (42 U.S.C. 294m-q))

[FR Doc. 82-23845 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-16-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of Lynx, River Otter, Alaskan Gray Wolf, Alaskan Brown Bear, American Alligator, and American Ginseng Taken in 1982–83 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed findings and rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Exports of animals and plants listed in Appendix II of CITES may only occur if a Scientific Authority (SA) has advised a permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species, and if a Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This notice announces proposed findings by Scientific and Management Authorities of the United States on the export of certain Appendix II species native to this country. Such findings have been made annually on a State-by-State basis. The Service requests comments on these findings and information on the species involved.

DATES: The Service will consider information and comments received by September 20, 1982 for ginseng and by September 30, 1982 for animal species addressed in this notice in making its final findings and rule.

ADDRESS: Please send correspondence concerning this notice to the Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of the Scientific Authority, room 536, 1717 H Street, NW., Washington, D.C., or at the Federal Wildlife Permit Office, room 621, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority—Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Management Authority—Mr. S Ronald Singer, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2418.

Export Permits—Ms. Maggie Tieger, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–1903.

SUPPLEMENTARY INFORMATION: This is the second in a series of notices concerning the Service's findings on export of lynx *(Lynx canadensis)*, river otter *(Lutra canadensis)*, Alaskan gray wolf *(Canis lupus)*, Alaskan brown bear *(Ursus arctos)*, American alligator *(Alligator mississippiensis)*, and American ginseng *(Panax quinquefolius)* taken in the 1982–83 harvest season. In this notice, the Service announces its decisions on the guidelines to be used in making Scientific Authority and Management Authority findings for export of these species, and proposes findings based on those guidelines.

In the previous notice on this subject (47 FR 14664; April 5, 1982), the Service invited comments on proposed guidelines and information on the species involved. That notice addressed exports of bobcat *(Lynx rufus)*, in addition to the six species named above. Proposed findings for bobcat exports and the guidelines used for those findings will be addressed in a separate notice because of legal complications in satisfying CITES requirements for export of that species. The Service seeks to prevent delaying the issuance of export findings for other species; those findings may have greater value for conservation of the species if they are issued before State harvest seasons open.

Scientific Authority Advice

CITES regulates international trade in species included in Appendix II through a system of permits issued by designated MA's in each party nation. Export permits are to be issued only if a MA receives advice from a SA that export will not be detrimental to the survival of the species.

The Endangered Species Act of 1973, amended in 1979, designates the Secretary of the Interior as both MA and SA of the United States, for purposes of CITES. These functions are carried out by the Fish and Wildlife Service. MA responsibilities are delegated to the Associate Director—Federal Assistance. SA responsibilities are delegated to the Associate Director—Research.

Advice on the export of species addressed in the present findings is given in a general way, applicable to any specimens harvested in particular States in a given season, rather than on a permit-by-permit basis. The reasons for the practice are that (1) the individual exporters who apply for permits are unable to supply much information about the sources of specimens or the effect of their harvest on the populations of the species, (2) the species in question are subject to commercial exploitation, and it would be burdensome to both the industry and the Service to make separate SA decisions on each of the many permits, and (3) the development of general advice on a State-by-State basis enables the Service to conduct a comprehensive review of the status of the species in question and the effect of international trade on its survival. Advice based on such a review is more meaningful than it would be if it were based only on information supplied in connection with individual permit requests.

For this year, the Service initially proposed to use the same general guidelines for lynx, otter, and alligator as for bobcat. The reason was that it would be a complicated process to develop SA advice for the various species using different sets of guidelines. However, adoption of the proposed guidelines for lynx, otter, and alligator would now appear to create even greater problems. The proposed guidelines were:

1. A current estimate of the total number of animals in the preharvest population is to be developed for each affected State, derived by (a) extrapolating the number of animals per unit area in each of the major habitat types to obtain an estimate of the total number of animals in the State, where the number of animals per unit area is determined by direct count, (e.g., by using radio tracking) or by indirect indictions of abundance (e.g., track counts, scented track plots, hunter-trapper surveys, and/or harvest records); or (b) by using population modeling (e.g., calculating population size from data on recruitment, mortality, sex ratio, age composition, or other parameters).

2. An upper limit on the total number of animals that can be harvested without detriment to the survival of the species is to be developed for each affected State, considering such factors as (a) population trends, (b) sizes of past harvests, (c) age composition and sex ratio of harvested animals, and (d) prey abundance.

3. Export would be deemed nondetrimental only for animals taken in those States for which there were (a) a preharvest population estimate that the Service determines to be reliable, either statistically, or by use of population models, or by comparison to other indications of abundance, and (b) a management program within the State that can prevent the total harvest from exceeding an amount that the Service

determines can be harvested without detriment to the survival of the species. This level generally would not be allowed to exceed 20 percent of the estimated total preharvest population, although the allowable percentage would be ajusted for each State in view of factors such as those mentioned in paragraph 2 above, and in view of the reliability of the population estimate.

The Service previously indicated that these guidelines might not be feasible in each State for lynx, otter, and alligator. Presently, they are required only for bobcat because of a ruling by the Court of Appeals for the District of Columbia Circuit (*Defenders of Wildlife* vs. *Endangered Species Scientific Authority*, 659 F.2d 168 (1981)). Information other than population estimates is generally used to determine the status of wildlife populations and the extent they are impacted by harvest. Most furbearers and other game species are managed on the basis of information that indicates trends in their status, rather than on the basis of population estimates. Harvests generally are limited by restricting the length and timing of the season and by imposing bag limits, rather than by setting annual Statewide quotas.

Comments received from 14 State wildlife agencies, the National Alligator Association, the Wildlife Legislative Fund of America, and the firm of Robert R. Nathan Associates, Inc., all support these observations. The Montana Department of Fish and Game indicated, however, that it did not foresee any problems in using the same guidelines for bobcat, lynx, and otter. Comments in favor of applying the newly proposed bobcat guidelines to lynx, otter, and alligator were submitted jointly by Defenders of Wildlife, Inc., and the Humane Society of the United States. These organizations argued that, as a legal matter, the Court of Appeals' decision requiring population estimates and harvest quotas applies to all Appendix II animal species. They contended that these data are obtainable and necessary. It is the position of the Fish and Wildlife Service, however, that the Court of Appeals' decision does not extend to species other than bobcat. In addition, many State wildlife agencies have found that such data generally are very difficult to obtain and unnecessary for management of these species. Based on their considerations, the Service concludes that the proposed guidelines are inappropriate for lynx, otter, and alligator.

Accordingly, the Service will use guidelines for the export of lynx, otter, and alligator that were developed in 1977 and used each year since that time. These guidelines were developed by a working group of wildlife biologists and represent professionally accepted wildlife management practices. They are listed below:

A. Minimum requirements for biological information:

(1) Population trend information, the method of determination to be a matter of State choice.

(2) Information on total harvest of the species.

(3) Information on distribution of harvest.

(4) Habitat evaluation.

B. Minimum requirements for a management program:

(1) There should be a controlled harvest, methods and seasons to be a matter of State choice.

(2) All pelts should be registered and marked.

(3) Harvest level objective should be determined annually.

The Service indicated in the previous notice that CITES provides for listing species in Appendix II for two reasons: because the species is potentially threatened by international trade, or because international trade in the species must be regulated in order to effectively control trade in another species. The latter type of listing is generally to control trade in species whose appearance either as whole specimens, as parts (skins, etc.), or as manufactured products closely resembles that of other threatened or potentially threatened species. The lynx, otter, and alligator were listed for a combination of these two reasons. The Alaskan populations of gray wolf and brown bear were listed only for the latter reason (similarity in appearance). Accordingly, the Service will consider the impact of trade in these species on the effectiveness of CITES in controlling trade in other related species or populations when determining conditions under which export may be allowed.

For ginseng, the Service stated its intention in the April 5, 1982, notice to use the same guidelines as were used last year in determining if exports will not be detrimental to the survival of the species (46 FR 45172; September 10, 1981). The Service would make this determination by evaluating (1) information from each State on past, present, and potential geographic distribution, relative frequency, local abundance, population trends, and harvest intensities on a county-by-county basis, and (2) State research and management programs for this species, including a limited harvest season.

Several State agencies expressed support for the Service's proposal to develop multi-year findings on the export of ginseng. Because the status of wild ginseng does not vary greatly from year to year within any given State, the Service now proposes to issue findings valid for a three-year period (chosen as a reasonable balance between the needs for continuity and currency). The Service will continue to monitor the status of ginseng each year, and will maintain the option of revising the findings at any time if new information shows a compelling need for such a change.

Management Authority Findings

Exports of CITES Appendix II animals or plants can only be authorized if the MA is satisfied that the animals or plants were not obtained in contravention of laws for their protection and if the SA issues favorable advice.

Evidence of legal take for lynx, river otter, Alaskan gray wolf, Alaskan brown bear, and American alligator has been provided by State tagging programs. Ideally, the Service would like to see such programs include both mandatory possession tagging of all CITES-listed skins harvested, and required presentation of each skin to a State agent for removal of the possession tag and application of a permanent, locking tag.

Recognizing that such programs do not yet exist in all affected States, and that it is not feasible to establish them for the next harvest season in certain States, the Service also will continue to accept certain less-comprehensive programs as evidence that skins were lawfully acquired within particular States in the 1982–83 season. However, the Service believes that registration of all CITES-listed skins harvested is important to control unlawful trade, that skins should be tagged promptly when harvested to reduce the likelihood they will be passed off as taken in another State, and that persons applying tags should report to the State on all tags used.

Alternative ways to satisfy basic tagging requirements for the 1982–83 season are described below. The Service is pursuing discussions with States about the establishment of possession tagging for skins between actual take and application of State export tags as a possible requirement for exports of skins in future seasons. At a minimum, tagging for the 1982–83 season must include:

(1) Application of permanent, locked tags bearing the appropriate legend, to all skins to be exported;

(2) Such tags must be applied to skins by State personnel, dealers registered with the State for this purpose, or the persons taking the animals; and

(3) Where tags are applied by dealers or persons taking the animals, such persons should be accountable to the State on the use of those tags.

In response to the notice of April 5, 1982, the Arizona Game and Fish Department commented that CITES export tags should be applied by Federal enforcement personnel prior to export, to promote a savings to the State's management program. Although such tagging probably could be done by Federal personnel, there would be no greater economy because evidence of legal take from the State of origin still would have to be supplied for each skin to receive an export tag.

Kansas and Colorado wildlife agencies expressed concern that export tags may be used to enforce Federal export quotas. The Service is not setting such quotas, and is relying on tagging as proof of legal take for CITES export purposes. Tagging also is one of the SA guidelines because of its importance as a management tool for States to measure and control the harvest.

The National Alligator Association stated that Florida and Louisiana have adequate alligator tagging systems and suggested that the Service not propose changes in them. The Service agrees and does not seek to alter these systems.

For the 1982–83 season, the Service will continue to require the use of self-locking, permanent tags marked to specify State, year of take, species, and a serial number. The Service arranged for the manufacture of permanent, locking export tags for most skin-exporting States in 1981 and will do the same in 1982. States may purchase and use their own tags for 1982, provided their style of tag and legend has been approved by the Service.

MA guidelines for approval of ginseng export for the 1982 through 1984 seasons are:

(1) State registration of dealers purchasing ginseng in the State;

(2) State requirement that these registered dealers maintain records of their commerce in ginseng, and report such commerce to the State; and

(3) Inspection and certification by State personnel of all ginseng shipments from the State. This certification is necessary to authenticate that the ginseng was legally taken from wild or cultivated sources within the State.

The third criterion above represents a strengthening of the Service's previous requirement of certification to authenticate that the ginseng was lawfully taken from wild or cultivated sources.

Experience has shown the value of a State official inspection and certification program which can document that the roots in question were legally taken or artifically propagated in that State. Recognizing that States might not be able to institute such inspection and certification this season, the Service will accept, for this year only, other forms of certification that were approved for the 1981 season. Information on forms of certification approval for the 1981 season can be found at 46 FR 45173; September 10, 1981.

In response to the April 5, 1982, notice, the Wisconsin Department of Agriculture suggested that cultivated ginseng be removed from CITES listing because it differed in appearance from wild gingseng. Presently, cultivated ginseng roots are exempt from CITES export permits, and may be exported under Certificates of Artificial Propagation. There is no provision in CITES for the further exemption of artificially propagated CITES-listed plants from all trade controls.

In 1980, the Service announced that the Management Authority would approve export of artificially propagated ginseng from States approved for export of wild-collected ginseng due to the established certification programs (45 FR 80444: December 4, 1980). The Service will continue to approve the export of artificially propagated ginseng from approved States and from other States if they can provide similar documentation to minimize the risk that wild-collected plants are exported as cultivated.

Information Sought

Information to be used in developing both SA and MA findings was outlined in the April 5, 1982, notice. Because the Service has decided to use previously developed guidelines for SA findings on the export of animal species addressed in this notice, information needs have been reduced to relate directly to those guidelines. Specifically, the Service has eliminated requests for population estimates, number of animals bought by dealers, number of licensed trappers, and prices paid to trappers for pelts. For each species, information that has been provided in past years need not be resubmitted, provided it is cited and its validity is affirmed.

In making an export finding for a particular State, the Service exercises its own independent judgment as required by CITES. Still, in recognition of the fact that the responsibility and authority for conservation of "resident species" (as opposed to migratory species) lies primarily with the States, the Service prefers to make export determinations only after providing the States and affected parties an opportunity to provide it with relevant information. Consequently, for lynx, otter, and alligator, the Service requests the following information concerning each affected State from all interested parties:

1. An assessment of population trends of the species in each State; the relationship of these trends to habitat condition, management practices, harvesting pressure, prey abundance, or other factors, and a brief summary of any research being conducted to assess the distribution, abundance, or general condition of the species in the State.

2. Total Statewide harvest of the species expected to be allowed by the State in the 1982–83 season, together with an explanation of the biological basis for this figure and a description of methods used by the State to insure that the actual harvest will not substantially exceed this harvest level objective.

3. Information concerning, or copies of, current State regulations governing harvest, possession, transport, and sale of the species, including tagging requirements and samples of actual tags.

4. Statewide harvest information for the previous 1981–82 season: the number of animals that were harvested and tagged, and any available information on harvest per unit effort.

For Alaskan gray wolf and Alaskan brown bear, the Service seeks only the information listed above in items 3 and 4.

For American ginseng, the Service will continue to seek the following information concerning each affected State:

1. Historic, present, and potential distribution of ginseng on a county basis, using county outline maps, and indicating the source(s) and accuracy of this information. Include also the distribution of preferred habitat on a regional or Statewide basis, indicating recent trends in loss or protection of habitat.

2. Approximate number or density of ginseng populations per county or region, and the approximate number of all known ginseng localities in the State, including also the source of this information.

3. Average population size (i.e., "stand" or "patch") or local abundance of wild ginseng on a county or regional basis in the State, indicating the source(s), general reliability and accuracy of the information. Include

also any changes from previous years or differences from historical population sizes.

4. An assessment of population trends on a county or regional basis indicating whether populations of ginseng are believed to be increasing, decreasing, stable, extirpated or unknown. Include source(s) and general reliability and accuracy of this information.

5. Assessment of harvest intensity on a county or regional basis indicating whether the relative intensity is heavy, moderate, light, none, or unknown, and any changes from previous years. Provide also the known or estimated number of ginseng collectors in the State.

6. A county map showing those counties in which ginseng is reported to be commercially cultivated. Include figures on the amount of cultivated ginseng reported to be harvested annually and certified for export from the State.

7. Average number of roots per pound harvested, preferably on a county or regional basis or, if these are not available, on a Statewide basis. Include also an assessment of any trend in root sizes or number of roots per pound over previous years.

8. Describe the State's current research program on ginseng and its progress, including a summary of results so far obtained.

9. Describe harvest practices, including regulations on length of harvest season, any harvest restrictions such as size and age of collected plants, and any seed planting requirements.

10. Information concerning, or a copy of, State law or regulation on: (a) State registration of dealers (cost of registration, season of operation for dealers), (b) dealer maintenance of records, (c) dealer reporting system of ginseng commerce, (d) State certification of legal ginseng take, (e) samples of 1982 dealer certificates, and (f) samples of diggers license, giving cost of license and dates of harvest season.

11. Describe State official certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State.

Proposed Findings

Information on the status and management of the species addressed in this notice has been assembled by the Service. This information and records of the Service's evaluation of it in terms of guidelines described above are available for public inspection at the Service's Office of the Scientific Authority.

The Service proposes to approve exports of these species harvested during the 1982–83 season for animals and the 1982 through 1984 seasons for ginseng in the following States, on the grounds that both SA and MA guidelines are expected to be met:

Lynx—Alaska, Idaho, Minnesota, Montana, and Washington.

River otter—Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New York, North Carolina, Oregon, South Carolina, Vermont, Virginia, Washington, and Wisconsin.

Alaskan gray wolf—Alaska.

Alaskan brown bear—Alaska.

American alligator—Florida and Louisiana.

American ginseng—Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont (artificially propagated ginseng only), Virginia, West Virginia, and Wisconsin.

For all other States not addressed above, either the taking of these species is not allowed by the State, the species do not occur in the State, or the Service did not obtain adequate information on which to base SA and MA findings. The Service proposes not to grant general approval for export of these species from such States.

Comments Solicited

The Service requests comments and current information on the species addressed in this notice. These proposed findings are based mainly on information accumulated from previous years. Generally, final findings to be developed for 1982–83 season exports will be issued only on the basis of currently valid information. Final findings will take into consideration the comments and any additional information received, and such consideration might lead to final findings that differ from this proposal.

The period for comment on this proposal with regard to ginseng only is limited to 20 days. A longer period would be impractical and contrary to the public interest. These findings are most useful for conservation of the species if they are issued before the harvest season has passed.

This proposal is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. et seq.; 87 Stat. 884 as amended), and was prepared by Dr. Richard L. Jachowski, Office of the Scientific Authority, telephone (202) 653–5948.

Note.—The Department has determined that these proposed findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, the preparation of an Environmental Impact Statement is not required. A determination on whether final findings are a major Federal action significantly affecting the quality of the human environment will be made at the time the final findings are published. The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). For the wildlife species, this rule treats exports on a case-by-case basis and, in most cases, approves export in accordance with State management programs. Since any effects on small entities are imposed by these State management programs, this rule would have little effect on small entities in and of itself. For ginseng, exports normally derive their product from the ginseng harvest in a number of States. Therefore, the approval or disapproval of export from any one State would not significantly effect the industry.

Dated: August 2, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

List of Subjects in 50 CFR Part 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (agriculture), Treaties.

Accordingly, the Service proposes to amend Part 23 of Title 50, Code of Federal Regulations, as set forth below:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart F—Export of Certain Species

1. In § 23.51, add new paragraph (e) as follows:

§ 23.51 American ginseng (panax quinquefolius).

* * * * *

(e) 1982 through 1984 Harvests: Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont (artificially propagated ginseng only), Virginia, West Virginia, and Wisconsin.

Conditions on findings: Roots must be documented as to State of origin and season of collecting. Wild and artificially propagated roots must be certified by the State as legally collected and such certification must be presented upon export.

2. In § 23.53, add new paragraph (f) as follows:

§ 23.53 River otter (Lutra canadensis).

* * * * *

(f) 1982–83 Harvest: Alabama, Alaska, Arkansas, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Hampshire, New York, North Carolina, Oregon, South Carolina, Vermont, Virginia, Washington, and Wisconsin.

Condition on findings: Pelts must be clearly identified as to State of origin and season of taking, including tagging according to conditions established by the Service.

3. In § 23.54, add new paragraph (f) as follows:

§ 23.54 Lynx (Lynx canadensis).

* * * * *

(f) 1982–83 Harvest: Alaska, Idaho, Minnesota, Montana, and Washington.

Condition on findings: Pelts must be clearly identified as to State of origin and season of taking, including tagging according to conditions established by the Service.

4. In § 23.55 Gray wolf (*Canis lupus*).

* * * * *

(f) 1982–83 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the State of Alaska.

5. In § 23.56, add new paragraph (f) as follows:

§ 23.56 Brown bear (Ursus arctos).

* * * * *

(f) 1982–83 Harvest: Alaska.

Condition on findings: Pelts must be tagged as required by the State of Alaska.

6. In § 23.57, add new paragraph (d) as follows:

§ 23.57 American alligator (Alligator mississippiensis).

* * * * *

(d) 1982–83 Harvest: Florida, Louisiana.

[FR Doc. 82-23858 Filed 8-30-82; 8:45 am]
BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 47, No. 169
Tuesday, August 31, 1982

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

Environmental Impact Statement; Cancellation Notice

Colorado Hill-Zaca Silver Mine, Toiyabe National Forest, Alpine County, Calif., Intent to Conduct Environmental Assessment Pursuant to Possible Preparation of an Environmental Impact Statement.

I have determined that the EIS process should be terminated because the Environmental Assessment Report for this project has been completed and a determination made that an EIS was not needed. A Notice of Intent to prepare an EIS was published in the **Federal Register**, Vol. 46, No. 136, p. 36874, July 16, 1981.

Dated: August 3, 1982.

Frank J. Ferrarelli,

Forest Supervisor.

[FR Doc. 82-23810 Filed 8-30-82; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Docket 40946; Order 82-8-114]

89 Canadian Small-Aircraft Charter Carriers; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: Docket 40946. The Board proposes to cancel the foreign air carrier permits issued to 89 Canadian small-aircraft charter carriers. In lieu of holding a foreign air carrier permit, the carriers were required to reapply for authority under Part 294 of the Board's rules. The authority conferred under Part 294 is the same as that authorized in the permits, *i.e.*, the operation of small aircraft charters between the United States and Canada.

OBJECTIONS: All interested persons having objections to the Board's tentative finding and conclusions that this authority should be cancelled as described in the order cited above, shall, no later than October 18, 1982 file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to subject Canadian carrier or carriers, the Department of Transportation, the Department of State, the Canadian Transport Commission, and the Ambassador of Canada in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and cancel the foreign air carrier permit issued to the subject Canadian carriers listed in the Board's order, effective 45 days after the effective date of that order.

ADDRESS FOR OBJECTIONS: Docket: 40946, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington, D.C. metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Nancy Pitzer Trowbridge, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board, (202) 673-5134.

By the Civil Aeronautics Board: August 25, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-23855 Filed 8-30-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-8-111]

Americas Trading Co., Inc., d.b.a. ICB International Airlines; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice.

SUMMARY: The Board has tentatively decided to grant to Two Americas Trading Company, Inc., d.b.a. ICB International Airlines, the authority to operate scheduled air transportation of cargo between a point or points in the United States and a point or points in the United Kingdom (to be effective January 1, 1983), Belgium, the Netherlands, Luxembourg, Portugal, Israel, Iraq, Ivory Coast, Gabon, Ghana, and Zaire.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this action be taken, as described in the order cited above, shall no later than September 17, 1982, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 40360, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to Two Americas Trading Company, Inc., the Departments of State and Transportation, and to the Attorney General. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board may enter an order which will make final the Board's tentative findings and conclusions, and, subject to the disapproval of the President under section 801(a) of the Act, amend the carrier's certificate to authorize it to engage in the foreign air transportation described above.

To get a copy of the complete order, request it from the Civil Aeronautics Board, Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington Metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Ira Leibowitz, (202) 673-5203, Legal Division, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: August 25, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-23854 Filed 8-30-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket 36595]

Investigation Into the Competitive Marketing of Air Transportation; Corrected Notice of Oral Argument [1]

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this case is assigned to be held before the Board on Wednesday, September 15, 1982 at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW, Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise the Secretary, in writing, on or before Wednesday, September 8, 1982, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., August 24, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-23853 Filed 8-30-82; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-8-81; Docket 40915]

Pan American World Airways, Inc. and British Airways; Request for Relief From Unfair, Discriminatory and Restrictive Practices

Correction

In FR Doc. 82-23192 appearing on page 36872 in the issue of Tuesday, August 24, 1982, the "Order number" in the heading appeared incorrectly. It should have appeared as set forth above.

BILLING CODE 1505-01

COMMISSION ON CIVIL RIGHTS

New Jersey 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 meeting of the New Jersey Advisory Committee to the Commission will convene on September 23, 1982, at 6:30 p.m. and will end at 8:30 p.m., at the Ramada Inn, Naricon Avenue, East Brunswick, New Jersey. The purpose of this meeting is to review the status of civil rights issues in the state of New Jersey.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Clyde C. Allen, 620 Sheridan Avenue, Plainfield, New Jersey, 07060, (212) 572-7577 or the Eastern Regional Office, Jacob J. Javits Building, 26 Federal Plaza, Room 1639, New York, New York, 10278, (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 26, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-23869 Filed 8-30-82; 8:45 am]

BILLING CODE 6335-01-M

New York 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 meeting of the New York Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:30 p.m., on September 29, 1982, at the Sheraton Center, 811 Seventh Avenue and Fifty-Third Street, in the Province Suite, New York, New York. The purpose of the meeting will be to discuss program activities for Fiscal Year 1983.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Robert J. Mangum, 420 East Twenty-Third Street, New York, New York 10010, (212) 420-3935 or the Eastern Regional Office, Jacob J. Javits Building, 26 Federal Plaza, Room 1639, New York, New York 10278, (212) 264-0400.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 26, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-23890 Filed 8-30-82; 8:45 am]

BILLING CODE 6335-01-M

Ohio 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 meeting of the Ohio Advisory Committee to the Commission will convene at 10:00 a.m. and will end at 3:00 p.m., on September 25, 1982, at the Holiday Inn River View, Toledo, Ohio. The purpose of the meeting will be to give a report on the National State Advisory Chairpersons' Conference held in Washington, D.C., on September 13-14, 1982 and discussion of a new project to study equal educational opportunity for Hispanics in North Western Ohio.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Henrietta H. Looman, 1222 Woodland Avenue, North West, Canton, Ohio 44703 (216) 454-2278 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 26, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-23888 Filed 8-30-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Affirmative Countervailing Duty Determinations: Certain Stainless Steel Products From Spain

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary affirmative countervailing duty determinations.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Spain of certain stainless steel products, as described in the "Scope of Investigations" section of this notice. The estimated net subsidy for each firm is indicated in the "Suspension of Liquidation" section of this notice. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of the products subject to these determinations which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or the posting of a bond on these products in an amount equal to the estimated net subsidy. If these investigations proceed normally, we will make our final determinations by November 8, 1982.

EFFECTIVE DATE: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 377-0171.

[1] Corrected to show change of time from 11:00 a.m. to 10:00 a.m. (See original notice 47 FR 36466 August 20, 1982).

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Spain of certain stainless steel products, as described in "Scope of Investigations" section of this notice. For purposes of these investigations, the following programs are preliminarily found to confer benefits which constitute subsidies:

- Medium and long-term preferential loans
- Privileged circuit exporter credits—working capital loans (short-term preferential loans)

We estimate the estimated net subsidy to be the amount indicated for each firm in the "Suspension of Liquidation" section of this notice.

Case History

On February 17, 1982, we received a petition in proper form from counsel on behalf of eight domestic manufacturers of stainless steel products. These manufacturers are Al Tech Specialty Corporation, Armco Stainless Steel Division, Carpenter Technology Corporation, Colt Industries, Inc.—Crucible Materials Group, Cyclops Corporation, Guterl Special Steel Corporation, Josyln Stainless Steels and Republic Steel Corporation. The petition alleged that certain benefits which constitute subsidies within the meaning of section 303 of the Act are being provided, directly or indirectly, to the manufacturers, producers, or exporters in Spain of stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars.

We reviewed the petitions and on March 3, 1982, determined that countervailing duty investigations should be initiated (47 FR 10268). In the notice announcing these investigations, we stated that we expected to issue preliminary determinations by May 13, 1982.

Section 303 of the Act applied to these investigations when they were initiated because at that time, Spain was not a "country under the Agreement" within the meaning of section 701(b) of the Act and the products at issue were dutiable. Therefore, the domestic industry was not required to allege, and the U.S. International Trade Commission ("ITC") was not required to determine, whether imports of these products caused or threatened to cause material injury to the U.S. industry in question.

On April 14, 1982, the Office of the U.S. Trade Representative announced that Spain had become a "country under the Agreement" as set out in section 701(b) of the Act. As a result, Title VII applies to all countervailing duty investigations concerning merchandise from Spain. Accordingly, on April 29, 1982, we published a notice in the **Federal Register** (47 FR 18401) of our termination of the investigations begun on March 3, 1982 under section 303 and our initiation of investigations under Title VII of the Act as of April 14, 1982. Unless extended, the preliminary determinations in these investigations were due no later than June 18, 1982. We subsequently determined that these investigations were "extraordinarily complicated" as defined in section 703(c) of the Act and extended the deadline for making our preliminary determinations for 65 days to August 23, 1982 (47 FR 25392).

Since injury determinations are required for investigations involving a country under the Agreement, we advised the ITC of our initiations and made information from our files available to it, in accordance with section 355.25(b) of the Commerce Department Regulations. On June 10, 1982, the ITC preliminarily determined that there is a reasonable indication that these imports are materially injuring or threatening to materially injure a U.S. industry.

We presented questionnaires concerning the allegations to the government of Spain at its embassy in Washington, D.C. on March 8, 1982. On May 17, 1982, we received the responses to the questionnaires. Supplemental responses were received on June 21, June 29, and August 4, 1982. Additional data have been submitted since the August 4 submission. Where possible these data have been considered in these preliminary determinations. Data that could not be considered in making our preliminary determinations will be considered in making our final determinations in these cases.

Scope of the Investigations

The products covered by these investigations are:

- Stainless steel wire rod
- Hot-rolled stainless steel bars
- Cold-formed stainless steel bars

The products are fully described in appendix A to this notice.

Olarra, S.A. (Olarra); Roldan, S.A. (Roldan); S.A. Echevarria (Echevarria); Forjas Alavesas, S.A.; and La Calibradora Mecanica, S.A. are the only known producers and exporters in Spain of the subject products which were exported to the United States. The period for which we are measuring subsidization is the 1981 calendar year.

Analysis of Programs

In its responses, the government of Spain provided data for the applicable periods. Additionally, we received information from the following firms, which produced and exported to the United States the products under investigation:

Firms	Product
Roldan	Hot-rolled stainless steel bars, cold-formed stainless steel bars, and stainless steel wire rod.
Olarra	Hot-rolled stainless steel bars and cold-formed stainless steel bars.

Certain subsidies discussed in this notice were conveyed through decreases issued by the government of Spain. Those decrees include the following:

Decree 669/74 of March 14, 1974 (Concerted Action)—This decree established the National Steel Industry Program, 1974–1982. To achieve the specific goals established by this program, the government authorized certain benefits for the integrated and non-integrated steel firms which included preferential loans and loan terms, accelerated amortization of non-liquid investments, substantial reduction of certain taxes, and expropriation of land for new plant construction.

Decree 2206/1980 of October 18, 1980—This decree established Sdad. de Aceros Especiales (Aceriales) for the purpose of restructuring the Spanish specialty steel industry. Aceriales is comprised of representatives from the industry, which includes the stainless steel producers, and the government. The Administrative Council of Aceriales is responsible for developing and executing a reconversion plan within the mandates of the government decree. The government has authorized funds for Aceriales through the Spanish Ministry of Industry and Energy and the Basque country regional government to assist the association to achieve its goals.

Based upon our analysis to date of the petitions and the responses to our questionnaires, we have preliminarily determined the following:

I. Program Preliminarily Determined To Be a Subsidy

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of hot-rolled stainless steel bars, cold-formed stainless steel bars, and stainless steel wire rod under the program listed below.

Preferential Loans

Petitioners alleged benefits in the form of preferential loans and loan terms. The Department requested from each of the companies under investigation information on all loans outstanding during the period for which we are measuring subsidization. We discuss short-term borrowing and medium and long-term financing separately below.

1. Medium and Long-Term Preferential Loans

Medium-term financing in Spain is from two to five years. Long-term financing is less prevalent and is usually for periods not longer than ten years.

We examined each loan reported to determine if the government was lending or had directed a bank to lend these funds to certain companies, sectors or regions in Spain at preferential rates or terms.

To calculate any subsidy on such loans, we compared the principal and interest payments the company would have made during a given time period on a comparable loan from a normal commercial lender with the amount actually paid on the loans in question.

To determine what the company would have paid on a comparable loan, we used as a benchmark the national average commercial interest rate. On loans directed by the government to a specific company, we use as a benchmark the interest rate the firm received on private commercial loans. While one firm reported such loans, we need additional information to determine if the interest rates on these loans are appropriate benchmarks for these investigations. We used as the national commercial rate the average maximum interest rates published by the Banco de Espana for the year in which the loan in question was received. Where published, the appropriate monthly or quarterly rates were used. The only published information available to us for 1962–1969 were the fixed minimum rates established for that period by the government of Spain. From 1972–1977, rates were published for commercial and industrial banks. We used the industrial banks' maximum rate since these banks lent funds to industry and were the primary source of long-term money during this period. Commercial bank rates were used during all other time periods.

We computed in each year of each loan the differential in payments between the actual loan and the comparable commercial loan. We then calculated the present value of this stream of differentials in the year the loan was made, using as the discount rate for that year the average long-term government-bond yield for Spain. Where the bond yield was not available, we calculated it by dividing the government-bond rate by the commercial-bond rate in the nearest year for which these rates existed and applying the percentage that resulted to the commercial bond rate for the year in question.

This lump-sum benefit (present value of stream of differentials) was then allocated in constant nominal amounts over the life of the loan. The 1981 portion of the benefit was then further allocated over the total sales value of steel production reported by the company under investigation.

The preferential loans reported by the responding Spanish firm contained provisions for deferred principal repayments. Information gathered in the context of other investigations involving Spain indicates that private commercial banks offer similar terms to manufacturers, producers, or exporters of such products as those under investigation. Therefore, for purposes of these preliminary determinations, we are treating deferred principal payments as being not preferential and thus not a countervailable subsidy.

A discussion of our treatment of these loans on a company-by-company basis follows:

(1) Roldan

Roldan reported loans outstanding during the period for which we are measuring subsidization. They included loans from Banco Credito Industrial (BCI), a government credit institution which issues loans directed by the government to the Spanish steel industry. We found a subsidy flowing from these loans when the interest rates were less than the benchmark discussed earlier.

The complete terms of one BCI loan were not reported. We established the amount of the loan for purposes of these preliminary determinations by treating it as issued the year of the earliest submitted financial statement containing evidence of the obligation. Multiple disbursements made under another BCI loan were treated as individual loans. In such cases we used as the benchmark the commercial interest rate at the time of the disbursement.

We preliminarily determine that the *ad valorem* subsidy for preferential medium and long-term loans to Roldan is 1.45 percent.

(2) Olarra

Olarra's response indicates that the company went into receivership in 1979. Bank credits obtained by the company subsequent to its receivership consist entirely of short-term loans. Bank loans obtained prior to this time have been aggregated in the receivership debt. We will seek additional information concerning the specific details of the loans obtained prior to receivership before reaching a final determination in this case. Olarra received no funds from Aceriales and no allegations were made concerning its participation in Concerted Action. Therefore, in the absence of specific loan information, we preliminarily determine the *ad valorem* subsidy for medium- and long-term loans to Olarra to be zero.

(3) Echevarria

Echevarria did not respond to our questionnaire but was identified by the government of Spain as a producer and exporter of all three products under investigation. Petitioners alleged that, in addition to the other programs available to exporters and firms in the Spanish steel industry, Echevarria received benefits that were specifically directed to it by the government of Spain. The Department had information on certain benefits directed to Echevarria from this and other investigations involving Spain. As petitioners did not quantify the benefits they claimed were specifically directed to Echevarria, we used the department's information on benefits to this firm for purposes of these preliminary determinations.

Our information indicates that in 1979 Echevarria received a government loan of 1.25 billion pesetas through the Council of Ministers. A Ministry of Economy Order dated January 15, 1980 granted 2.5 billion peseta loan to Echevarria through the official lending institution, the Instituto de Credito Official. Additionally, Aceriales reports disbursing 477 million pesetas to Echevarria in 1980 and 1.3 billion pesetas in 1981.

As discussed earlier, Aceriales has received a portion of its funding from the government. We have information that indicates that Aceriales has disbursed its funds to other firms in the form of loans. Therefore, we are treating Aceriales' disbursements to Echevarria as government directed loans for purposes of these preliminary determinations.

We find a subsidy flowing from such loans when the interest rate is less than the benchmark discussed earlier. We do not have information on the terms and conditions of the loans described above. We have no information on the terms and conditions of loans made by Aceriales to other firms. In the absence

of a response from Echevarria, we treated these loans as bearing an interest rate of zero. The loan length was based on the long-term loan experience of another company subject to these investigations.

Any subsidy flowing from the 1981 disbursement by Aceriales would occur outside the period for which we are measuring subsidization and would be part of an annual review should countervailing duty orders be issued in these investigations. Consequently the subsidy from the 1981 loan has not been included in our estimated net subsidy rate.

We calculated the benefit from the remaining loans and allocated it over the estimated total sales value of Echevarria's steel production in 1981. Information available to us on Echevarria's 1979 and 1980 sales was used to estimate its total sales in 1981 by applying the percentage increase in Echevarria's total sales between 1979 and 1980 to the 1980 total sales figure.

We preliminarily determine, therefore, that the *ad valorem* subsidy for these loans to Echevarria is 5.61 percent.

2. Short-Term Loans

The government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates through a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports. Of the four privileged circuit programs identified in the notice of initiation, we determined that stainless steel producers benefited from one, the working-capital loans program.

Under the privileged circuit program, firms may obtain working-capital loans for less than one year, the total of which is not to exceed a specified percentage of their previous year's exports. In 1981 this percentage for firms without exporter's cards was 20 percent until November, when it was decreased to 16 percent. For firms with government-issued exporter's cards, the applicable rates were 30 percent before November and 24 percent thereafter. On April 14, 1982 the percentage was further reduced to 22.5 percent with exporter's card and to 15 percent for firms without such cards.

In 1981, the privileged circuit working capital loan interest rate ceiling mandated by the government was 10 percent, including fees and commissions. Working capital loans are available throughout Spain to all exporters meeting eligibility requirements. In such instances we calculate the subsidy by comparing the preferential interest rate with the national average commercial interest rate on loans with similar terms and conditions.

Of the two companies responding, only Roldan obtained working capital loans during the period for which we are measuring subsidization. While Olarra has used the program in the past, it has not obtained privileged circuit working-capital loans as recently as calendar years 1980 and 1981.

The loans obtained by Roldan were approximately one year in length. We determined that during the period that Roldan received its working-capital loans, the average prime interest rate was 16.94 percent for loans of approximately one year and that the average borrower paid 2 percentage points over the prime rate for loans of this type.

As the 10 percent working-capital loan rate includes fees and commissions, we also made an addition of 0.5 percent to the commercial rate, which by Spanish law is the maximum allowable charge for fees and commissions. Based on these data we determined the national average commercial interest rate to average borrowers to be 19.44 percent for one year loans, including fees and commissions.

While the Privileged Circuit Exporter Credit program is a government mandated program, commercial banks are free to select the firm that will receive such loans. It is extremely unlikely that a company in receivership such as Olarra would be considered qualified by commercial banks to participate in this program. Olarra indicates in its response that it has not participated in the program in the last two years. Therefore, for purposes of these preliminary determinations, we have excluded Olarra from our calculation of this benefit. Since Roldan is the remaining principal exporter to the United States of the products under investigation, we used its participation in the program to determine the *ad valorem* subsidy conferred by this program on the stainless steel producers.

To determine the benefit, the interest differential of 9.44 percent was applied to the total privileged circuit working-capital loans received by Roldan in 1981. This benefit was prorated over the sales value of Roldan's total exports to arrive at a preliminary *ad valorem* subsidy to stainless steel producers, with the exception of Olarra, of 1.0 percent.

II. Program Preliminarily Determined Not To Be a Subsidy

We preliminarily determine that a subsidy is not being provided to manufacturers, producers, or exporters in Spain of the products under investigation, under the following program.

A. Desgravacion Fiscal a la Exportacion (DFE)

Spain employs a cascading tax system. A turnover tax ("IGTE") is levied on each sale of a product through its various stages of production, up to (but not including) the ultimate sale at the retail level. The DFE is the mechanism used in Spain for the rebate of these accumulated taxes (hereafter referred to as "indirect taxes") upon exportation of that product. In calculating the DFE payments to be rebated to exporters, the Spanish used an input-output table of the economy that defined indirect tax incidences on a sectoral basis. This is the basis for a schedule of border taxes ("ICGI") designed to subject imported goods to a tax burden equivalent to that borne by an identical or similar item produced in Spain. The DFE is tied by law to the level of the ICGI.

To demonstrate the actual indirect tax incidence on each product under investigation, the government of Spain provided a "structure of cost" analysis of each product. This identified inputs incorporated into each product, the percent each input comprised of the total cost of producing each product, and the indirect tax incidence burdening each input.

Based on the 1980 IGTE tax rate of 2.4 percent, the total indirect tax burden (including two final stage taxes) in 1980 on each product under investigation was 12.04 percent for hot-rolled stainless steel bars, 13.01 percent for cold-formed stainless steel bars and 11.11 percent for stainless wire rod. The DFE rate in 1980 did constitute an overrebate of indirect taxes because the DFE rebate for each product was 15.5 percent. However, in January, 1981, the government of Spain increased the IGTE rate by 58 percent to 3.8 percent; and in January, 1982 further increased the IGTE to 4.6 percent. As a result of these increases in the tax rate the indirect tax burden on each product exceeds the 15.5 percent DFE rate and the overrebate is eliminated. Therefore, we preliminarily determine that the current DFE rebate of 15.5 percent is loss than the indirect tax burden currently borne by each product and

thus, in these cases, the DFE is not a benefit which constitutes a subsidy.

III. Programs Preliminarily Determine Not To Be Utilized or Not Applicable

We have preliminarily determined that the following programs which were identified in the notice of "Initiation of Countervailing Duty Investigations" are not applicable to these investigations or are not utilized by the manufacturers, producers, or exporters in Spain of the products under investigation.

A. Certain Privileged Circuit Exporter Credits

Privileged Circuit Export Credits were discussed in general earlier in this notice. One program, working-capital loans, has been preliminarily determined to provide subsidies to manufacturers, producers, or exporters of the products under investigation. The three remaining privileged circuit programs identified in our notice of initiations were not utilized. They are:

(1) Commercial Services Loans

Exporters may obtain preferential loans to establish, expand or acquire commercial services in export markets or to maintain stocks for export. Commercial services loans may cover 60–65 percent of the real investment while stock maintenance loans may cover 30–35 percent of the average annual value of the stock.

(2) Short-Term Export Credit

Companies with firm orders for export can qualify for preferential short-term export credit. The loan amounts are limited to 80–90 percent of the total contract price of the exported goods.

(3) Prefinancing Exports

Companies that manufacture certain capital and consumer products can qualify for preferential short-term financing with firm orders for export of these items. The loan amounts are limited to 80–85 percent of the contract price of exported products.

B. Warehouse Construction Loans

Exporters desiring to construct warehouse facilities adjacent to loading zones may borrow 70–75 percent of the total investment. Respondents state they received no loans under this program.

C. Equity Infusion

Petitioners alleged that the government of Spain obtained 51 percent ownership in Olarra during the formation of Aceriales in 1980. Olarra states that it received no funds from Aceriales and that it has been a privately held company since at least 1980. The information provided in Aceriales' response to these investigations confirms the fact that Olarra received no funds from Aceriales in 1980 or 1981. We, therefore, preliminarily determine that this allegation concerning Olarra does not apply to these investigations.

D. Special Credits to Aceros de Llodio

Petitioners considered Aceros de Llodio a producer and exporter of the stainless steel products under investigation and included it in their allegations as the recipient of special credits from the government of Spain. However, the government did not identify this company as an exporter of the products under investigation.

Therefore, we have preliminarily determined that this allegation does not apply to the investigations concerning the stainless steel products described in this notice.

IV. Programs for Which Additional Information Is Needed

The programs listed below are also included in our investigations. At this time, we do not have sufficient information from petitioners or respondents to quantify or to determine whether these programs are providing manufacturers, producers, or exporters in Spain of the products under investigation benefits which constitute subsidies within the meaning of the countervailing duty law. We will seek additional information regarding these programs before reaching final determinations.

A. Export Credit Insurance

The Compania Espanola de Seguros de Credito a la Exportacion, S.A. ("CESCE"), 51 percent of which is owned by the government of Spain, provides export insurance to cover commercial, political, exchange rate fluctuations and inflation risks. We do not have sufficient information about CESCE to evaluate its operations. Therefore, we will seek this additional information before determining whether this program is providing benefits which constitute a subsidy within the countervailing duty law.

B. Research and Development (R&D) Incentives

Firms located in Spain may receive government grants covering up to 50 percent or more of the cost of R & D projects. At this time we have insufficient information from both the government of Spain and the companies upon which to determine whether this program is being used by the manufacturers, producers, or exporters in Spain of the products subject to these investigations and whether it provides benefits which constitute a subsidy within the meaning of the U.S. countervailing duty law. We will seek additional information regarding these programs before reaching final determinations.

C. Regional Investment Incentive Programs

The government of Spain, as well as regional and municipal authorities, provide a wide variety of investment incentive programs which vary according to the region of the country. They include reduction in taxes, reduced import duties on imported tools and equipment, cash grants, preferential access to official credit, and free or inexpensive land. At this time we have insufficient information from both the government of Spain and the companies upon which to determine whether programs of this nature are being used by manufacturers, producers, or exporters in Spain of the products subject to these investigations and whether they provide benefits which constitute a subsidy within the meaning of the U.S. countervailing duty law. We will seek additional information regarding these programs before reaching final determinations.

Verification

In accordance with section 776(a) of the Act, we will verify data used in making our final determinations.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of hot-rolled stainless steel bars, cold-formed stainless steel bars, and stainless steel wire rod which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or bond for each such entry of the merchandise in the amounts indicated below:

Manufacturer/producer/exporter	Ad valorem rate (percent)
Roidan, S.A.	2.45
Olarra, S.A.	0.00
S.A. Echevarria	6.61
All other producers, manufacturers, or exporters of the products under investigation	6.61

Where a company specifically listed above has not exported one of the products under investigation during the period for which we are measuring

subsidization, the cash deposit or bond amount for these products should be based on the rate for the investigated products that were exported by that company. If the manufacturer is unknown, the rate for all other manufacturers/producers/exporters shall be used.

This suspension will remain in effect until further notice.

ITC Notifications

In accordance with section 703(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on September 30, 1982, at the U.S. Department of Commerce, Conference Room D, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3073B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 23, 1982. Oral presentations will be limited to issues raised in the briefs.

All written views should be filed in accordance with 19 CFR 355.34, within thirty days of this notice's publication, at the above address and in at least ten copies.

Dated: August 23, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

Appendix A

For purpose of these investigations:

1. The term *"stainless steel wire rod"* covers a coiled, semi-finished, hot-rolled stainless steel product of solid cross section, approximately round in cross section, not under 0.20 inches nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured as currently provided for in item 607.26 of the *Tariff Schedules of the United States (TSUS)* or if tempered, treated, or partly manufactured as provided for in item 607.43 of the TSUS.

2. The term *"hot-rolled stainless steel bars"* covers hot-rolled stainless steel products of solid section having cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, not coated or plated with metal as currently provided for in item 606.9010 of the *Tariff Schedules of the United States Annotated.*

3. The term *"cold-formed stainless steel bars"* covers cold-formed stainless steel products of solid section having cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, not coated or plated with metal as currently provided for in item 606.9005 of the *Tariff Schedules of the United States Annotated.*

Stainless steel is an alloy steel which contains by weight less than 1 percent of carbon and over 11.5 percent of chromium. Iron must predominate by weight and the alloy is malleable as first cast. Alloy steel is defined as a steel which contains one or more of the following elements in the quantity, by weight, respectively indicated:

Over 1.65 percent of manganese, or
Over 0.25 percent of phosphorus, or
Over 0.35 percent of sulphur, or
Over 0.60 percent of silicon, or
Over 0.60 percent of copper, or
Over 0.30 percent of aluminum, or
Over 0.20 percent of chromium, or
Over 0.30 percent of cobalt, or
Over 0.35 percent of lead, or
Over 0.50 percent of nickel, or
Over 0.30 percent of tungsten, or
Over 0.10 percent of any other metallic element.

[FR Doc. 82-23763 Filed 8-30-82 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs; Availability of Evaluation Findings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the Maryland, Michigan, New Jersey, Oregon, and Wisconsin Coastal Zone Management Programs.

Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved coastal management program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and to their approved coastal management programs; and to be making satisfactory progress on grant tasks, special award conditions, and significant improvement tasks. Accomplishments were occurring with respect to the national coastal management objectives identified in Section 303(2)(A)–(I) of the Coastal Zone Management Act.

A copy of the findings made by the Acting Assistant Administrator for Coastal Zone Management for each of these states may be obtained on request from: Harriet Knight, Chief of Program Evaluation, Office of Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634–4245).

Dated: August 24, 1982.

William Matuszeski,

Acting Assistant Administrator for Coastal Zone Management.

[FR Doc. 82-23822 Filed 8-30-82: 8:45 am]

BILLING CODE 3510-08-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

George Kudravetz,

Acting Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

SN 6-247,713 (4,343,262) Laboratory Rat Feeder, Dept. of Health and Human Services.

SN 6-186,363 (4,343,215) Perforated Cylinder, Department of the Treasury.

SN 6-152,874 (4,343,189) Method and Apparatus for Edgewise Compression Testing of Flat Sheets, Department of Agriculture.

SN 6–246,971 (4,343,095) Pressure Dryer for Steam Seasoning Lumber, Department of Agriculture.
SN 6–180,542 (4,343,070) Removal of Lint from Cottonseed, Department of Agriculture.
SN 6–318,531 (4,342,777) Polybutylbenzylphenols and Benzyl-3, 4-Methylenedioxybenzenes in Insect Population Control, Department of Agriculture.
SN 6–254,318 A Catalytic Coating to Directly Generate Heat Upon the Surface of a Heat Dome, Department of the Interior.
SN 6–380,471 Vibration Dosimeter, Department of Health and Human Services.
SN 6–366,165 Isolation of Hepatitis a Virus Strain HM–175, National Institutes of Health.
SN 6–386,991 Inactivation of a Lipid Virus, National Institutes of Health.

[FR Doc. 82–23866 Filed 8–30–82; 8:45 am]
BILLING CODE 3510–04–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Project on Guadalupe River in the City of San Jose, County of Santa Clara, California

AGENCY: San Francisco District, Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed action.* The tentatively selected plan for Guadalupe River and adjacent streams involves the widening of the existing channel between State Highway 17 and Park Avenue in the City of San Jose, Santa Clara County, California. The widening of the channel would increase the channel capacity of the river so that the 100-year flood and all lesser floods would be contained within the channel to prevent future flooding in downtown San Jose from 100-year and lesser floods. Implementation of the tentatively selected plan involves the following actions: (1) Acquisition of approximately 60 acres of land for flood control purposes; (2) Removal of a number of structures located within the project right-of-way; (3) Displacement of a number of people inhabiting structures located within the right-of-way; (4) Channelization of approximately 2 miles in the form of excavation of one side (or in selected areas both sides) of the channel; (5) Placement of riprap for slope protection in selected areas of high velocity; and (6) Construction of approximately 1,000 linear feet of covered concrete box culvert to serve as a bypass channel for a portion of the project.

2. *Alternatives.* In addition to the tentatively selected plan, the following alternatives will be studied in detail in the Draft EIS:

a. The No Action Plan. It is assumed that in the absence of a Federal flood control project, no project would be implemented by local interests. It is, therefore, assumed that under the no action plan, flooding would continue to occur in downtown San Jose with the same frequency and magnitude as in the past.

b. The Non-Structural Plan. A non-structural plan has been investigated as an alternative to the tentatively selected plan. The non-structural plan consists of a combination of flood warning and rearrangement and/or protection of damageable property within structures on the flood plain.

3. *Coordination.* At all stages of this study, the Corps of Engineers has invited public participation and it has engaged in active coordination of its efforts with other concerned agencies. The coordination effort began in 1972 with the first public meeting. Another public meeting was held in 1976 when the alternatives developed were presented to the public. A public meeting is scheduled for October 1982. In addition to the formal public meetings, eight neighborhood workshops have been held where affected residents were invited to participate in the planning process. Following the 1972 public meeting, a Citizen's Advisory Committee was formed. This committee has operated since and its work has resulted in proposals and recommendations that have aided the Corps in its planning effort. An Environmental Working Paper, in which a large array of alternatives were presented, was circulated by the Corps of Engineers to concerned agencies and interested members of the public in January 1975. Comments generated by this Environmental Working Paper were very useful in the formulation of the plans to be presented in this Draft Environmental Impact Statement. Coordination and review of Corps' study efforts by other agencies have taken place at several points during the course of the study. Agencies and local jurisdictions involved in this coordination include the following: (1) Santa Clara Valley Flood Control and Water Management District, (2) Various departments of the City of San Jose, (3) California Department of Fish and Game, (4) California Department of Transportation (Caltrans), (5) State Historic Preservation Officer, (6) U.S. Fish and Wildlife Service, (7) U.S. Environmental Protection Agency, (8) Federal Highway Administration, and (9) Advisory Council on Historic Preservation.

4. *Scoping Process.* To allow for the identification of significant issues and to facilitate communication between concerned agencies and interested parties, the San Francisco District, Corps of Engineers, has been and its coordinating the Environmental Impact Statement and the planning process with the U.S. Fish and Wildlife Service, the Federal Highway Administration, California Department of Fish and Game, the State Historic Preservation Officer, Santa Clara Valley Flood Control and Water Management District, and various departments of the City of San Jose. The Corps of Engineers formally requested comments from these agencies and from concerned environmental organizations in the Environmental Working Paper.

Because coordination with concerned agencies and organizations is already in progress, and because the significant resources in the study area have already been identified, a scoping meeting as described in the CEQ Final Regulations dated 29 November 1978 is not planned. At the public meeting sheduled for October 1982, when the Corps' plans will be presented to the public, the public will be solicited for comments regarding identified significant issues.

5. *Significant Issues.* The significant issues identified during the planning process, including input from concerned agencies and the public will be analyzed in depth in the Draft EIS. The following environmental resources and components have been identified as significant: (1) the riparian habitat, wildlife resources, water quality, aesthetics, cultural resources, erosion/sedimentation, and displacement of people.

6. *Consultation.* Consultation is being performed under the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1532 *et seq.*)

7. It is estimated that the Draft EIS will be circulated to concerned agencies and the public for review and comments in January 1983.

8. Questions about the proposed action and the DEIS can be answered by Arijs Rakstins, Project Management Branch, San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California 94105.

Dated: August 20, 1982.

Edward M. Lee, Jr.,

LTC(P), CE District Engineer.

[FR Doc. 82-23817 Filed 8-30-82; 8:45 am]

BILLING CODE 3710-FS-M

Intent To Prepare a Draft Environmental Impact Statement; Proposed Flood Control Project, Mahwah, N.J. and Suffern, N.Y.

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: 1. Description of Proposed Action—The primary purpose of this project is to provide flood protection to the Town of Mahwah, NJ and Village of Suffern, NY during periods of high water from the Ramapo and Mahwah Rivers. Various structural and/or nonstructural measures are under consideration.

2. Reasonable Alternatives—Reasonable alternatives under consideration include: Channel modifications, floodwalls without channel modifications, levee and floodwall plans, combination channel, levees and floodwall plans, nonstructural methods such as floodproofing and raising of structures, and a "no action" alternative. Other plans considered but found to be infeasible include upstream detention and tunnel diversions.

3. Scoping Process.

a. Public involvement has been continuous since the beginning of the detailed investigation of the potential project area. Public coordination activities in the project area include workshops on plan formulation, subbasin coordination meetings, meetings with environmental representatives and meetings with Mahwah and Suffern town officials. In addition, environmental interests were called by phone and invited to participate in the formulation of plans by alerting the study group to areas of special environmental concern. Local interests were interviewed for the cultural reconnaissance. Other public meetings and coordination are planned.

b. Significant Issues Requiring In-depth Analysis—Possible loss of: wetland areas; aquatic habitats within trout stocked waters; aesthetics; and some elements of the Hopper Grist Mill, nominated to the National Register of Historic Places.

c. Assignments—Cultural resources reconnaissance was conducted.

Impact assessment used U.S. Fish and Wildlife Service (USFWS) Planning Aid Reports.

d. Environmental review and consultation—USFWS reviewed plans, for which they submitted Planning Aid Reports. New Jersey Department of Environmental Protection Division of Fish, Game and Shellfisheries conducted an aquatic survey and reviewed the plans in consultation with USFWS. Literature, herbaria and field searches were conducted for federal rare, threatened and endangered plant and animal species under the auspices of the FWS.

The cultural reconnaissance was reviewed by the State Historic Preservation Officer and the State Archaeologist.

4. Scoping Meeting will ☐ [1] will not ☐ be held.

5. Estimate date of statement availability March 1983

ADDRESS: U.S. Army Engineer District, New York, 26 Federal Plaza, New York, NY 10278.

Project Manager, Sheila Rice, ATTN: NANPL-P, Tel. No. 212/264-3579

EIS Coordinator, M. Lou Benard, ATTN: NANPL-P, Tel. No. 212/264-3615

U.S. Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10278

Dated: August 17, 1982.

Samuel P. Tosi,

Acting Chief, Planning Division.

[FR Doc. 82-23811 Filed 8-30-82; 8:45 am]

BILLING CODE 3710-06-M

Office of the Secretary

DOD Inventory of Commercial Activity for Fiscal Year 1981

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice announces the publication of the DoD Commercial Activities Inventory Report and Five Year Review Schedule for Fiscal Year 1981. This document may be obtained by writing to the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402, referring to stock number 008-007-03249-6, and enclosing a check in the amount of $13.00, payable to the Superintendent of Documents.

SUPPLEMENTARY INFORMATION: This document is published under the provisions of OMB Circular A-76, which requires the Department of Defense to publish an annual inventory report of all commercial activities, both in-house and contract support services. The OMB also requires that the Department of Defense publish a five year schedule for reviewing all in-house and contract commercial activities. The purpose of the review is to determine whether the contract method of operation should continue or whether an in-house versus contract cost comparison should be performed to determine the most cost effective method of operation.

M. S. Healy,

OSD Federal Register Liaison Officer, Directives Division.

August 25, 1982.

[FR Doc. 82-23808 Filed 8-30-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

The DoD Advisory Group on Electron Devices (AGED) will meet in closed session on October 13, 1982, at the Palisades Institute for Research Services, Inc., 1925 North Lynn Street, Arlington, Virginia 22209.

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 AGED 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. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. 1 section 10(d) (1976)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(b)(c) 1976) and that accordingly this meeting will be closed to the public.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

August 26, 1982.

[FR Doc. 82-23851 Filed 8-30-82; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

Working Group D (Mainly Laser Devices) of the DoD Advisory Group on

[1] Date Sept. 22, 1982 Time 7:30 p.m. Location Village Hall Auditorium 60 Washington Avenue, Suffern, NY 10901

Electronic Devices (AGED) will meet in closed session September 14–15, 1982, at the Palisades Institute for Research Services, 1925 North Lynn Street, Arlington, Virginia 22209.

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 D 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 laser area includes programs on developments and research related to low energy lasers for such applications as battlefield surveillance, target designation, ranging, communications, weapon guidance and data transmission. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. 1, section 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 Federal Register Liaison Officer, Department of Defense.

August 26, 1982.

[FR Doc. 82–23852 Filed 8–30–82; 8:45 am]

BILLING CODE 3810–01–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 115. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 115 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: August 24, 1982.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel per Diem Bulletin Number 115

To the Heads of Executive Departments and Establishments

Subject: Table of Maximum Per Diem Rates in lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense August 17, 1966, "Executive Order 11294, August 4, 1966 Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status," in which this Committee is directed to exerise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 114 except in the case identified by asterisk which rates are effective on the date of this Bulletin.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	89.00
Barrow	169.00
Bethel	114.00
College	97.00
Cordova	109.00
Deadhorse	142.00
Dillingham	103.00
Dutch Harbor	82.00
Eielson AFB	97.00
Elmendorf	89.00
Fairbanks	97.00
Ft. Richardson	89.00
Ft. Wainwright	97.00
Juneau	97.00
Ketchikan	96.00
Kodiak	103.00
Kotzebue	109.00
Murphy Dome	97.00
Noatak	109.00
Nome	110.00
Noorvik	109.00
Petersburg	96.00
Point Hope	100.00
Prudhoe Bay	142.00
Shemya AFB [1]	11.00
Shungnak	109.00
Sitka-Mt. Edgecombe	96.00
Skagway	96.00
Spruce Cape	103.00
Tanana	110.00
Valdez	93.00
Wainwright	79.00
Wrangell	96.00
All Other Localities	83.00
American Samoa	65.00
Guam, M.I.	74.00
Hawaii:	
Oahu	91.00
All Other Localities	67.00
Johnston Atoll [2]	19.10
Midway Islands [1]	12.60
Puerto Rico:	
Bayamon:	
12–16—5–15	119.00
5–16—12–15	88.00
Carolina:	
12–16—5–15	119.00
5–16—12–15	88.00
Fajardo (Including Luquillo):	
12–16—5–15	119.00
5–16—12–15	88.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12–16—5–15	119.00
5–16—12–15	88.00
Ponce (Incl. Ft. Allen NCS)	70.00
Roosevelt Roads:	
12–16—5–15	119.00
5–16—12–15	88.00
Sabana Seca:	
12–16—5–15	119.00
5–16—12–15	88.00
San Juan (Incl. San Juan Coast Guard Units):	
12–16—5–15	119.00
5–16—12–15	88.00
All Other Localities	77.00
*Virgin Islands of U.S.:	
12–1—4–30	113.00
5–1—11–30	88.00
Wake Island [2]	15.00
All Other Localities	20.00

[1] Commercial facilities are not available. The $12.60 per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. When Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

August 26, 1982.

[FR Doc. 82–23849 Filed 8–30–82; 8:45 am]

BILLING CODE 3810–01–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 114. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 114 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: August 19, 1982.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 114

To the Heads of Executive Departments and Establishments

Subject: Table of Maximum Per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense August 17, 1966, "Executive Order 11294, August 4, 1966 Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status," in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 113 except in the case identified by asterisk which rate is effective on the date of this Bulletin.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
*Adak [1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	89.00
Barrow	169.00
Bethel	114.00
College	97.00
Cordova	109.00
Deadhorse	142.00
Dillingham	103.00
Dutch Harbor	62.00
Eielson AFB	97.00
Elmendorf	89.00
Fairbanks	97.00
Fort Richardson	89.00
Fort Wainwright	97.00
Juneau	97.00
Ketchikan	96.00
Kodiak	103.00
Kotzebue	109.00
Murphy Dome	97.00
Noatak	109.00
Nome	110.00
Noorvik	109.00
Petersburg	96.00
Point Hope	100.00
Prudhoe Bay	142.00
Shemya AFB [1]	11.00
Shungnak	109.00
Sitka-Mount Edgecombe	96.00
Skagway	96.00
Spruce Cape	103.00
Tanana	110.00
Valdez	93.00
Wainwright	79.00
Wrangell	96.00
All other localities	83.00
American Samoa	65.00
Guam, M.I	74.00
Hawaii:	
Oahu	91.00
All other localities	67.00
Johnston Atoll [2]	19.10
Midway Islands [1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	119.00
5-16—12-15	88.00
Carolina:	
12-16—5-15	119.00
5-16—12-15	88.00
Fajardo (including Luquillo):	
12-16—5-15	119.00
5-16—12-15	88.00
Fort Buchanan (including GSA Service Center, Guaynabo):	
12-16—5-15	119.00
5-16—12-15	88.00
Ponce (including Fort Allen NCS)	70.00
Roosevelt Roads:	
12-16—5-15	119.00
5-16—12-15	88.00
Sabana Seca:	
12-16—5-15	119.00
5-16—12-15	88.00
San Juan (including San Juan Coast Guard units):	
12-16—5-15	119.00
5-16—12-15	88.00
All other localities	77.00
Virgin Islands of United States:	
12-1—4-30	102.00
5-1—11-30	82.00
Wake Island [2]	15.00
All other localities	20.00

[1] Commercial facilities are not available. The $12.60 per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska—when Government quarters are not utilized, and quarters are obtained at the Simone Construction, Inc. camp, a daily travel per diem allowance of $71.50 is prescribed to cover the cost of lodging, meals and incidental expenses at this facility.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

August 26, 1982.

[FR Doc. 82-23850 Filed 8-30-82; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Discretionary Grant Programs; Application Notice Establishing Closing Dates for Transmittal of Certain Fiscal Year 1983 Applications

AGENCY: Department of Education.

ACTION: Application notice establishing closing dates for transmittal of certain Fiscal Year 1983 applications.

SUMMARY: The purpose of these application notices is to inform potential applicants of fiscal and programmatic information and closing dates for transmittal of applications for awards under certain programs administered by the Department of Education.

Organization of Notice

This notice contains two parts. Part I includes, in chronological order, the list of all closing dates covered by this notice. Part II consists of the individual application announcements for each program. These announcements are in the same order as the closing dates listed in Part I.

The budget estimates in the individual application notices are based on the President's budget request for Fiscal Year 1983 and are subject to enactment by the Congress.

Instructions for Transmittal of Applications

Applicants should note specifically the instructions for the transmittal of applications included below:

Transmittal of applications: Applications for new projects must be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

To be assured of consideration for funding, applications for noncompeting continuation awards should be mailed or hand delivered on or before the closing date given in the individual program announcements included in this document.

If an application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications delivered by mail: Applications must be addressed to the Department of Education Application Control Center, *Attention:* (insert appropriate CFDA Number), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant for a new project will be notified that its application will not be considered.

Applications delivered by hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing day.

PART I.—PROGRAMS LISTED IN CHRONOLOGICAL ORDER

CFDA	Program	Closing date
84.024	Handicapped Children's Early Education Program—Noncompeting Continuations.	Oct. 14, 1982.
84.036	Library Career Training Program—New Projects.	Nov. 1, 1982.
84.015	National Resource Centers Program and Foreign Language and Area Studies Fellowship Program—New Projects.	Do.
84.003F	Bilingual Education: Fellowships Program—New Projects.	Nov. 12, 1982.

PART I.—PROGRAMS LISTED IN CHRONOLOGICAL ORDER—Continued

CFDA	Program	Closing date
84.091	Strengthening Research Library Resources Program—New Projects.	Nov. 15, 1982.
84.116D	Fund for the Improvement of Postsecondary Education—Comprehensive Program Final Year Dissemination, New Projects.	Jan. 11, 1983.
84.116C	Fund for the Improvement of Postsecondary Education—Comprehensive Program, Noncompeting Continuations.	Jan. 18, 1983.
84.003F	Bilingual Education: Fellowship Program—Noncompeting Continuations.	Feb. 4, 1983.
84.078	Regional Education Programs for Handicapped Persons—Noncompeting Continuations.	Mar. 18, 1983.
84.023C	Field Initiated Research—Noncompeting Continuations.	Apr. 1, 1983.

- 84.024—Handicapped Children's Early Education Program

Closing Date: October 14, 1982—Noncompeting Continuations.

Authority for this program is contained in Section 623 of the Education of the Handicapped Act.

(20 U.S.C. 1423).

Awards are made under this program to public and private nonprofit agencies and institutions.

The purpose of this program is to support experimental demonstration activities which can provide innovative and effective means of serving preschool handicapped children and their families and to develop models which others can use.

Available funds: The total amount of funds awarded under this grant program for Fiscal Year 1982 was $7,000,000. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that $3,480,000 will be available for Fiscal Year 1983. An estimated 29 continuation demonstration projects will be awarded with the average grant totalling $120,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting demonstration grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Children's Early Education Program (34 CFR Part 309), and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

Further information: Jane DeWeerd, Handicapped Children's Early Education Program, Special Education Programs, Department of Education, 400 Maryland Avenue, S.W., Room 3113, Donohoe Building, Washington, D.C. 20202. Telephone: (202) 245-9722.

- 84.036—Library Career Training Program

Closing date: November 1, 1982—New Projects.

Applications are invited for new projects under the Library Career Training Program.

Authority for this program is contained in Sections 201 and 222 of the Higher Education Act of 1965 as amended by the Education Amendments of 1980.

(20 U.S.C. 1021 *et seq.*)

The Secretary may award a grant to an institution of higher education or library agency or organization. The purpose of these grants is to assist in training persons in librarianship.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by November 1, 1982.

Program information: Evaluation criteria and eligibility requirements for the Library Career Training program appear in the Code of Federal Regulations in 34 CFR Part 776. The Fiscal Year 1983 grant program will be governed by the provisions of the final regulations published on March 5, 1982, in the **Federal Register.** (47 FR 9786)

Applications for grants will be evaluated independently according to academic levels. The Secretary anticipates making grants for fellowship projects only, if funds are appropriated for Fiscal Year 1983. The Secretary will not consider applications for institute or traineeship projects.

Available funds: For fiscal year 1983 the Department of Education has not requested funds for the Library Career Training program. However, applications are invited for fellowship projects to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year, if funds are appropriated for the program. At the present time there are

no multi-year projects under this program.

In Fiscal Year 1982, 33 grants were awarded totaling $639,050 which provided fellowships to 74 individuals. In Fiscal Year 1982, approximately $448,000 was awarded for fellowships at the master's level, $156,000 at the Doctoral level, $24,000 at the post-Master's level, and $11,000 at the Associate level. If funds are appropriated for the program in Fiscal Year 1983, the Secretary would reserve funds for fellowships at the Master's, Doctoral, post-Master's, and Associate levels.

The U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by September 15, 1982. They may be obtained by writing to the Library Education, Research and Resources Branch, Attn: II–B, U.S. Department of Education (Room 3319–A, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Library Career Training Program (34 CFR Part 776).

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: For further information, contact, Mr. Frank A. Stevens, or Ms. Yvonne Carter, Library Education, Research and Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3319–A, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–9530.

(U.S.C. 1021, *et seq.*)

- 84.015—National Resource Centers Program and Foreign Language and Area Studies Fellowships Program

Closing date: November 1, 1982—New Projects.

Applications are invited for new projects under the National Resource Centers Program and Fellowships Program.

Authority for these programs is contained in Section 602 of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1122)

These programs issue awards to institutions of higher education.

The purpose of the awards under the National Resource Centers Program is to provide general assistance for nationally recognized centers of excellence in modern foreign languages and area studies and in modern foreign languages and international studies. The purpose of the Foreign Language and Area Studies Fellowships Program is to provide incentive awards to meritorious students undergoing advanced training in modern foreign languages and related area studies. The fellowships are awarded through approved institutions of higher education with nationally recognized programs of excellence.

Closing date for transmittal of applications: An application for a grant must be mailed or hand-delivered by November 1, 1982.

Program information: The eligibility requirements for National Resource Centers are set forth in § 656.2 of the program regulations while the selection criteria are set forth in § 656.31 of the regulations (34 CFR 656.2 and 656.31). The institutional eligibility requirements for fellowships are set forth in § 657.31. (34 CFR 657.2(a) and 657.31) These regulations were published in the **Federal Register** on April 1, 1982 at 47 FR 14118–14122.

Priorities for national resource centers: The regulations governing this program permit the establishment of priorities for National Resource Centers. Under § 656.31(m), institutions which address the priority may receive up to 10 additional points in the evaluation process. Two priorities have been established. They are:

(1) Priority will be accorded programs which demonstrate evidence of improved linkages between language and area studies and professional schools, such as business, education, law, and journalism; and

(2) Priority will continue to be given to the training of specialists in the less commonly taught languages and cultures of non-Western countries.

Priorities for foreign language and area studies fellowships: The regulations governing this program allow the establishment of priorities for languages and disciplines as well as the assignment of a lower priority for certain languages, levels of instruction, and categories of applicant. (34 CFR 657.31(n))

Priorities are hereby established for fellowships as follows:

(1) Priority will be given to those programs willing to allocate fellowships to candidates combining professional studies such as business, law and journalism with foreign language and area studies.

(2) Priority will continue to be given to students of less commonly taught languages and cultures of non-Western countries.

(3) Priority will be given to applicants that, in the selection of fellows, assign lowest consideration to candidates:

(i) who are studying French, Iberian Spanish, German, or Italian, (instruction in these languages is widely available and the need is therefore less);

(ii) who already possess fluency equivalent to native speakers in the language for which the award is sought, (the program seeks to increase the number of Americans trained in foreign languages);

(iii) who are taking the first 18 semester hours (27 quarter hours) or their equivalent in Latin American Spanish, and Russian language instruction (basic instruction in these languages is comparatively well established and there is a greater need to encourage study of these languages at the more advanced levels); and

(iv) who are taking the first 12 semester hours (18 quarter hours) in Chinese and Japanese language instruction, (basic instruction in these languages is comparatively well established and there is a greater need to encourage the study of these languages at the more advanced levels).

With regard to the establishment of priorities for languages and disciplines, available information of the need for trained specialists in modern foreign languages and area studies suggests that the supply of specialists in such languages and disciplines as Latin American Anthropology, East Asian History, and East European and Russian Language and Literature may be exceeding the demand, while the demand may be exceeding the supply in such areas as East European and Soviet Economics, Middle East Anthropology and Sociology and African Humanities. However, definitive data on this subject are not yet available. Therefore, for this cycle we have not formally established disciplinary priorities.

Applicants are reminded that their applications are reviewed for relevance to employment possibilities (§ 657.31(L)) and are advised to provide information concerning the placement of graduates at the master and doctoral levels for the past three years.

Available funds: It is anticipated that approximately $5,746,000 will be

available for the Centers Program in FY 1983. These funds could support approximately 50 awards to centers at an average level of approximately $115,000. It is anticipated that up to 10 to 15 percent of the awards will be used for undergraduate centers and up to 10 to 15 percent of the awards will be used for centers in comparative area studies, or for international affairs or topic-oriented centers. The remaining funds will help insure the maintenance of a minimal national capability in modern foreign languages and area studies for every major region of the world.

It is expected that $2,805,000 will be available for the Fellowship Program. Approximately 330 awards will be made in FY 1983. Stipend levels will be $4,000 for an academic year fellowship and $1,000 for a summer intensive language fellowship.

Applications for fellowships will be considered for all world areas and the general international category. Institutions may apply for allocations for the academic year or summer or both.

These estimates do not bind the U.S. Department of Education except as may be required by the applicable statute and regulations.

Funding commitments will be for two years, with second year funding dependent on performance and availability of funds.

Application forms: Application forms and program information packages may be obtained by writing to the Division of Advanced Training and Research, International Education Programs, U.S. Department of Education, Room 3923–3308, 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that the narrative portion of the application not exceed 60 pages in length and that the appendices be limited to course lists and vitae of faculty and professional staff.

Applicable regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the National Resource Centers Program (34 CFR Parts 655 and 656) that were published in the Federal Register on April 1, 1982 at 47 FR 14116–14119.

(b) Regulations governing the Foreign Language and Area Studies Fellowships (34 CFR Parts 655 and 657) that were published in the Federal Register on April 1, 1982 at 47 FR 14116 and 14122.

(c) Regulations governing both programs: Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78.

Further information: For further information contact Joseph F. Belmonte, Centers and Fellowships Branch, International Education Programs, U.S. Department of Education (Room 3923, ROB–3), 400 Maryland Avenue S.W., Washington, D.C. 20202. Telephone: (202) 245–2356.

(20 U.S.C. 1122)

- 84.003F—Bilingual Education: Fellowship Program

Closing date: November 12, 1982—New Projects.

Applications are invited for participation in the Fellowship Program under the Bilingual Education Act.

Authority for this program is contained in Section 723 of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95–561).

(20 U.S.C. 3233)

The Secretary approves for participation in the Fellowship Program an institution of higher education that offers a program of study leading to a degree above the master's level in the field of training teachers for bilingual education. The Secretary awards fellowships to individuals nominated by the approved institutions of higher education.

The purpose of the fellowships is to provide financial assistance to full-time graduate students who are preparing to become trainers of teachers for bilingual education.

Closing date for transmittal of applications: An application for participation must be mailed or hand delivered by November 12, 1982.

Program information: An institution of higher education may be approved for participation in the Fellowship Program for a period of from one to five years based on the quality of its bilingual education training program. The Secretary notifies an approved institution of higher education of the numbers of students by language(s) that it may nominate for fellowship support. The Secretary approves all renominations of recipients who maintain satisfactory progress in a post-master's program of study before approving nominations of new students. The maximum award for a student in a doctoral program of study is three years. Otherwise, the maximum award for a student in a post-master's program of study is two years.

An individual interested in receiving a fellowship must apply directly to approved institutions of higher education. Fellowships are awarded for only one year at a time. A new application must be filed each year at the institution in which the individual wishes to enroll. A list of participating institutions may be obtained by calling or writing the Office of Bilingual Education and Minority Languages Affairs contact person.

In accordance with the program regulations, individuals who are selected will be required to sign a contract by which they will agree either to work for an equivalent period of time in an activity related to training bilingual education personnel or to repay the assistance received. Additional information on the service requirement is contained in program regulations.

Available funds: It is expected that approximately $1,350,000 will be available for fellowships at newly approved institutions under the Fellowship Program in Fiscal Year 1983.

It is estimated that these funds could support 150 fellowships.

However, these estimates do not bind the Department of Education to a specific number of fellowships unless that number is otherwise specified by statute or regulations.

Application forms: Application packages are expected to be ready for mailing on September 10, 1982. They will be mailed to individuals on the mailing list for the Bilingual Education Act programs. A copy of the application package may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, (Room 420, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms, included in the program information package. The Secretary strongly urges that the narrative portion of the application not exceed 40 pages in length. The Secretary further urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(1) The regulations governing the Fellowship Program, 34 CFR Parts 500 and 515.

(2) The regulations contained in 34 CFR 75.51 and 77.1–77.2 of the Education Department General Administrative Regulations (EDGAR).

For further information: For further information contact Fellowship Program Manager, Office of Bilingual Education and Minority Languages Affairs, U.S.

Department of Education (Room 421, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. 20202, Telephone (202) 245-2595.

(20 U.S.C. 3233)

- 84.091—Strengthening Research Library Resources Program

Closing date: November 15, 1982.

Applications are invited for new projects under the Strengthening Research Library Resources Program.

Authority for this Education is contained in Sections 201, 231, and 232 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980.

(20 U.S.C. 1021 *et seq.*)

The Secretary may award a grant to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, or a State or other public library.

The purpose of the awards is to promote research and education of high quality throughout the United States by providing financial assistance that helps the Nation's major research libraries maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered by November 15, 1982.

Program information: Evaluation criteria and eligibility requirements for the Strengthening Research Library Resources program appear in the Code of Federal Regulations in 34 CFR Part 778. The Fiscal Year 1983 grant program will be governed by the provisions of the final regulations published on August 13, 1982, in the **Federal Register** (47 FR 35455). Applicants should give special attention to the revised evaluation criteria described in 34 CFR 778.31 and 778.32.

Available funds: For Fiscal Year 1983, the Department of Education has not requested funds for the Strengthening Research Library Resources program. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program. At the present time there are no multi-year projects under this program.

In Fiscal Year 1982 grant funds were awarded to 40 major research libraries either directly or through joint applications. With a Fiscal Year 1982 appropriation of $5,760,000, each institution received an average of $144,000. However, the U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by September 15, 1982. They may be obtained by writing to the Library Education, Research and Resources Branch, Attn: II-C, U.S. Department of Education (Room 3319-A, ROB-3), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Strengthening Research Library Resources Program (34 CFR Part 778).

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: For further information, contact Mr. Frank A. Stevens or Ms. Louise Sutherland, Library Education, Research and Resources Branch, Division of Library Programs, Office of Libraries and Learning Technologies, U.S. Department of Education (Room 3319-A, ROB-3), 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone (202) 245-9530.

(20 U.S.C. 1021, *et seq.*)

- 84.116D—Fund for the improvement of postsecondary education

Closing date: January 11, 1983—New Projects.

Applications are invited for new awards under the Comprehensive Program Final Year Dissemination Competition conducted by the Fund for the Improvement of Postsecondary Education.

Authority for this program is contained in section 1001 of Title C of the Higher Education Act, as amended. This program issues awards to institutions of postsecondary education and other public and private educational institutions and agencies. The purpose of the awards is to improve postsecondary education by supporting efforts by current grantees to disseminate project ideas and results.

(20 U.S.C. 1135)

Closing date for transmittal of applications: Applications for awards must be mailed or hand delivered by January 11, 1983.

Program information.—Type of Competition: In Final Year Dissemination Competitions, the Secretary supports efforts by grantees of the Fund to disseminate project ideas and results. Applications in these competitions are limited to grantees of the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this competition within one year following termination of its project.

Selection Criteria: The Secretary evaluates an application on the basis of the following criteria:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would:

(1) Address the purposes of the Final Year Dissemination Competition;

(2) Address an important problem or need;

(3) Represent an improvement upon, or important departure from, existing practice;

(4) Involve learner-centered improvements; achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which:

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by the quality of the dissemination project design;

(3) The applicant is capable of carrying out the proposed project, as evidence by the adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(4) The extent to which the applicant is capable of carrying out the proposed dissemination project as evidenced by the applicant's qualifications and relevant prior experience; and

(5) The applicant and any other participating organizations are committed to the success of the dissemination project, as evidence by contributions of resources and prior work in the area.

(c) *Appropriateness of the Fund's support.* The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the

availability of other funding sources for the proposed dissemination activities.

(20 U.S.C. 1135)

The selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (b)(3), (b)(4), and (c) are of equal importance. In applying the criteria, the Secretary first analyzes an application in terms of the individual criteria. The Secretary then bases the final judgment of an application on an overall assessment of the extent to which the application satisfactorily addresses the selection criteria.

Other Information to be requested from Applicants: The Secretary will contact Applicants by telephone during the final stages of the selection process when it is necessary to clarify or verify information relevant to their application.

Available funds: Approximately $100,000 is estimated to be available for new awards in Fiscal Year 1983. It is estimated that these funds could support approximately 15 new awards. The estimated maximum amount of new awards will be $8,000 for a 12-month period.

However, these estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Application forms: Application forms included in program information packages will be sent directly to all Comprehensive Program grantees in their final year of funding and those single-year grantees whose grants have terminated within the past year.

The program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulation governing the competition.

Applicable regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78, with the exceptions noted in 34 CFR 630.4(b).

(2) Regulations governing the Fund for the Improvement of Postsecondary Education (34 CFR Part 630) that were published in the **Federal Register** on April 9, 1982. (47 FR 15552–15555).

Further information: For further information, contact the U.S. Department of Education, Fund for the Improvement of Post-secondary Education, 400 Maryland Avenue, S.W., (Room 3100 ROB–3) Washington, D.C. 20202. Telephone: (202) 245–8100.

(20 U.S.C. 1135)

- 84.116C—Fund for the Improvement of Postsecondary Education

Closing date: January 18, 1983—Noncompeting Continuations.

Applications are invited for noncompeting continuation awards under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education.

The Secretary issues awards to institutions of postsecondary education and other public and private educational institutions and agencies for the purpose of improving postsecondary education.

Authority for this program is contained in Title X of the Higher Education Act, as amended.

(20 U.S.C. 1135)

Closing date for transmittal of applications: Applications for awards should be mailed (postmarked) or hand delivered by January 18, 1983.

If the application is late, the Department of Education may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Program information: Program information will be mailed to eligible applicants. Institutions currently receiving funds and who satisfy the requirements of 34 CFR 75.118 concerning the continuation of multi-year projects are eligible for continuation awards.

Available funds: It is estimated that approximately $6,000,000 will be available for continuation awards in Fiscal Year 1983. It is estimated that these funds could support approximately 107 continuation awards. The estimated size of the continuation awards is between $5,000 and $250,000 for a 12-month period. In past years, awards have averaged $70,000 for a 12-month period.

However, these estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms included in program information packages will be sent directly to all potential applicants that are eligible for a continuation award.

The program information package is intended to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those specifically imposed under the statute and regulations governing the competition.

Applicable regulations: The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78, with the exceptions noted in 34 CFR 630.4(b).

(2) Regulations governing the Fund for the Improvement of Postsecondary Education 34 CFR Part 630 that were published in the **Federal Register** on April 9, 1982 (47 FR 15552–15555).

Further information: For further information, contact the U.S. Department of Education Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW., (Room 3100, ROB–3), Washington, D.C. 20202. Telephone: (202)245–8091.

(20 U.S.C. 1135)

- 84.003F—Bilingual Education: Fellowship Program

Closing date: February 4, 1983—Noncompeting Continuations.

Applications are invited for continuing participation in the Fellowship Program under the Bilingual Education Act.

Authority for this program is contained in Section 723 of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 95–561.

(20 U.S.C. 3233)

Eligible applicants are institutions of higher education with programs of study that have been previously approved by the Secretary for a period in excess of one year. The Secretary awards fellowships to individuals nominated by the approved institutions of higher education.

The purpose of this program is to provide continued financial assistance to full-time graduate students who are preparing to become trainers of teachers for bilingual education.

Closing date for transmittal of applications: To be assured of consideration for participation, an application should be mailed or hand delivered by February 4, 1983.

Program information: Each institution applying for continuing participation in the Fellowship Program is asked to submit with its application a ranked list of nominees and alternates for

fellowships. The applicant should develop a ranked list of nominees and alternates for each approved language, using the nomination form included in the program information package.

The Secretary will make final selections from these lists. The Secretary approves all renominations of recipients who maintain satisfactory progress in a post-master's program of study before approving nominations of new students. The maximum award for a student in a doctoral program of study is three years. Otherwise, the maximum award for a student in a post-master's program of study is two years. A nominee who is not initially selected as a recipient may be designated as an alternate and may subsequently be selected if a vacancy becomes available.

An individual interested in receiving a fellowship must apply directly to an approved institution of higher education. A fellowship is awarded for only one year at a time. A new application must be filed each year at the institution in which the individual wishes to enroll. A list of participating institutions may be obtained by calling or writing the Office of Bilingual Education and Minority Languages Affairs contact person.

In accordance with the program regulations, individuals who are selected will be required to sign a contract by which they will agree either to work for an equivalent period of time in an activity related to training bilingual education personnel or to repay the assistance received. Additional information on the service requirement is contained in the program regulations.

Available funds: It is expected that approximately $2,350,000 will be available for fellowships at continuation institutions under the Fellowship Program in Fiscal Year 1983.

It is estimated that these funds could support 260 fellowships.

However, these estimates do not bind the Department of Education to a specific number of fellowships unless that number is otherwise specified by statute or regulations.

Application forms: Application packages are expected to be ready for mailing on December 3, 1982. They will be mailed to each institution of higher education with programs of study that have been approved for a period in excess of one year. A copy of the application package may be obtained by writing to the Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package.

Applicable regulations: Regulations applicable to this program include the following:

(1) The regulations governing the Fellowship Program, 34 CFR Parts 500 and 515.

(2) The regulations contained in 34 CFR 75.51 and 77.1–77.2 of the Education Department General Administrative Regulations (EDGAR).

Further information: For further information contact Fellowship Program Manager, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education (Room 421, Reporters Building), 400 Maryland Avenue SW., Washington, D.C. 20202, Telephone (202) 245–2595.

(20 U.S.C. 3233)

- 84.078—Regional Education Programs for Handicapped Persons

Closing date: March 18, 1983—Noncompeting Continuations.

Authority for this program is contained in Section 625 of the Education of the Handicapped Act.

(20 U.S.C. 1424a)

This program issues awards to institutions of higher education, including community and junior colleges, vocational-technical institutions, and other appropriate nonprofit educational agencies.

The purpose of this program is to support the development and operation of specially designed or modified programs of vocational-technical, postsecondary or adult education for deaf or other handicapped persons.

Available funds: The total amount of funds awarded under this grant program for Fiscal Year 1982 was $418,000. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that $350,000 will be available for Fiscal Year 1983 for 7 noncompeting continuation projects to be awarded with the average grant totalling $50,000. These estimates do not bind the Department of Education to a specific number of grants nor to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions and forms included in the program information package. The Secretary urges that applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Regional Education Programs for Handicapped Persons (34 CFR Part 338); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: Joseph Rosenstein, Regional Education Programs for the Handicapped, Special Education Programs, Department of Education, Room 3121, Donohoe Building, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245–9722.

- 84.023C—Field Initiated Research

CLOSING DATE: April 1, 1983—Noncompeting Continuations.

Authority for this program is contained in Sections 641 and 642 of Part E of the Education of the Handicapped Act.

(20 U.S.C. 1441, 1442)

The purpose of this program is to provide a source of support for a broad range of research and development projects which fall outside areas of interest identified by the Education Department as priorities for directed research activities. The appropriate areas of interest for projects are limited only by the mission of the Research program, which is the support of applied research relating to education of the handicapped.

Available funds: The total amount of funds awarded under this grant program for Fiscal Year 1982 was $3,000,000. At this time the Fiscal Year 1983 appropriation is undetermined. It is estimated that $1,000,000 will be available for Fiscal Year 1983. An estimated 8 noncompeting continuation projects will be awarded with the average grant totalling $125,000. These estimates do not bind the Department of Education to a specific number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulations.

Application forms: Application forms and program information packages will be mailed to grantees who are eligible to apply for noncompeting continuation grant support under this notice.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The Secretary urges that

applicants not submit information that is not requested.

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped Research and Demonstration program (34 CFR Part 324).

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

Further information: Max Mueller, Research Projects Branch, Special Education Programs, Department of Education, 400 Maryland Avenue SW., (Room 3165 Donohoe Building), Washington, D.C. 20202. Telephone (202) 245–9836.

Dated: August 26, 1982.

Gary L. Jones,

Acting Secretary of Education.

[FR Doc. 82–23793 Filed 8–30–82; 8:45 am]

BILLING CODE 4000–01–M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463, Section 10(a)(2)).

DATE: September 23, 1982 at 5:00 p.m. through September 25, 1982 at 2:00 p.m.

ADDRESS: Hampton Institute, Marine Science Center, Hampton, Virginia.

FOR FURTHER INFORMATION CONTACT: Sven Groennings, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets SW., Washington, D.C. 20202 (202–245–8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1003 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a–1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education * * * on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board will be open to the public. The proposed agenda includes:

(a) Reviewing and recommending possible program directions for fiscal year 1982–83.

(b) MISIP and science education.

Records shall be kept of all Board proceedings, and shall be available for public inspection at the Fund for the Improvement of Postsecondary Education, 7th and D Streets, SW., Room 3100, Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m. weekdays, except Federal Holidays.

Dated: August 26, 1982.

Thomas P. Melady,

Assistant Secretary for Postsecondary Education.

[FR Doc. 82–23818 Filed 8–30–82; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Petroleum Council, Coordinating Subcommittee of the Committee on Third World Petroleum Development; Meeting

Notice is hereby given that the Coordinating Subcommittee of the Committee on Third World Petroleum Development will meet in September 1982. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Third World Petroleum Development will investigate the petroleum resource potential of Third World countries and analyze those factors impacting the development of these resources. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Coordinating Subcommittee meeting follows:

The Coordinating Subcommittee will hold its second meeting on Monday and Tuesday, September 13 and 14, 1982, beginning at 8:00 a.m. each day, in Room 2639 of the Standard Oil Building, 200 East Randolph Drive, Chicago, Illinois.

The tentative agenda for the Coordinating Subcommittee meeting follows:

1. Review of study module drafts.
2. Discuss schedule of Subcommittee assignments.
3. Discuss any other matters pertinent to the overall assignment of the Coordinating Subcommittee.

The meeting is open to the public. The Chairman of the Coordinating Subcommittee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Coordinating Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353–2700, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 25, 1982.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 82–23766 Filed 8–30–82; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate

AGENCY: Department of Energy.

ACTION: Amendment of notice of suspension and proposed debarment.

BACKGROUND: On July 9, 1982, the Department of Energy (DOE) issued a notice announcing that DOE had suspended and proposed to debar Daniel P. Ahearne, President, Total Energy Applications Management, Inc. The notice published in the July 23, 1982, **Federal Register** (47 FR 31957) indicated that Mr. Ahearne had been advised of the deadline for submitting a written request for a hearing and a reply to the notice of proposed debarment was August 9, 1982, and that the three-year period of debarment was proposed to begin on August 30, 1982.

AMENDMENT: Because of a delay in the delivery of the notice mailed to Mr. Ahearne, DOE has extended the deadlines related to the proposed debarment. The deadline for submitting a request for a hearing, and a reply to the notice is now August 30, 1982; the effective date of the proposed debarment is September 20, 1982.

FOR FURTHER INFORMATION CONTACT: Norman Vinson, Procurement and Assistance Management Directorate, Room 1I–018, Forrestal Building, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Issued in Washington, D.C., on August 13, 1982.

Hilary J. Rauch,

Director, Procurement and Assistance Management Directorate.

[FR Doc. 82-23765 Filed 8-30-82; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP64-121-000 and CI65-700]

Farmland Industries, Inc., CRA, Inc.; Notice of Petition for Declaratory Order and Motion To Vacate

August 11, 1982.

Take notice that on July 2, 1982, Farmland Industries, Inc. (Farmland), and CRA, Inc. (CRA), P.O. Box 7305, Kansas City, Missouri 64116, filed in Docket Nos. CP64-121 and CP65-700,[1] respectively, a petition pursuant to Section 1.7 of the Commission's Rules of Practice and Procedure for a declaratory order disclaiming Commission jurisdiction over Petitioners gathering system, facilities and operations in Schleicher and Irion Counties, Texas, as well as a motion to vacate the orders issued in the instant dockets, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioners request that the Commission find that their gathering facilities and operations behind the Mertzon processing plant, Schleicher and Irion Counties, Texas, which facilities allegedly are used to gather natural gas produced in the Velrex Field to the plant, are non-jurisdictional under Section 1(b) of the Natural Gas Act.

It is submitted that CRA owns and operates the Mertzon processing plant and in addition owns certain gas purchase and sales contracts for gas produced in the Velrex Field, Irion County, Texas, as well as certain related gathering lines. It is further submitted that in order to gather CRA's gas produced in the Velrex Field to the Mertzon plant, Farmland owns and operates approximately 15 miles of pipeline running from a point in the Velrex Field to the Mertzon plant, and by order issued in Docket No. CP64-121, it is authorized to operate such facilities and transport such gas. Petitioner explains that after the gas is processed at the Mertzon plant, CRA delivers it to Northern Natural Gas Company, Division of InterNorth, Inc. (Northern) at the plant's tailgate and also redelivers at that point gas which has been gathered on behalf of Northern and which Northern purchases from third party producers. Thus, it is asserted, Farmland makes no sales of natural gas from its facilities, but rather, the only service provided by Farmland is the gathering of natural gas to the Mertzon plant on behalf of CRA and others.

It is submitted that the order in Docket No. CP64-121 was issued on August 10, 1964, to Farmland's predecessor, Brooks Pipe Line Company (Brooks Pipe Line), which was authorized to acquire and operate certain pipeline facilities running from the Velrex Field to the Mertzon processing plant and to transport and deliver gas on behalf of Brooks Gas Corporation (Brooks Gas), which wholly owned Brooks Pipe Line. It is further submitted that when it issued the order in Docket No. CP64-121, the Commission found that Brooks Pipe Line would be engaged in the transportation of natural gas in interstate commerce and would, therefore, be a "natural gas company" within the meaning of the Natural Gas Act.

Petitioners state that pursuant to a contract dated July 8, 1968, CRA acquired from Brooks Gas all of its gathering facilities and gas contracts relating to activities behind the Mertzon plant effective August 1, 1968. It is also stated that by order issued November 6, 1968, in Docket No. G-19534, *et al.*, CRA was substituted for Brooks Gas as the certificate holder in Brooks Gas' certificated sales dockets.

Petitioners further state that on August 1, 1968, Brooks Pipe Line was liquidated and Brooks Gas acquired all of its assets including the facilities certificated in Docket No. CP64-121 running from the Velrex Field to the Mertzon plant and that under an assignment of the same date, the facilities formerly held by Brooks Pipe Line were conveyed by Brooks Gas to Farmland, an affiliate of CRA. By order issued February 17, 1969, in Docket No. CP64-121 Farmland was authorized to acquire and operate the facilities in question and to transport the gas to the Mertzon plant.

Petitioners assert that neither Brooks Pipe Line nor its successor, Farmland, has taken title to the natural gas which has flowed through the gathering system behind the Mertzon plant and which is covered by the transportation services authorized in Docket No. CP64-121. Rather, it is contended, Farmland utilizes its gathering facilities located entirely upstream of the processing plant to collect the gas to CRA's plant where it is ultimately delivered to the purchasing pipeline, Northern, at the tailgate. Thus, it is stated, the purpose of the subject facilities behind the Mertzon plant is to gather gas on behalf of others from the Velrex Field to the Mertzon plant.

Petitioners contend that the same considerations apply to the certificate issued to Brooks Gas in Docket No. CI75-700, and now held by CRA. It is submitted that the service provided thereunder by CRA is in the nature of gathering and, as such, is dependent upon the facilities used and services provided by Farmland. It is also submitted that CRA's service and the certificate issued in Docket No. CI65-700 recognize that such authorization is aligned with the certification granted Farmland in Docket No. CP64-121. Accordingly, it is stated, if Farmland's facilities are found to be used solely for non-jurisdictional gathering services, similar findings should then be made concerning CRA's authorization in Docket No. CI65-700 which is based upon the authorization granted in Docket No. CP64-121.

Petitioners assert that by this filing they do not propose changes in their operations insofar as the transportation services which have been performed under Docket No. CP64-121 and CI65-700 are concerned. Rather, Farmland requests that its facilities and operations authorized by the Commission in Docket No. CP64-121, relating to the 15 miles of gathering line, be declared non-jurisdictional under Section 1(b) of the Natural Gas Act. In addition, CRA requests that any service it performs under the authorization granted in Docket No. CI65-700 be declared exempt from Commission jurisdiction under Section 1(b) of the Natural Gas Act as well. Therefore, Petitioners propose that the certificates of public convenience and necessity issued in Docket No. CP64-121 and CI65-700 be vacated.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 3, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

[1] These proceedings were commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), they were transferred to the Commission.

petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23795 Filed 8-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-27-000]

Industrial Fuel & Asphalt of Indiana, Inc.; Notice of Filing of Petition for Review Under 42 U.S.C. 7194

August 19, 1982.

Take notice that Industrial Fuel & Asphalt of Indiana, Inc., on August 16, 1982, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the preceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before September 3, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before September 3, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Deputy General Counsel for Enforcement and Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St. NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23796 Filed 8-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-26-000]

Natural Gas Pipeline Company of America; Notice of Change in Rates

August 13, 1982.

Take notice that on July 23, 1982, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective September 1, 1982:

Second Substitute Forty-sixth Revised Sheet No. 5
Sixth Revised Sheet No. 5C
Sixth Revised Sheet No. 5D

Natural states the purpose of the filing is to reflect rate adjustments under the PGA and incremental pricing sections of its tariff and Article X of the Stipulation and Agreement in Docket No. RP81-49 which was approved by the Commission on May 13, 1982. The overall effect of the filed for adjustments is to increase Natural's DMQ-1 rates by $0.01 in the demand component and 5.38¢ in the commodity component. Appropriate adjustments were also made to Natural's other sales rate schedules. The adjustments and annualized revenue increase, amounting to approximately $45.9 million, are summarized below:

	Rate schedule DMQ-1 rate adjustment		Annualized jurisdictional revenue increase (decrease)
	Demand	Commodity (cents)	millions of dollars
Purchased gas cost adjustment:			
Producer supplier		10.41	$88.0
Pipeline supplier	$.01	.76	6.8
Deferred purchased gas cost		(5.55)	(46.9)
Total PGA	0.01	5.62	47.9
Article X advance payments		(.24)	(2.0)
Total	0.01	5.38	45.9

Sheet Nos. 5C and 5D reflect no projected incremental pricing surcharges (MSAC) for the six month period beginning September 1, 1982. None of Natural's offsystem customers have reported MSAC's.

Natural states they have included the unpaid accruals balance in computing the current surcharge adjustment. Natural made reference to the Court's decision in *El Paso Natural Gas vs. FERC*, No. 81-4295 (5th Cir., May 24, 1982), which reversed the FERC order requiring El Paso to eliminate all accrued but unpaid gas purchases from the purchased gas adjustment account. Natural states they will not charge interest on the balance of unpaid accruals which are collectable outside the normal billing cycle from the date of purchase.

Natural states that it has complied with the FERC letter order of May 17, 1982, directing the removal from its purchased gas adjustment account all costs not associated with non-concurrent exchange transactions in future PGA filings. However, with respect to the net imbalance at November 30, 1981, Natural states it had delivered more gas than it had received with respect to concurrent transactions. Therefore, Natural has increased the amount to be recovered beginning September 1, 1982, to ensure recovery of the purchased gas cost associated with this imbalance.

Natural requests any additional waivers of the Commission's regulations to the extent, if any, required to put the proposed tariff sheets into effect on September 1, 1982.

A copy of this filing has been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 20, 1982. Protests will be considered by the Commission by determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-23797 Filed 8-30-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-28-000]

Panhandle Eastern Pipe Line Co.; Change in Tariff

August 13, 1982.

Take notice that on July 16, 1982 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Alternate Forty-Third Revised Sheet No. 3–A
First Substitute Alternate Twentieth Revised Sheet No. 3–B
Seventh Revised Sheet No. 3–C.1
Seventh Revised Sheet No. 3–C.2
Seventh Revised Sheet No. 3–C.3

An effective date of September 1, 1982 is proposed or upon commencement of deliveries from Northern Border Pipeline Company (Northern Border) if subsequent to September 1, 1982 but prior to October 1, 1982.

Panhandle states that these revised tariff sheets reflect the alternate tariff sheets as accepted by the Commission's Order of April 30, 1982 and July 8, 1982 in Docket No. RP82–58. These tariff sheets reflect rate adjustments as follows:

(1) A DCA Commodity Surcharge Adjustment pursuant to Section 16.6(e) of the General Terms and Conditions; and

(2) A Rate Adjustment pursuant to Section 18.4 of the General Terms and Conditions, such adjustment reflecting a proposed Pipeline Supplier rate adjustment to be effective concurrently herewith; and

(3) A PGA Rate Adjustment pursuant to Section 18.2 of the General Terms and Conditions, such adjustment reflecting the current cost of gas and recovery of amounts in the deferred purchased gas cost account; and

(4) A "Reduced PGA" rate, and projected incremental pricing surcharges for each direct sale non-exempt industrial boiler fuel facility and each sale-for-resale customer in accordance with Section 21 of the General Terms and Conditions; and

(5) A Purchased Gas Transmission and Compression and Transportation Revenue tracking adjustment in accordance with Article VI of the Stipulation and Agreement dated November 21, 1980 in Docket No. RP80–78 and pursuant to paragraph (B) of the Commission's Order issued April 30, 1982 in Docket No. RP82–58; and

(6) An ANGTS Rate Adjustment pursuant to Section 22 of the General Terms and Conditions.

On April 30, 1982 and July 8, 1982 the Commission issued orders in Docket No. RP82–58 accepting Panhandle's alternate proposed tariff sheets, subject to refund, effective September 1, 1982 or upon commencement of deliveries from Northern Border Pipeline Company (Northern Border) if subsequent to September 1 but prior to October 1, 1982. Panhandle ancticipates deliveries from Northern Border commencing by September 1, 1982; however, in the event such deliveries have not commenced by then, Panhandle is filing herewith certain alternate tariff sheets, to become effective in the event that deliveries from Northern Border have not commenced by September 1, 1982. These alternate tariff sheets would remain in effect until the proposed tariff sheets described on page one are placed into effect, pursuant to the Commission's orders of April 30, 1982 and July 8, 1982.

Therefore, Panhandle submits herewith for filing six (6) copies each of the following alternate Revised sheets to its FERC Gas Tariff Original Volume No. 1:

Alternate First Substitute Alternate Forty-Third Revised Sheet No. 3–A
Alternate First Substitute Alternate Twentieth Revised Sheet No. 3–B
Alternate Seventh Revised Sheet No. 3–C.1
Alternate Seventh Revised Sheet No. 3–C.2
Alternate Seventh Revised Sheet No. 3–C.3

An effctive date of September 1, 1982 is proposed for the alternate tariff sheets.

These alternate tariff sheets reflect (1) Panhandle's currently effective rates as approved in Docket No. TA82–1–28 by Commission Orders dated February 26, 1982 and April 13, 1982 and (2) rate adjustments as follows:

(1) A DCA Commodity Surcharge Adjustment pursuant to Section 16.6 (e) of the General Terms and Conditions; and

(2) A Rate Adjustment pursuant to Section 18.2 of the General Terms and Conditions, such adjustment reflecting a proposed Pipeline Supplier rate adjustment to be effective concurrently herewith; and

(3) A PGA Rate Adjustment pursuant to Section 18.2 of the General Terms and Conditions, such adjustment reflecting the current cost of gas and recovery of amounts in the deferred purchased gas cost account; and

(4) A "Reduced PGA" rate, and projected incremental pricing surcharges for each direct sale non-exempt industrial boiler fuel facility and each sale-for-resale customer in accordance with Section 21 of the General Terms and Conditions; and

(5) A Purchased Gas Transmission and Compression and Transportation Revenue Tracking adjustment in accordance with Article VI of the Stipulation and Agreement dated November 21, 1980 in Docket No. RP80–78 and the Commission's Order of January 27, 1981 in Docket No. RP80–78.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23798 Filed 8–30–82; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TA82–2–30–000]

Trunkline Gas Co.; Notice of Change in Tariff

August 13, 1982.

Take notice that on July 16, 1982, Trunkline Gas Company (Trunkline) tendered for filing Fortieth Revised Sheet No. 3–A and Seventh Revised Sheet No. 3–B to its FERC Gas Tariff, Original Volume No. 1. Trunkline submits that these revised tariff sheets reflect rate adjustments as follows:

(1) A PGA Rate Adjustment in accordance with Section 18 of the General Terms and Conditions which reflects increases in the current cost of gas and recovery of amounts in the deferred purchased gas cost account; and

(2) A "Reduced PGA" rate, and projected incremental pricing surcharges for each direct sale non-exempt industrial boiler fuel facility and each sale-for-resale customer in accordance with Section 21 of the General Terms and Conditions; and

(3) A Purchased Gas Transmission and Compression tracking adjustment pursuant to Article V of the Stipulation and Agreement in Docket No. RP80–106; and

(4) A Gas Purchase Prepayments tracking adjustment pursuant to Article X of the Stipulation and Agreement in Docket No. RP80–106; and

(5) An Advance Payment tracking adjustment pursuant to Article IV of the Stipulation and Agreement in Docket No. RP80–106.

An effective date of September 1, 1982 is proposed.

Trunkline states that this PGA Rate Adjustment filed herewith reflects payments to Trunkline's applicable gas suppliers pursuant to the Commission's Order Nos. 93 and 93–A issued in Docket No. RM80–33. On December 24, 1981 the Commission issued an order in Docket No. RM80–33 which vacated the partial stay previously granted in these proceedings. The Commission's Order of December 24, 1981 reaffirmed the December 1, 1978 effective date of the so-called "Btu rule" (18 CFR 270.204) which prescribes the standard for determining the Btu content of natural gas in calculating maximum lawful prices under the Natural Gas Policy Act of 1978. Therefore, in view of the Commission's Order of December 24, 1981 Trunkline has also included payments in the instant PGA Rate Adjustment to affected producers retroactive to December 1, 1978 based on the application of Section 270.204 of the Commission's Regulations. Trunkline is still in the process of finalizing its computations with respect to its total obligations related to these retroactive payments. However, included herein is $8,047,696, which has been identified by Trunkline as a portion of its remaining obligation to make these retroactive payments, and such amounts will be disbursed by Trunkline prior to the September 1, 1982 effective date of the instant PGA Rate Adjustment.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 20, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–23799 Filed 8–30–82; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Effluent Guidelines Unit Processes Subcommittee of the Environmental Engineering Committee (EEC) of the Science Advisory Board will be held in the Ninth Floor Conference Room, Region VIII, U.S. Environmental Protection Agency, 1860 Lincoln Street, Denver, CO, on September 16, 1982. The meeeting will begin at 9:00 a.m. and last until approximately 5:30 p.m.

The purpose of the meeting will be to review technical support data pertaining to the development of Effluent Guidelines for the Organic Chemicals and Plastics/Synthetic Fibers Industries. The main issue to be discussed will be the relationship between the occurrence of priority pollutants and the feedstock-generic chemical process combinations used in the industry. The EPA Contractors Engineering Report (which forms the technical basis for the guidelines) concluded, based on the examination of 176 products manufactured through 123 processes (100 organic chemical and 23 plastics), that priority pollutants are predictable either directly from five principal sources, or indirectly from feedstock-generic process combinations. The concept of predicting, industry-wide, the presence of priority pollutants based on generic similarities to those plants examined will be reviewed.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Acting Director, Science Advisory Board, at (202) 382–4126.

Terry F. Yosie,

Acting Director, Science Advisory Board.

August 24, 1982.

[FR Doc. 82–23789 Filed 8–30–82; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL 2199–1]

Science Advisory Board; Executive Committee—Open Meeting

Under Pub. L. 92–463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board (SAB). The meeting will be held September 20–21, 1982, starting at 9:15 a.m. on September 20 in Room 1101 West Tower, E.P.A. Headquarters, 401 M Street, SW., Washington, D.C.

A major purpose of the meeting is to brief the Committee on the organizational and scientific capabilities of laboratories in the Office of Research and Development and proposals for laboratory reorganization. The agenda will also include an update of Science Advisory Board review of Agency regulations and standards, and reports of SAB committee chairman.

The meeting will be open to the public. Any member of the public wishing to attend, submit a statement, or obtain further information should contact Dr. Terry F. Yosie, Acting Director, Science Advisory Board at (202) 382–4126 before close of business September 15, 1982.

Dated: August 25, 1982.

Terry F. Yosie,

Acting Director, Science Advisory Board.

[FR Doc. 82–23788 Filed 8–30–82; 8:45 am]

BILLING CODE 6560–50–M

[TSH–FRL 2197–8; OPTS–59054E]

Urethane Polyester Prepolymer Acrylate Capped; Extension of Test Marketing Exemption Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the test marketing period for an additional 6 months for test marketing exemption (TME) TM–81–18, under the authority of section 5(h)(1) of the Toxic Substances Control Act (TSCA). The TME and request for an extension of the test marketing period were submitted by the Thiokol/Specialty Chemicals Div. Notice of approval of the TME was published in the Federal Register of August 7, 1981 (46 FR 40326).

EFFECTIVE DATE: This extenseion is effective on August 23, 1982.

ADDRESS: Written comments, identified by the document control number [OPTS–5905E; TM–81–18], may be submitted on or before September 13, 1982 and should be addressed to: Document Control Officer (TS–793), Office of Pesticides and Toxic Substances, Management Support Division, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW., Washington, D.C. 20460, (202–382–3742).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA 90 days before manufacture or import begins. Section 5(h)(1) authorizes EPA, upon receipt of an application, to exempt any person from the notice requirements of section 5 and to permit them to manufacture a new chemical substance for test marketing purposes. EPA may impose restrictions on the test marketing activity, including a limit on the time period during which it may take place.

On July 29, 1981, EPA granted a test marketing exemption (TM–81–18) to the Thiokol/Specialty Chemicals Div., PO Box 8296, Trenton, NJ 08650, for urethane polyester prepolymer acrylate capped (generic description). The substance is to be used as a base for UV-cured coatings, adhesives, and inks. The company claimed the specific chemical identity and process information to be confidential business information. Notice of approval of the TME was published in the **Federal Register** of August 7, 1981 (46 FR 40326). Approval was based on an Agency finding of low toxicity and minimal human exposure and environmental release. Test marketing activity was limited to 1 year.

On July 9, 1982, EPA received a request from Thiokol Corp. that the test marketing period be extended for an additional 6 months. The company states that the market for the new chemical has developed more slowly than was anticipated and that further test marketing is desirable prior to full commercialization.

EPA has decided to extend the 1 year exemption period by an additional 6 months, provided that all other restrictions specified in the notice of approval of the test marketing exemption remain unchanged. These include record-keeping requirements, a 5,000 kilogram limit on production volume, and worker protection measures. This decision is based on a finding that the additional time will not affect the Agency's original conclusion that test marketing of this substance will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind its decision to grant this extension should any new information come to its attention which casts significant doubt on this conclusion.

Dated: August 23, 1982.

Marcia Williams,

Acting Director, Office of Toxic Substances.

[FR Doc. 82-23791 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53040; TSH-FRL-2196-3]

Premanufacture Notices; Monthly Status Report for July 1982

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** at the beginning of each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for July 1982.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance. Nonconfidential portions of the PMNs may be seen in Rm. E–106 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments are to be identified with the document control number "[OPTS–53040]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW., Washington, D.C. 20460 (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Kirk Maconaughey, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–208, 401 M Street, SW., Washington, D.C. 20460 (202–382–3746).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during July; (b) PMNs received previously and still under review at the end of July; (c) PMNs for which the notice review period has ended during July; (d) chemical substances for which EPA has received a notice of commencement to manufacture during July; and (e) PMNs for which the review period has been suspended. Therefore, the July 1982 PMN Status Report is being published.

Dated: August 20, 1982.

Woodson W. Bercaw,

Acting Director, Management Support Division.

Premanufacture Notices Monthly Status Report, July 1982

I. 56 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH

PMN No.	Identity/generic name	FR citation	Expiration date
82-479	Generic name: Heteropolycyclic(dihydroxyhetero-polycycle)	47 FR 30104 (7/12/82)	Sept. 29, 1982.
82-480	Generic name: Polyol polyacrylate	47 FR 30104 (7/12/82)	Do.
82-481	Generic name: Blocked urethane polymer	47 FR 31063 (7/16/82)	Sept. 30, 1982.
82-482	Generic name: Acetal of polyvinyl alcohol	47 FR 31063 (7/16/82)	Oct. 4, 1982.
82-483	Generic name: Polymer of acrylic acid and acrylic esters	47 FR 31063 (7/16/82)	Do.
82-484	Generic name: Phosphorodithioic acid, dialkyl ester amine salt	47 FR 31063 (7/16/82)	Do.
82-485	Generic name: Chlorotriazine modifed copper phthalocyanine sodium salt	47 FR 31063 (7/16/82)	Do.
82-486	Generic name: Alkyl phosphate ester	47 FR 31063 (7/16/82)	Oct. 5, 1982.
82-487	Generic name: Copolymer of an alkenoic acid derivative, substituted and unsubstituted vinyl aromatic compounds and a substituted alkene.	47 FR 31063 (7/16/82)	Do.
82-488	Found to be invalid		
82-489	Generic name: Sulfurized di-carboxylic polyglycol ester	47 FR 31957 (7/23/82)	Oct. 10, 1982.
82-490	Found to be on the Inventory		
82-491	Generic name: Polyester polymer	47 FR 31957 (7/23/82)	Do.
82-492	Generic name: Substituted dithoic acid salt	47 FR 31957 (7/23/82)	Oct. 11, 1982.
82-493	Generic name: Tetrasubstituted benzisoxazole	47 FR 31957 (7/23/82)	Do.
82-494	2, 2-dimethyl-1,3-propanediol, polymer with 1,6-hexanediol, 1,3-dihydro-1,3-dioxo-5-isobenzofuancarboxylic acid, 1,3-benzenedicarboxylic acid, 1,4-benzenercarboxylic acid and 1,6-hexanedioic acid.	47 FR 33234 (7/30/82)	Oct. 14, 1982.
82-495	Generic name: Sustituted naphthalene	47 FR 33234 (7/30/82)	Do.
82-496	Generic name: Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-497	Generic name: Rosin ester resin	47 FR 33235 (7/30/82)	Do.

I. 56 Premanufacture Notices Received During the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
82-498	Generic name: Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-499	Generic name: Rosin ester resin	47 FR 33235 (7/30/82)	Do.
82-500	Generic name: Alkyl cycloalkanol alkanoate	47 FR 33235 (7/30/82)	Do.
82-501	Generic name: Substituted pentenedioate	47 FR 33235 (7/30/82)	Oct. 17, 1982.
82-502	Generic name: Substituted diazo compound	47 FR 33235 (7/30/82)	Do.
82-503	Generic name: Water base vinly acrylic copolymer	47 FR 33235 (7/30/82)	Do.
82-504	Polymer of 2-methyl-2-propenoic acid, 1-dodecyl ester; 2-methyl-2-propenoic acid, methyl ester; 2-methyl-2-propenoic acid, 1-butyl ester.	47 FR 33235 (7/30/82)	Oct. 18, 1982.
82-505	4,4'-bis-(2,6-dimethylphenol)sulfone	47 FR 33235 (7/30/82)	Do.
82-506	Generic name: Alkoxy ester of N-methylacetamide	47 FR 33235 (7/30/82)	Do.
82-507	Generic name: Substituted isothiocyanate	47 FR 33235 (7/30/82)	Do.
82-508	Generic name: Bias alkoxylated aluminum acetoacetic ester chelate	47 FR 33235 (7/30/82)	Oct. 19, 1982.
82-509	Generic name: Alkana diol	47 FR 33235 (7/30/82)	Do.
82-510	Generic name: Polyether urethane	47 FR 33236 (7/30/82)	Do.
82-511	Found to be on the Inventory		
82-512	Generic name: Phenyl derivative of an ethyl methacrylate	47 FR 33236 (7/30/82)	Do.
82-513	Generic name: Alkyl diol, toluene diisocyanate, alkene ester, adipic acid resin	47 FR 33236 (7/30/82)	Do.
82-514	Generic name: Substituted cycloaliphatic hydroxyalkyl ether ester	47 FR 33236 (7/30/82)	Do.
82-515	Generic name: Acrylate ester of acrylic polymer	47 FR 33236 (7/30/82)	Do.
82-516	Generic name: Aromatic amine derivative	47 FR 33236 (7/30/82)	Do.
82-517	Generic name: Polysulfide polymer with formal and alcohol moiety	47 FR 34187 (8/6/82)	Oct. 20, 1982.
82-518	Generic name: Metal complex substituted aromatic	47 FR 34187 (8/6/82)	Do.
82-519	2-(6-chloro-2-benzothiazolylazo)-5-[N-(2-cyanoethyl)-N-(n-pentyl)amino]-acetanilide	47 FR 34187 (8/6/82)	Do.
82-520	2-(3-hydroxy-2-quinolinyl)-2,3-dihydro-1,3-dioxo-1H-indene-5-carboxylic acid methyl (ethyl) ester	47 FR 34187 (8/6/82)	Do.
82-521	4-(2,6-dicholoro-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino]benzene	47 FR 34187 (8/6/82)	Do.
82-522	Generic name: Diureido silane ester	47 FR 34188 (8/6/82)	Oct. 24, 1982.
82-523	Generic name: Polyaryl sulfone ether	47 FR 34188 (8/6/82)	Do.
82-524	Generic name: Salt of polyhydroxy stearic acid and polyethyleneimine	47 FR 34188 (8/6/82)	Do.
82-525	Generic name: Polyester modified epoxy resin	47 FR 34188 (8/6/82)	Do.
82-526	Generic name: Polyester modified epoxy resin	47 FR 34188 (8/6/82)	Do.
82-527	Generic name: Titanium (4+) mixed alcohol complex	47 FR 34188 (8/6/82)	Do.
82-528	Generic name: Polymer of aromatic aldehyde and phenolic compound	47 FR 34188 (8/6/82)	Do.
82-529	Generic name: Aliphatic acid ester salt	47 FR 34188 (8/6/82)	Do.
82-530	Generic name: Acidic aliphatic ester	47 FR 34188 (8/6/82)	Do.
82-531	Generic name: Organophosphorus compound	47 FR 34188 (8/6/82)	Do.
82-532	Organophosphorus compound	47 FR 34188 (8/6/82)	Oct. 25, 1982.
82-533	Generic name: Polyhydroxylated diisocyanate	47 FR 34188 (8/6/82)	Do.
82-534	Generic name: Polyether-urethane	47 FR 34188 (8/6/82)	Do.
82-535	Generic name: Modified phenol formaldehyde substituted alkylamine	47 FR 34189 (8/6/82)	Do.
82-536	Alkyl ester of polyethylene glycol	47 FR 35332 (8/13/82)	Oct. 27, 1982.
82-537	Generic name: Amine/amine salt of dicarboxylic acid	47 FR 35333 (8/13/82)	Do.

II. 75 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No.	Identity/generic name	FR citation	Expiration date
82-400	Potassium N,N-bis(hydroxyethyl) cocamine oxide phosphate	47 FR 25402 (6/11/82)	Aug. 30, 1982.
82-401	Generic name: Polyvinyl starch	47 FR 25402 (6/11/82)	Do.
82-402	Generic name: Styrene-dene-substituted alkene copolymer	47 CFR 25402 (6/11/82)	Do.
82-403	Ethyl acrylate-methyl acrylate copolymer	47 FR 25402 (6/11/82)	Aug. 31, 1982.
82-404	Ethylacrylate-methyl methacrylate copolyer	47 FR 25402 (6/11/82)	Do.
82-405	Ethyl acrylate-methyl acrylate-methyl methacrylate copolymer	47 FR 25402 (6/11/82)	Do.
82-406	Ethyl acrylate-methyl acrylate copolymer	47 FR 25403 (6/11/82)	Do.
82-407	Vinyl acetate homopolymer	47 FR 25403 (6/11/82)	Do.
82-408	Generic name: Tetra tosylate porphine	47 FR 25403 (6/11/82)	Do.
82-409	Potassium N,N-bis(hydroxyethyl) tallow amine oxide phosphate	47 FR 25403 (6/11/82)	Do.
82-410	Generic name: Substituted heterocycle, amine salt	47 FR 25403 (6/11/82)	Do.
82-411	Generic name: Mixed metal hydroxide	47 FR 25403 (6/11/82)	Do.
82-412	Anthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H, 9H)-tetrone,2,9-bis (4-aminophenyl)	47 FR 25403 (6/11/82)	Sept. 1, 1982.
82-413	Generic name: Polyether polyglycol resin polymer	47 FR 25403 (6/11/82)	Do.
82-414	Generic name: Polyester polymer	47 FR 25403 (6/11/82)	Do.
82-415	Generic name: Polyester polymer	47 FR 25403 (6/11/82)	Do.
82-416	Generic name: Urethane polyol	47 FR 25403 (6/11/82)	Do.
82-417	Generic name: Polymer of alkenes and substituted alkenes	47 FR 25403 (6/11/82)	Do.
82-418	Generic name: Hydrogen bis[1-[(3,5-disubstituted-2-hydroxyphenyl) azo]-3-(N-mono-substituted)-2-naphthalenolate(2-)]chromate(1-).	47 FR 26235 (6/17/82)	Sept. 2, 1982.
82-419	Generic name: Acrylamide-acrylate copolymer	47 FR 26235 (6/17/82)	Do.
82-420	Invalid		
82-421	1-(cyclohexen-1-yl) piperidine	47 FR 26235 (6/17/82)	Sept. 5, 1982.
82-422	Generic name: Tetrasubstituted benzisoxazole	47 FR 26235 (6/17/82)	Do.
82-423	Generic name: Polyhaloalkoxyalkylphenone	47 FR 26235 (6/17/82)	Sept. 6, 1982.
82-424	Polymer of: Hexanediol, dantocol, trimethylol propane, isophthalic acid, adipic acid	47 FR 26235 (6/17/82)	Do.
82-425	Generic name: Polyester of a substituted alkanoic ester, alkanoic diols and a carbomonocyclic diacid.	47 FR 26235 (6/17/82)	Do.
82-426	Generic name: Substituted cyclopentadiene	47 FR 26235 (6/17/82)	Sept. 7, 1982.
82-427	Generic name: Alkoxylated aliphatic glycol	47 FR 26235 (6/17/82)	Do.
82-428	Generic name: Acrylated alkoxylated aliphatic glycol	47 FR 26235 (6/17/82)	Do.
82-429	Generic name: Ethoxylated molybdenum amine	47 FR 26235 (6/17/82)	Do.
82-430	Generic name: Tetrasubstituted benzisoxazole	47 FR 26235 (6/17/82)	Do.
82-431	Generic name: Isocyanic acid, polymethylene polyphenylene ester polymer with modified polyalkylene glycol.	47 FR 26235 (6/17/82)	Do.
82-433	Found to be on the Inventory		
82-434	Generic name: Polyquaternary methacrylamide ammonium acetate	47 FR 27610 (6/25/82)	Sept. 12, 1982.
82-435	Generic name: Poly[oxy(methyl-1,2-ethanediyl)] aliphatic ether amide of dialkenoic acid	47 FR 27610 (6/25/82)	Do.
82-436	Soyabean oil polymer with maleic anhydride, neopentyl glycol, tetrahydrophthalic anhydride and trimethylol propane.	47 FR 27610 (6/25/82)	Do.
82-437	Generic name: Modified polyester of a carbomonocyclic anhydride and a substituted alkanediol	47 FR 27610 (6/25/82)	Do.
82-438	Generic name: Aromatic amine ester	47 FR 27610 (6/25/82)	Do.

II. 75 Premanufacture Notices Received Previously and Still Under Review at the End of the Month—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
82-439	Generic name: Sulphonated phenyl arsine dibromide	47 FR 27610 (6/25/82)	Do.
82-440	Generic name: Copolyesters	47 FR 27611 (6/25/82)	Sept. 13, 1982.
82-441	Generic name: Alkylphenol, formaldehyde, alkanolamine, alkylene oxides reaction product	47 FR 27611 (6/25/82)	Do.
82-442	Generic name: Aromatic acids, polyether polyol alkyd	47 FR 27611 (6/25/82)	Do.
82-443	Generic name: Alkyl substituted mercaptan	47 FR 27611 (6/25/82)	Sept. 14, 1982.
82-444	Further clarification needed on chemical identity		
82-445	Withdrawn		
82-446	Generic name: Substituted imidazolidinone	47 FR 28994 (7/2/82)	Sept. 16, 1982.
82-447	Generic name: Substituted imidazolidinone	47 FR 28994 (7/2/82)	Do.
82-448	Generic name: A reaction product of phenylene-bis[[[(butane derivative)-substituted]-phenyl]azo], compound with organic acids.	47 FR 28995 (7/2/82)	Do.
82-449	1-cyclohexen-1-amine, N,N-dibutyl	47 FR 28995 (7/2/82)	Sept. 19, 1982.
82-450	Generic name: Amino alkyl alkoxy silanes	47 FR 28995 (7/2/82)	Do.
82-451	Generic name: Metal complexed disazo compound	47 FR 28995 (7/2/82)	Do.
82-452	Generic name: Benzoxazole oxazolidinone	47 FR 28995 (7/2/82)	Do.
82-453	Generic name: Benzoxazolium salt	47 FR 28995 (7/2/82)	Do.
82-454	Generic name: Saturated -polyester resin	47 FR 28995 (7/2/82)	Sept. 20, 1982.
82-455	Generic name: Polyhaloalkoxyarylamide	47 FR 28995 (7/2/82)	Do.
82-456	Generic name: Isocyanate terminated polyether polyurethane prepolymer	47 FR 28995 (7/2/82)	Do.
82-457	Generic name: Alkyd derivative from fatty acids, substituted alkanoic acids, a carbomonocyclic anhydride, polyols and esters.	47 FR 28995 (7/2/82)	Do.
82-458	Generic name: Polymer of a vegetable oil derivative, alkane diols and a carbomonocyclic anhydride.	47 FR 28995 (7/2/82)	Do.
82-459	Generic name: Silicon substituted organic ester	47 FR 28995 (7/2/82)	Do.
82-460	Generic name: Dialkyl amide of an alkenedioic acid	47 FR 28995 (7/2/82)	Sept. 21, 1982.
82-461	Generic name: Diacyl peroxide	47 FR 28996 (7/2/82)	Sept. 22, 1982.
82-462	Generic name: Trisubstituted benzoxazole	47 FR 28996 (7/2/82)	*Do.
82-463	Generic name: Unsaturated polyester resin	47 FR 30103 (7/12/82)	Sept. 23, 1982.
82-464	Generic name: 2-hydroxy-3-naphthoic acid N-aryl amide	47 FR 30103 (7/12/82)	Sept. 26, 1982.
82-465	Generic name: Quaternary ammonium chloride	47 FR 30103 (7/12/82)	Do.
82-466	Polymer of vinyl toluene, styrene, 2 ethyl hexyl acrylate	47 FR 30103 (7/12/82)	Do.
82-467	Generic name: Aromatic aliphatic branched polyester resin	47 FR 30103 (7/12/82)	Sept. 28, 1982.
82-468	Generic name: Isocyanate terminated polyether polyurethane prepolymer	47 FR 30103 (7/12/82)	Sept. 27, 1982.
82-469	Reaction product from benzyl-1-hydroxydiphenyl ethoxylate and glycolic acid, sodium salt	47 FR 30103 (7/12/82)	Do.
82-470	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7/12/82)	Sept. 28, 1982.
82-471	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7/12/82)	Do.
82-472	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30103 (7/12/82)	Do.
82-473	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-474	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-475	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-476	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-477	Generic name: Terephthalic acid modified unsaturated polyester resin	47 FR 30104 (7/12/82)	Do.
82-478	Generic name: Calcium salt of a substituted amino acid	47 FR 30104 (7/12/82)	Do.

III. 76 Premanufacture Notices For Which the Notice Review Period Has Ended During the Month

[Expiration of the notice review period does not signify that the chemical had been added to the inventory]

PMN No.	Identity/generic name	FR citation	Expiration date
81-559	5-Acetylamino-4-hydroxy-3-(2-hydroxyl-4-(2-hydroxy-sulfonyl) ethylsulfonyl)-5-methy-phenylazo)-2,7-naphthalenedisulfonic acid trisodium salt complex.	46 FR 5516 (11/6/81)	June 9, 1982.
81-643	Generic name: Cationic acrylamide copolymer	46 FR 63107 (12/30/81)	Apr. 19, 1982.
81-644	Generic name: Cationic acrylamide copolymer	46 FR 63107 (12/30/81)	Do.
82-245	Generic name: Modified polyurethane	47 FR 16403 (4/16/82)	July 1, 1982.
82-246	Generic name: Barium sulfonated red	47 FR 16403 (4/16/82)	Do.
82-247	Generic name: 2-anthracenesulfonic acid, 1-amino-4-substituted phenylamino-9,10-dihydro-9,10-dioxo-sodium salt.	47 FR 16403 (4/16/82)	Do.
82-248	Generic name: Polymer of alkanediols and a carbomonocyclic anhydride	47 FR 16403 (4/16/82)	Do.
82-249	Generic name: Modified hydroxy functional acrylic copolymer	47 FR 16404 (4/16/82)	Do.
82-250	Generic name: Mixture of naphthalenedisulfonic acid,[azoxy bis[(substituted phenyl)azo]]bis substituted-, and its sodium salts.	47 FR 16404 (4/16/82)	Do.
82-251	3,4-dichlorophenol	47 FR 16404 (4/16/82)	Do.
82-252	Generic name: Isocyanate terminated polyester polyurethane prepolymer	47 FR 16404 (4/16/82)	July 4, 1982.
82-253	Generic name: Urethane polyether	47 FR 16404 (4/16/82)	Do.
82-254	Generic name: Modified polymer of styrene, alkenoic acid, alkenoic esters and substituted alkenoic esters.	47 FR 16404 (4/16/82)	Do.
82-255	Void		
82-256	Generic name: Poly[(aminoaklylamino)alkylene oxide], aqueous solution	47 FR 16404 (4/16/82)	July 5, 1982.
82-257	*m*-chlorophenylphenylether	47 FR 16404 (4/16/82)	Do.
82-258	Generic name: Heterocyclic-methoxyphenylazo substance	47 FR 16404 (4/16/82)	Do.
82-259	Generic name: Aliphatic oligomeric carbonate diol	47 FR 16404 (4/16/82)	Do.
82-260	Generic name: Disubstituted benzene	47 FR 16404 (4/16/82)	Do.
82-261	Generic name: Substituted naphthalene	47 FR 16404 (4/16/82)	Do.
82-262	Generic name: Substituted naphthalene	47 FR 16405 (4/16/82)	Do.
82-263	Generic name: A mixture of the sodium salts, lithium salts, and mixed sodium/lithium salts of naphthalene disulfonic acid, [azoxy bis [(substituted-phenyl)azo]]bis[substituted].	47 FR 16405 (4/16/82)	Do.
82-264	Generic name: The reaction products of: mixed branched 2,5-furandione; polyalkylene substituted phenol, condensed with aldehyde and mixed amines; coco glycerides with mixed acid and alcohol; sulfur.	47 FR 16405 (4/16/82)	July 6, 1982.
82-265	4,4'-bis(2,5-dimethylstryl)-diphenyl	47 FR 16405 (4/16/82)	July 7, 1982.
82-266	Generic name: Alkyl quaternary ammonium hydroxide	47 FR 16405 (4/16/82)	Do.
82-267	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	July 5, 1982.
82-268	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	Do.
82-269	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	Do.
82-270	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	Do.
82-271	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	Do.
82-272	Generic name: Heterocyclic-alkylphenyl azo substance	47 FR 16405 (4/16/82)	July 8, 1982.
82-273	*m*-chlorophenylphenylsulfide	47 FR 16405 (4/16/82)	Do.

III. 76 Premanufacture Notices For Which the Notice Review Period Has Ended During the Month—Continued

[Expiration of the notice review period does not signify that the chemical had been added to the inventory]

PMN No.	Identity/generic name	FR citation	Expiration date
82-274	Generic name: Triethylene glycol ether	47 FR 17666 (4/23/82)	July 11, 1982.
82-275	Generic name: Saturated linear butylene mixed acids copolyester	47 FR 17666 (4/23/82)	July 12, 1982.
82-276	Generic name: Bis(substituted-6,6,6-tri-acryloyloxymethyl-4-oxahexyl)ethyl-methyl-disubstituted heteromonocycle.	47 FR 17666 (4/23/82)	July 11, 1982.
82-277	Generic name: Polymer of aliphatic and aromatic diacids and an aliphatic diol	47 FR 17666 (4/23/82)	July 12, 1982.
82-278	Generic name: Di-quaternary ammonium salt with formal linkage	47 FR 17666 (4/23/82)	Do.
82-279	Generic name: Unsaturated carboxylic amide-carboxylic acid	47 FR 17667 (4/23/82)	July 13, 1982.
82-280	Generic name: Unsaturated carboxylic amide-carboxylic acid	47 FR 17667 (4/23/82)	Do.
82-281	Generic name: Polyether alkanyl esters	47 FR 17667 (4/23/82)	Do.
82-286	Generic name: Substituted aryl alkyl siloxane	47 FR 17667 (4/23/82)	July 14, 1982.
82-287	Generic name: Disubstituted benzene	47 FR 18652 (4/30/82)	July 15, 1982.
82-288	Generic name: Polymer of disubstituted acrylic acid, disubstituted benzene, and substituted acrylic acid.	47 FR 18652 (4/30/82)	Do.
82-289	Polymer of ethylene oxide; bisphenol A; epichlorohydrin; acrylonitrile; ethylene glycol; xylylenediamine; isphorondiamine.	47 FR 18652 (4/30/82)	Do.
82-290	Generic name: Disubstituted benzene	47 FR 18653 (4/30/82)	July 18, 1982.
82-291	Generic name: Sulfonated copper phthalocycanine dye	47 FR 18653 (4/30/82)	Do.
82-292	Generic name: Substituted trialkoxy silane	47 FR 18653 (4/30/82)	Do.
82-293	2,2,6-trimethyl-4H-1,3-dioxin-4-one	47 FR 18653 (4/30/82)	Do.
82-294	Generic name: Metallic beta diketonate	47 FR 18653 (4/30/82)	Do.
82-295	Cis-4-decen-1-ol	47 FR 18653 (4/30/82)	July 19, 1982.
82-296	Generic name: 9,10-anthracenedione sulfonic acid, sodium salt	47 FR 18653 (4/30/82)	Do.
82-297	Generic name: Isocyanate terminated polyether polyurethane prepolymer	47 FR 18653 (4/30/82)	Do.
82-298	Generic name: Polymer of alkyl acrylate and acrylamide	47 FR 18653 (4/30/82)	Do.
82-299	Generic name: Polymer of alkyl acrylate, vinyl heteromonocycle and acrylic acid	47 FR 18653 (4/30/82)	Do.
82-300	Generic name: Neutralized polymer of styrene, alkyl acrylates and substituted alkyl methacrylates	47 FR 18653 (4/30/82)	July 20, 1982.
82-301	Generic name: Neutralized polymer of styrene, alkyl acrylates and substituted alkyl methacrylates	47 FR 18653 (4/30/82)	Do.
82-302	Generic name: Polysilazane	47 FR 18654 (4/30/82)	Do.
82-303	Generic name: Inert fluorocarbon	47 FR 18654 (4/30/82)	Do.
82-304	Generic name: Quaternary amine functional polyether urethane modified polyglycidyl ether of Bisphenol A.	47 FR 18654 (4/30/82)	July 21, 1982.
82-305	Generic name: Modified hydroxyethylcellulose	47 FR 19781 (5/7/82)	July 22, 1982.
82-306	Generic name: Disubstituted benzenamine	47 FR 19781 (5/7/82)	Do.
82-307	Generic name: Polyhaloalkoxyaroyl halide	47 FR 19781 (5/7/82)	July 25, 1982.
82-308	Generic name: Substituted benzotriazole	47 FR 19782 (5/7/82)	Do.
82-309	Generic name: Cationic substituted acid amide	47 FR 19782 (5/7/82)	Do.
82-310	Generic name: Cationic substituted acid amide	47 FR 19782 (5/7/82)	Do.
82-311	Generic name: Unsaturated alkyl amino alkyl dioxolane	47 FR 19782 (5/7/82)	Do.
82-312	Generic name: Dihaloethylacetate	47 FR 19782 (5/7/82)	Do.
82-313	Acetamide, 2,2-, dichloro-N-(1,3-dioxlan-2-ylmethyl)-N-2-propenyl	47 FR 19782 (5/7/82)	Do.
82-314	Generic name: Copolymer of alkyl acrylates and methacrylates	47 FR 19782 (5/7/82)	July 26, 1982.
82-315	Generic name: Polyester polymer derived from a carbomonocyclic anhydride and containing a mixture of substituted alkane diols.	47 FR 19782 (5/7/82)	Do.
82-316	4-butylmorpholine	47 FR 19782 (5/7/82)	Do.
82-317	Generic name: Metal alkanoate	47 FR 19782 (5/7/82)	July 27, 1982.
82-318	Generic name: A mixture of naphthalene sulfonic acid, -(substituted amino)-hydroxy-((substituted phenyl)azo) and naphthalene sulfonic acid, -(substituted amino)-hydroxy-((substituted phenyl)azo), compounded with organic acids.	47 FR 19782 (5/7/82)	July 28, 1982.
82-319	Generic name: Alkyl oligoglycosides	47 FR 19782 (5/7/82)	Do.
82-320	Phenol, 4-nitroso-, magnesium salt, hexahydrate	47 FR 19782 (5/7/82)	Do.
82-321	Generic name: Polyester random copolymer	47 FR 19783 (5/7/82)	Do.
82-322	Generic name: Styrene acrylates copolymer	47 FR 20853 (5/14/82)	July 29, 1982.

IV. 42 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No.	Chemical identification	FR citation	Date of commencement
81-47	Generic name: Neutralized polymer from modified epoxy resin	46 FR 15944 (3/10/81)	Feb. 8, 1982.
81-139	Generic name: Polymer of carbomonocyclic acids, carbomonocyclic anhydride and modified vegetable oil.	46 FR 24683 (5/1/81)	July 1, 1982.
81-166	2-Naphthalenesulfonyl chloride, 6-acetamino	46 FR 24990 (5/4/81)	Sept. 1981.
81-167	Ethanol, 2-(6-acetaminoaph-2-yl) sulfonyl	46 FR 24990 (5/4/81)	Do.
81-203	Generic name: Substituted alkyl cyanoacrylate ester	46 FR 29254 (6/2/81)	June 1982.
81-238	Generic name: Polyhaloalkanoic acid chloride	46 FR 31345 (6/15/81)	July 22, 1982.
81-278	Generic name: Compound from alkenoic acids, carbomonocyclic anhydride and substituted alkanediols.	46 FR 36239 (7/14/81)	June 30, 1982.
81-292	Generic name: Silylated organic sulfonic acid, sodium salt	46 FR 35339 (7/8/81)	June 25, 1982.
81-446	Generic name: Polydimethylsiloxane, alkyl and terpenyl substituted	46 FR 47005 (9/23/81)	May 25, 1982.
81-453	Generic name: Modified phenolic novolak resin	46 FR 47006 (9/23/81)	June 28, 1982.
81-460	Generic name: Substituted heteropolycycle	46 FR 47658 (9/29/81)	Feb. 22, 1982.
81-525	Generic name: Polyisobutenyl-succinic acid, metal salt	46 FR 52226 (10/26/81)	July 6, 1982.
81-554	Generic name: Metal alkyl thiocarbonoate	46 FR 55003 (11/5/81)	June 11, 1982.
81-576	1, 2, 4, substituted anthraquinone	46 FR 56652 (11/18/81)	June 28, 1982.
81-588	Generic name: 2-2'-thiodiethyl bis (alkyl succinic acid ester)	46 FR 57632 (11/24/81)	June 25, 1982.
81-656	Generic name: Halogenated nitrotoluene derivative	47 FR 1020 (1/8/82)	Sept. 1982.
81-657	Generic name: Halogenated toluene derivative	47 FR 1020 (1/8/82)	Do.
81-658	Generic name: Halogenated toluidine derivate	47 FR 1020 (1/8/82)	Do.
81-667	Generic name: Substituted furan	47 FR 1411 (1/13/82)	May 21, 1982.
82-16	Generic name: Substituted cyclic amide-aldehyde condensation product	47 FR 3593 (1/26/82)	July 14, 1982.
82-30	Generic name: Polysubstituted alkyl polyamine	47 FR 3592 (1/26/82)	Mar. 18, 1982.
82-39	Generic name: Polymer of a diisocyanate, polyglycol and polysubstituted alkyl amine	47 FR 4145 (1/28/82)	June 11, 1982.
82-45	Generic name: Substituted pyridinium bromide	47 FR 4736 (2/2/82)	May 4, 1982.
82-48	Generic name: Polymer of cycloalkene	47 FR 5331 (2/4/82)	Apr. 29, 1982.
82-70	-[(1,3-dioxolan-2-ylmethoxy)imino]benezene-acetonitrile	47 FR 7311 (2/18/82)	June 16, 1982.
82-74	Generic name: Carbomonocyclic diester	47 FR 7487 (2/19/82)	July 15, 1982.
82-129	Generic name: Esterfild copolymer of a vinyl compound and an unsaturated carboxylic acid	47 FR 8675 (3/1/82)	July 10, 1982.
82-139	Polymer of hexanedioic acid and 2-(methylamino) ethanol	47 FR 8843 (3/2/82)	June 2, 1982.

IV. 42 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE—Continued

PMN No.	Chemical identification	FR citation	Date of commencement
82-170	1,6-hexanedioic acid, polymer with 1, 2-ethane-diol, 1,3-benzenedicarboxylic acid, 1, 4-benzenedicarboxylic acid, and 1, 6-hexanediol.	47 FR 1090 (3/12/82)	July 16, 1982.
82-172	Generic name: Chromophore substituted poly(oxy-alkylene)	47 FR 10900 (3/12/82)	June 7, 1982.
82-177	Generic name: Metal salt of sulfur analog of carboxyl alkyl carbonic acid	47 FR 11957 (3/19/82)	June 14, 1982.
82-199	Generic name: Poly-imidazoline derivative	47 FR 11959 (3/19/82)	July 1, 1982.
82-205	Generic name: Polyetherpolyol reaction with toluene diisocyanate hydroxy propyl acrylate blocked	47 FR 13038 (3/26/82)	July 10, 1982.
82-219	Generic name: Polyetherpolyol reaction with isophorne diisocyanate-HEA blocked	47 FR 14218 (4/2/82)	Do.
82-226	Generic name: Substituted phenyl, substituted naphthalenyl azo dye	47 FR 14219 (4/2/82)	June 30, 1982.
82-233	Generic name: Organic salt of phosphorus	47 FR 15407 (4/9/82)	July 12, 1982.
82-245	Generic name: Modified polyurethane	47 FR 16403 (4/16/82)	July 1, 1982.
82-247	Generic name: 2-anthracenesulfonic acid, 1-amino-4-substituted phenylamino-9, 10-dihydro-9, 10-dioxo sodium salt.	47 FR 16403 (4/16/82)	July 12, 1982.
82-267	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	July 5, 1982.
82-268	Generic name: Acid blocked amine	47 FR 16405 (4/16/82)	Do.
82-286	Generic name: Substituted aryl alkyl siloxane	47 FR 17667 (4/23/82)	Apr. 30, 1982.
82-303	Inert Fluorocarbon	47 FR 18654 (4/30/82)	July 21, 1982.

V. 16 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED

PMN No.	Identity/generic name	FR citation	Date suspended
80-137	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidiene)]	45 FR 48243 (7/18/80)	Sept. 22, 1980.
80-138	Benzeneamine, 4,4'-methylene bis [*N*-(1-methybutylidene)]	45 FR 48243 (7/18/80)	Do.
80-146	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononly, isodecyl) mixed esters, zinc salt.	45 FR 49153 (7/23/80)	Sept. 17, 1980.
80-147	Phosphorodithioic acid *O,O'*-di(isohexyl, isoheptyl, isooctyl, isononly, isodecyl) mixed esters	45 FR 49153 (7/23/80)	Do.
80-264	Generic name: Benzeneamine, [*N*-(1-methylhexylidene)-*N*-(1-methyl butylidene)-4,4'-methylene bis]	45 FR 73127 (11/4/80)	Dec. 24, 1980.
81-534	2,3-epoxycyclohexanone	45 FR 53522 (10/29/81)	Nov. 2, 1981.
81-558	4-hydroxy-3-(5-(2-hydroxysulfonyloxy) ethylsulfonyl)-2-methoxyphenylazo)-7-succinylamino-2-naphthalenesulfonic acid disodium salt.	45 FR 55146 (11/6/81)	Jan. 27, 1982.
81-561	4-[4-[2-(hydroxysulfonyoxy)ethylsufonyl]-5-methyl-2-methoxyphenylazo]-3-methyl-1-(3)sulfophenyl)-5-pyrazolone disodium salt.	45 FR 55146 (11/6/81)	Do.
81-660	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-hydroxysulfonyloxy)ethysulfonly)phenylazo)-1-napthalene sulfonic acid disodium salt.	45 FR 1021 (1/8/82)	Mar. 28, 1982.
81-661	4-hydroxy-3-(2-methoxy-5-methyl-4-(2-hydroxysulfonyloxy)ethysulfonly)phenylazo)-6-(3-sulfophenyl) amino-2-naphthalenesulfonic acid trisodium salt.	47 FR 1021 (1/8/82)	Do.
82-23	Generic name: Polyhalogenated aromatic alkylated hydrocarbon	47 FR 3595 (1/26/82)	May 12, 1982.
82-59	Generic Name: Aromatic disazo dye	47 FR 5530 (2/4/82)	Apr. 20, 1982.
82-60	Generic name: Zinc, O,O-bis alkylphosphoro dithioate	47 FR 5932 (2/9/82)	Apr. 15, 1982.
82-387	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters	47 FR 25401 (6/11/82)	July 30, 1982.
82-388	Phosphorodithioic acid, O,O', secondary butyl and isooctyl mixed esters, zinc salt	47 FR 25401 (6/11/82)	Do.
82-432	Reaction mixture containing: isobornyl acetylacetate, isobornyl acetate and ethylacetylacetate	47 FR 27610 (6/25/82)	July 2, 1982.

[FR Doc. 82-23679 Filed 8-30-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1373]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

The following listings of petitions for reconsideration filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Aguada, Arecibo, Cidra, Lajas, Manati, Mayaguez, Quebradillas, Utuado and Cabo Rojo, Puerto Rico) (BC Docket No. 80-520, RM's 3358, 3795 & 3796).

Filed by: Jose J. Arzuaga on 8-16-82.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Montevideo, Oliva, and Ortonville, Minnesota) (BC Docket No. 81-737, RM-3882).

Filed by: A. L. Stein, Attorney for Tri-State Broadcasting Co., (KDIO) on 8-3-82.

Subject: Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Phillipsburg, Kansas) (BC Docket No. 82-145, RM-4030)

Filed by: John Wells King and John P. Crigler, Attorneys for Bengel Broadcasting, Inc., on 8-9-82.

Subject: Interconnection Arrangements Between and Among the Domestic and International Record Carriers. (CC Docket No. 82-122)

Filed by: J. Steven Huffines, Attorney for Pureto Rico Communications Authority on 7-9-82. Robert Michelson, Attorney for Western Union International, Inc., on 8-18-82.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-23761 Filed 8-30-82; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

On August 25, 1982, the Federal Communications Commission submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632-7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, NW., Washington, D.C. 20503.

Title: Temporary Permit to Operate a Part 90 Radio Station

Form No.: FCC 572

Action: Revision

Respondents: Individuals, associations, partnerships, corporations and local governmental entities eligible to hold a radio station authorization in the Private Land Mobile Radio Service.

Estimated Annual Burden: 45,000 responses; 4,500 hours.
Title: Application for Exemption from Ship Radio Station Requirements
Form No.: FCC 820
Action: Revision
Respondents: Vessel owners, vessel operating agencies, or masters of vessels desiring exemption.
Estimated annual burden: 100 responses; 300 hours.
Federal Communications Commission.
William J. Tricarico,
Secretary.
August 25, 1982.
[FR Doc. 82-23760 Filed 8-30-82; 8:45 am]
BILLING CODE 6712-01-M

[Docket 20639; FCC 82-361]

RCA Global Communications, Inc.—Proposed Methods of Refunding Certain Monies Held in Escrow by the Communications Satellite Corp.; and American Telephone & Telegraph Co., et al.

AGENCY: Federal Communications Commission.

ACTION: Order terminating docket.

SUMMARY: The complete background to Docket No. 20639 has recently been set forth in *ITT World Communications, Inc.*, 89 FCC 2d 873 (1982). Briefly stated, however, the Commission in *American Telephone and Telegraph Co.*, 56 FCC 2d 821 (1975), *pleading schedule and issues modified*, 67 FCC 2d 966 (1978) instituted Docket No. 20639 to ensure that certain rate reductions of the Communications Satellite Corp. which had been ordered by the Commission in 1975 would be passed on by Comsat's carrier-customers such as the international record carriers to the final consumer of telecommunications sevices. In view of the Commission's action today approving a refund proposal of RCA Global Communications, Inc. all of Comsat's carrier-customers have now passed on these savings to their customers and the purposes of Docket No. 20639 have been achieved. Accordingly, the Commission terminated Docket No. 20639.

FOR FURTHER INFORMATION CONTACT: Patrick J. Donovan, Tariff Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6917.

SUPPLEMENTARY INFORMATION:

Adopted: August 4, 1982.

Released: August 9, 1982.

In the matter of RCA Global Communications, Inc., proposed methods of refunding certain monies held in escrow by the Communications Satellite Corporation and American Telephone and Telegraph Company, et al.; Docket No. 20639 (3-21-78; 43 FR 11750); order.

1. Before the Commission is a proposal submitted by RCA Global Communications, Inc. (RCA) for refunding certain monies held in escrow by the Communications Satellite Corporation (Comsat). These funds were placed in escrow by Comsat during 1976-1979 pending voluntary submission by its carrier-customers of suitable plans for "flowing-through" rate reductions ordered by the Commission in *Communications Satellite Corp.*, Docket 16070, 56 FCC 2d 110 (1975). The Department of Defense (DOD) has objected to the manner of refund proposed by RCA. For the reasons indicated below, we deny DOD's objections and permit the refund to be implemented.

Background and Contentions of the Parties

2. The background to this proceeding is fully set forth in *ITT World Communications, Inc.* (*Refund Approvals*), 89 FCC 2d 973, (1982). There, the Commission accepted refund proposals of ITT World Communications, Inc., TRT Telecommunications, Corp., and Western Union International, Inc. which had been submitted in early 1979 and are currently in the process of being implemented. RCA, too, had submitted a refund proposal in early 1979. This proposal contemplated a refund plan similar to those of the other IRCs except that RCA proposed a credit against future use instead of a cash refund. After the Bureau approved the refund plans of the other carriers, RCA filed a second plan which replaced the credit against future use with a cash refund. However, RCA withdrew this proposal in October, 1981. Later that year, it submitted a new proposal under which it would have essentially transferred the escrowed monies to itself and reduced its rate base accordingly. Its reasoning was that even with a reduced rate base for the 1976-1979 period in question, its earnings for telex and leased channel service would have been within an acceptable range. In *Refund Approvals*, the Commission concluded that this plan was not acceptable and directed the Bureau to designate the matter for hearing in Docket No. 20639 and prescribe a refund if an acceptable proposal were not submitted by RCA within 15 days. On May 17, 1982, RCA submitted the proposal which is now before us.

3. RCA's latest refund proposal would initially apportion the approximately $25,000,000[1] held in escrow by Comsat so that telex customers would receive 60 percent and leased channel customers 40 percent. Then, each customer would receive a credit or cash refund in proportion to the amount of service received during the period from June, 1976 to December, 1979 when funds were placed in escrow. In other words, a telex customer who received ten percent of the total amount of telex service provided by RCA during the escrow period would receive ten percent of the total amount allocated to telex service.[2]

4. In its opposition, DOD begins by noting the similarities between RCA's proposal and the refund plans of ITT, WUI and TRT accepted by the Commission over DOD's objections in *Refund Approvals*. DOD, therefore, renews with respect to the RCA proposal the objections raised against the proposals of the other IRCs, and incorporates by reference its previous pleadings. The principal claim advanced by DOD against the other carriers' plans was that telex customers were favored over leased channel customers such as DOD. DOD goes on to assert that RCA's current refund proposal is even more problematic than the other IRCs' proposals because RCA uses a different apportionment between telex and leased channel customers than it used in its 1979 flow-through tariff.[3] As such, DOD

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[1] Of this sum, approximately $15,000,000 is principal and $10,000,000 earned interest.

[2] When Comsat reduced its rates to the IRCs pursuant to the Commission's decision in Docket 16070, RCA was able to identify the amount of savings it would realize from circuits used to provide telex and leased channel service. In fact, according to cost support material submitted by RCA in connection with its flow-through tariff in 1979, approximately 30 percent of the total savings realized by Comsat's rate reductions was estimated as attributable to circuits used to provide telex service and 70 percent to circuits used to provide leased channel service. In other words, since the amount held in escrow represents the total savings from Comsat's rate reductions between 1976 and 1979, 30 percent and 70 percent of the escrowed funds can be attributed to telex circuits and leased channels, respectively. In turn, since RCA would apportion 60 percent of the escrowed funds to telex customers, and 40 percent to leased channel customers, its proposal may be said to favor telex customers. By comparison, RCA's 1979 flow-through tariff divided the total rate reductions approximately equally between telex and leased channel service. However, since savings of 30 percent and 70 percent, respectively, could be attributed to these services, it can be seen that RCA's flow-through tariff also somewhat favored telex customers.

[3] The percentage of the total rate reduction which went to telex service over all routes worldwide and the percentage which went to leased channel service under the IRCs 1979 flow-through tariffs, were subsequently employed by the IRCs, including RCA, in their 1979 refund plans in apportioning the refund pool between telex and leased channel customers.

argues that the proposed refund is an unlawful and arbitrary discrimination against leased channel customers.

Discussion

5. In *Refund Approvals,* we began by stating that the issue for determination was whether the proposed refunds were acceptable under the standards of Section 201(b) of the Act, 47 CFR 201(b). That section provides that all carrier charges, practices, classifications and regulations in connection with communication service must be just and reasonable and that any charge, practice, classification or regulation which is unjust and unreasonable is unlawful. In evaluating the carriers' proposals, we found that the favoring of telex customers did not appear to be unreasonable in view of the much higher rate of return apparently earned by this service as opposed to leased channel service. We also noted that this aspect of the refunds was consistent with the Commission's suggestion in *ITT World Communications, Inc.,* 70 FCC 2d 1316 (1978), that the carriers in their flow-through tariffs consider giving greater rate reductions to services which had earned high rates of return. As a separate matter, the carriers' refund plans were found not to violate any prior Commission decision or court orders. Finally, we discussed the unacceptability of DOD's own refund proposal which apparently would have excluded refunds to leased channel customers without identifiable satellite circuits.[4]

6. RCA's proposal differs from the others already approved only in that it has not apportioned the refund monies based on the same formula used in its flow-through tariff. As a result, telex customers are assertedly even more favored by the refund plan they are by the tariff. The Commission, however, has imposed no requirement that each refund plan must mirror the apportionment formula contained in the carrier's flow-through tariff. Rather, as explained in *Refund Approvals,* there may be a number of possible refund plans which would satisfy the requirements of Section 201(b), *supra.* Other than making general claims of unfairness, DOD has failed to advance any showing that the specific apportionment chosen by RCA lies outwide the reasonableness standard.[5]

7. DOD calls one other matter to our attention. RCA now estimates that the administrative costs of making refunds will likely be higher than the $116,700 orginally estimated in 1979. DOD argues that RCA has never justified this figure. In *Refund Approvals,* fn. 13, we stated that we would require a full accounting from the other IRCs of their refunds. We will also impose this requirement on RCA and will expect it to provide justification for any funds it retains to cover administrative expenses.[6]

8. In *American Telephone and Telegraph Co.,* 56 FCC 2d 821 (1975), *pleadings schedule and issues modified,* 67 FCC 2d 966 (1978), we instituted Docket No. 20639 to prescribe flow-through tariffs and flow-through refunds if the concerned carriers did not voluntarily comply with the Commission's flow-through objectives. RCA is the last carrier to comply with our objectives in this regard and thus the purposes of Docket No. 20639 have been achieved without any necessity for a prescription. Accordingly, we will terminate that Docket.

9. Accordingly, IT IS ORDERED, That the objections of the Department of Defense filed May 27, 1982 are denied.

10. It is further ordered, That the refund proposal of RCA Global Communications, Inc. filed May 17, 1982 is accepted.

11. It is further ordered, That Docket No. 20639 is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Dissenting Statement of Commissioner Mimi Weyforth Dawson In Re: Refund of COMSAT Overcharges

I do not believe we should approve the refund proposal of RCA Global Communications, Inc. which discriminates, unlawfully in my view, between telex and leased channel customers. The largest leased channel customer is the U.S. Department of Defense which will spend more than $52 million in 1982 on international leased channels. RCA proposes to give a windfall to telex customers on the rationale that rates of return on that service are higher than on other services. Moreover, unlike the other international record carriers [7] RCA Global does not even propose a refund which would reflect the apportionment formula in its flow-through tariff.[8] Thus, RCA Global proposes to skew its refund even more in favor of telex customers.

While, in the future, we may consider substantial deregulation of this industry,[9] we now have a duty to ensure that refunds are made in a fair and equitable manner. Thus, for these reasons and those stated in my separate statement to ITT World Communications, Inc., 89 FCC 2d 973 (1982), I dissent.

[FR Doc. 82-23785 Filed 8-30-82; 8:45 am]

BILLING CODE 6712-01-M

[4] *Refund Proposals, supra,* fn. 18.

[5] TRT Telecommunications Corp. has also submitted a letter commenting on RCA's proposal. It contends that RCA's plan is an attempt to gain a competitive advantage over the other IRCs by giving unduly large refunds to RCA's telex customers now that the proposals of the other carriers have been approved and are being implemented. TRT further claims that certain rate of return figures cited by RCA do not alone provide an adequate basis for finding the RCA plan reasonable. However, these contentions are vague, conclusory and virtually unsupported. Accordingly, they do not warrant further proceedings.

[6] The Commission has previously determined that Comsat rate reductions resulting from Docket 16070 should be flowed-through to the ultimate consumer net of direct and administrative costs related to the flow-through. *Communications Satellite Corp.,* Docket 16070, 56 FCC 2d 1101, 1187 (1975).

[7] See *ITT World Communications, Inc.* 89 FCC 2d 973 (1982) where we approved the refund proposals of the other carriers. I disagreed with permitting such a discrimination in that case.

[8] The flow-through tariffs were required to be filed to reflect lower rates to IRC users resulting from Comsat rate reductions.

[9] In FCC 82-187, Mimeo No. 31282 (released April 21, 1982) the Commission expanded the Competitive Carrier proceeding to consider deregulation of the IRCs' domestic operations. The question of deregulating the IRCs' international operations has not yet been considered.

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the Federal Register in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T–4060.

Filing party: Mr. H. E. Welch, Director of Traffic, Tampa Port Authority, P.O. Box 2192, 811 Wynkoop Road, Tampa, Florida 33601.

Summary: Agreement No. T–4060, between the Tampa Port Authority (Port) and Holland America Cruises, Inc. (Holland America) provides for the construction by Port of a passenger terminal facility and subsequent non-exclusive preferential assignment of the facility to Holland America. As compensation, Holland America will pay Port dockage charges in the amount of 5.5 cents per gross registered ton of the vessel(s) per day and wharfage charge of six dollars per passenger for the first three years of the agreement.

Agreement No. 5680–34.

Filing party: Bruce Love, Esquire, Lillick, McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Summary: Agreement No. 5680–34 modifies the basic agreement of the Pacific-Straits Conference to establish independent action procedures concerning interior point intermodal tariff matters.

Agreement No. 7680–44.

Filing party: Dominick J. Manfredi, Chairman, American West African Freight Conference, 67 Broad Street, New York, New York 10004.

Summary: Agreement No. 7680–44 modifies the American West African Freight Conference's basic approved agreement by incorporating new language in Article 16(f), which would expand the existing adjudication authority to give the neutral body greater discretion in deciding whether a malpractice has been committed.

Agreement No. 8900–19.

Filing party: David F. Smith, Esq., Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Summary: Agreement No. 8900–19 amends the basic provisions of the Eighty–Nine Hundred Rate Agreement to change the right of independent action procedures.

Agreement No. 10456.

Filing party: Alan F. Wohlstetter, Esquire, Denning & Wohlstetter, 1700 K Street NW., Washington, D.C. 20006.

Summary: Agreement No. 10456, between Expressvan International, Inc. (Expressvan), and Container Overseas Agency, Inc. (Container Overseas), (both nonvessel operating common carriers by water) provides for the joint loading of cargo to be transported from the ports of New York, Boston, Philadelphia and Baltimore to ports in Europe, the Mediterranean area, the Baltic area, the Red Sea, the Persian Gulf, the Arabian Sea, the Bay of Bengal, Africa, and Central and South America. Container Overseas shall accept and receipt Expressvan's less-than-containerload shipments, which will be consolidated with the shipments of Container Overseas to form containerloads to be shipped via direct vessel operators selected by Container Overseas.

By Order of the Federal Maritime Commission.

Dated: August 25, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82–23756 Filed 8–30–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 1504]

Ba-Cen-Car Freight Forwarding Inc.; Order of Revocation

On August 11, 1982, Ba-Cen-Car Freight Forwarding Inc., 2659 N.W. 36th Street, Miami, FL 33142 surrendered its Independent Ocean Freight Forwarder License No. 1504 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1504 issued to Ba-Cen-Car Freight Forwarding Inc. be revoked effective August 11, 1982, without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 1504 issued to Ba-Cen-Car Freight Forwarding Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Ba-Cen-Car Freight Forwarding Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82–23755 Filed 8–30–82; 8:45 am]

BILLING CODE 6730–01–M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Vimar Transportation Consultants, Inc., 7240 N.W. 25th Street, Miami, FL 33122. Officers: Vitalio Crespin, Sole Stockholder/President; Margarita Crespin, Vice President/Secretary/Treasurer

R. N. Forwarding Co., Inc., One World Trade Center, New York, NY 10048. Officers: Arthur Laufer, Vice President; Norman Laufer, President

Dennis Teicher, 31 Broadfield Place, Glen Cove, NY 11542.

Dated: August 25, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82–23752 Filed 8–30–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 534]

MAS International Corp.; Order of Revocation

On August 11, 1982, MAS International Corp., 350 Broadway, New York, NY 10013 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 534.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 534 issued to MAS International Corp., be rovoked effective August 11, 1982 without prejudice to reapplication for a license in the future.

It is further ordered, that Independent Ocean Freight Forwarder License No. 534 issued to MAS International Corp. be returned to the Commission for cancellation.

It is further Ordered, that a copy of this Order be published in the **Federal Register** and served upon MAS International Corp.

Albert J. Klingel, Jr.,

Director Bureau of Certification and Licensing.

[FR Doc. 82–23753 Filed 8–30–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2272]

Shipley International, Inc.; Order of Revocation

On August 16, 1982, Shipley International, Inc., P.O. Box 522853, Miami, FL 33152 surrendered its Independent Ocean Freight Forwarder License No. 2272 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981.

It is ordered, that Independent Ocean Freight Forwarder License No. 2272 issued to Shipley International, Inc. be revoked effective August 16, 1982.

It is further Ordered, that a copy of this Order be published in the Federal Register and served upon Shipley International, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-23754 Filed 8-30-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Bank of Virginia Company,* Richmond, Virginia; to acquire 100 percent of the voting shares or assets of The Bank of Vienna, Vienna, Virginia. Comments on this application must be received not later than September 15, 1982.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *ExTraCo Bankshares, Inc.,* Temple, Texas; to acquire 100 percent of the voting shares or assets of First National Bank of Temple-South, Temple, Texas. Comments on this application must be received not later than September 22, 1982.

Board of Governors of the Federal Reserve System, August 25, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23771 Filed 8-30-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Oak Park Bancorp, Inc.,* Oak Park, Illinois; to acquire 66.0 percent of the voting shares or assets of The Dunham Bank, St. Charles, Illinois. Comments on this application must be received not later than September 24, 1982.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chartercorp,* Kansas City, Missouri; to acquire 80 percent of the voting shares or assets of Bank of Independence, Independence, Missouri. Comments on this application must be received not later than September 24, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harlingen National Bancshares, Inc.,* Harlingen, Texas; to acquire 100 percent of the voting shares or assets of South Harlingen National Bank, Harlingen, Texas, a proposed new bank. Comments on this application must be received not later than September 24, 1982.

Board of Governors of the Federal Reserve System, August 25, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-23773 Filed 8-30-82; 8:45 am]

BILLING CODE 6210-01-M

Comprehensive Investment Co.; Formation of Bank Holding Company

Comprehensive Investment Company, Coon Rapids, Iowa, 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 Manilla State Bank, Manilla, Iowa. 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)).

Comprehensive Investment Company, Coon Rapids, Iowa, has also 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 engage in leasing of personal property, including farm equipment, as the functional equivalent of lending. These activities would be performed from offices of Applicant and its subsidiary in Manilla, Iowa, and in Coon Rapids, Iowa, and the geographic areas to be served are Manilla, Iowa, and Coon Rapids, Iowa, and the area within a 15 mile radius of each of those cities. 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 Chicago.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than September 20, 1982.

Board of Governors of the Federal Reserve System, August 25, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-23774 Filed 8-30-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas Texas 75222:

1. *Landmark Financial Group, Inc.*, Fort Worth, Texas; to become a bank holding company by acquiring 80 per cent of the voting shares of Mercantile Bank of Fort Worth, Fort Worth, Texas. Comments on this application must be received not later than September 22, 1982.

2. *Permian Bancshares, Inc.*, Odessa, Texas; to become a bank holding company by acquiring 100 per cent of the voting shares of Permian Bank & Trust, Odessa, Texas. Comments on this application must be received not later than September 22, 1982.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Saratoga Bancorp*, Saratoga, California; to become a bank holding company by acquiring 100 per cent of the voting shares of Saratoga National Bank, Saratoga, California, a banking organization. Comments on this application must be received not later than September 20, 1982.

C. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *First Winters Holding Company*, Winters, Texas; to become a bank holding company by acquiring 80 per cent of the voting shares of The Winters State Bank, Winters, Texas. This application may be inspected at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than September 22, 1982.

Board of Governors of the Federal Reserve System, August 25, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-23772 Filed 8-30-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have 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 bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

a. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303.

1. *First Hartford Bancshares, Inc.*, Hartford, Alabama; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First National Bank of Hartford, Hartford, Alabama. Comments on this application must be received not later than September 24, 1982.

2. *Quality Financial Services Corporation*, Alexandria, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of DeKalb County Bank and Trust Company, Alexandria, Tennessee. Comments on this application must be received not later than September 24, 1982.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60609.

1. *S.B.W. Bancorp., Inc.*, Waupun, Wisconsin; to become a bank holding company by aquiring 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to The State Bank of Waupun, Waupun, Wisconsin. Comments on this application must be received not later than September 24, 1982.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166.

1. *Dale Bancorp, Inc.*, Dale, Indiana; to become a bank holding company by aquiring 100 percent of the voting shares of The Dale State Bank, Dale, Indiana. Comments on this application must be received not later than September 24, 1982.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480.

1. *First State Financial Services, Inc.*, Bridgewater, South Dakota; to become a bank holding company by aquiring 80 percent of the voting shares of First State Bank, Bridgewater, South Dakota. Comments on this application must be received not later than September 24, 1982.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198.

1. *Victory Bancshares, Inc.*, Nowata, Oklahoma; to become a bank holding company by aquiring 90 percent of the voting shares of Victory National Bank, Nowata, Oklahoma. Comments on this application must be received not later than September 24, 1982.

G. **Federal Reserve Bank of Dallas** (Anthony J Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222.

1. *Lamesa National Corporation*, Lamesa, Texas; to become a bank holding company by aquiring at least 80 percent of the voting shares of The

Lamesa National Bank, Lamesa, Texas. Comments on this application must be received not later than September 24, 1982.

H. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120.

1. *Sterling Bancorporation*, Los Angeles, California; to become a bank holding company by aquiring 100 percent of the voting shares of Sterling Bank, Los Angeles, California. Comments on this application must be received not later than September 24, 1982.

Board of Governors of the Federal Reserve System, August 25, 1982.

Dolores S. Smith,

Assistant Secretary to the Board.

[FR Doc. 82-23775 Filed 8-30-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Proposed Discontinuance of Practice of Publishing Intervention Notices and Delegations of Authority

The General Services Administration (GSA) intends to discontinue the practice of publishing Intervention Notices and Delegations of Authority in connection with GSA's participation in Federal and state public utility proceedings.

Pursuant to section 201(a)(4) and 205(d) of the Federal Property and Administrative Services Act of 1949, as amended, 49 U.S.C. 481(a)(4) and 486(d), the Administrator of General Services is authorized to represent the consumer interests of the executive agencies in utility proceedings before Federal and state regulatory bodies, and under appropriate circumstances may delegate such representation authority to the head of another Federal agency. On each occasion that GSA has decided to intervene and participate in a utility rate proceeding, GSA has first published an Intervention Notice in the **Federal Register** describing GSA's proposed intervention and soliciting comments thereon. Similarly, each time GSA delegates representation authority to another Federal agency, the formal Delegation of Authority has been published in the **Federal Register.**

There is no requirement in law or regulation that GSA publish Intervention Notices and Delegations of Authority in connection with utility proceedings. Eliminating the practice will relieve GSA's support staff of a typing and clerical burden, and will avoid a considerable publication expense. Accordingly, GSA now proposes to discontinue the practice of publishing these items.

Persons desiring to comment on GSA's proposal to terminate publication of Intervention Notices and Delegations of Authority should submit all comments to John L. Stanberry, Assistant Commissioner, Office of Public Utilities, Transportation and Public Utilities Service, General Services Administration, 425 I Street NW., Room 2011, Washington, D.C. (mailing address: General Services Administration (TU), Chester A. Arthur Building, Washington, D.C. 20406), 202-275-1027, on or before September 30, 1982.

Dated: August 23, 1982.

Ray Kline,

Deputy Administrator of General Services.

[FR Doc. 82-23865 Filed 8-30-82; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82M-0253]

CILCO™, Inc.; Premarket Approval of Shearing-Stye Planar and Angled Posterior Chamber Intraocular Lenses (Models PC11/PB11 and PC12/PB12)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Shearing-style Planar (Models PC11/PB11) and Angled (Models PC12/PB12) Posterior Chamber Intraocular Lenses Sponsored by CILCO™, Inc., Huntington, WV. After reviewing the recommendations of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the devices had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by September 30, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Documents Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On August 25, 1981, CILCO™, Inc., Huntington, WV, submitted to FDA an application for premarket approval of the Shearing-style Planar and Angled Posterior Chamber Intraocular Lenses (Models PC11/PB11 and PC12/PB12, respectively). Models PB11 and PB12 contain blue haptics (attachment loops) made of polypropylene suture material and pigmented with the color additive [phthalocyaninato (2-1)] copper. The use of this additive to color polypropylene suture material used in ophthalmic surgery has been approved by FDA (21 CFR 74.1045). The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On July 16, 1982, FDA approved the application by a letter to the sponsor from the Acting Associate Director for Device Evaluation of the Bureau of Medical Devices. The Shearing-style Planar and Angled Posterior Chamber Intraocular Lenses are indicated for primary implantation in persons 60 years of age and older for the visual correction of aphakia where a cataractous lens has been removed by extracapsular extraction methods.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of

review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time or or before September 30, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 23, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23640 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0257]

Coburn Optical Industries, Inc.; Premarket Approval of Binkhorst Iris Clip and Fedorov Type I Iris Fixation Intraocular Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Binkhorst Iris Clip and Fedorov Type I Iris Fixation Intraocular Lenses sponsored by Coburn Optical Industries, Inc., Clearwater, FL. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Device Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative reviews by September 30, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On May 23, 1980, Coburn Optical Industries, Inc., Clearwater, FL, submitted to FDA an application for premarket approval of the Binkhorst Iris Clip and Fedorov Type I Iris Fixation Intraocular Lenses. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, and FDA advisory committee, which recommended approval of the application for the use of this device. On July 26, 1982, FDA approved the application by a letter to the sponsor from the Acting Associate Director for Device Evaluation of the Bureau of Medical Devices. The Binkhorst Iris Clip and Fedorov Type I Iris Fixation Lenses are indicated for primary implantation in persons 60 years of age and older for the visual correction of aphakia where a cataractous lens has been removed by intracapsular or extracapsular extraction methods.

A summary of the safety and effectiveness data on which FDA's approval is based is on filed in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFK-402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition under section 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact or resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before September 30, 1982, file with the Dockets Management Branch (address above) four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 23, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23639 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82N-0283]

International Drug Scheduling; Convention on Psychotropic Substances and Single Convention on Narcotic Drugs; Sedative Hypnotic Drugs and Analgesic Drugs

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting interested persons to submit data or comments concerning abuse potential, actual abuse, and medical usefulness and trafficking of four sedative hypnotic drugs and five analgesic drugs. This information will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding abuse liability, actual abuse, and trafficking of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drugs. The sedative hypnotic drugs are used mainly to induce calmness or sleep. The analgesic drugs are used mainly to treat pain. This notice requesting information is required by law.

DATE: Comments by October 15, 1982.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm.

4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., National Center for Drugs and Biologics (HFD–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: The United States is a party to the 1971 Convention on Psychotropic Substances and the Single Convention on Narcotic Drugs, 1961. Article 2 of the Convention on Psychotropic Substances provides that if a party to that Convention or the World Health Organization (WHO) has information about a substance which in its opinion may require international control or change in such control, it shall so notify the Secretary-General of the United Nations and provide the Secretary-General with information in support of its opinion. Article 3 of the Single Convention on Narcotic Drugs has a similar provision.

The Controlled Substances Act (CSA) (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970) provides that when WHO notifies the United States under Article 2 of the Convention on Psychotropic Substances that it has information that may justify adding a drug or other substance to one of the schedules of that Convention, transferring a drug or substance from one schedule to another, or deleting it from the schedules, the Secretary of State must transmit the notice to the Secretary of the Department of Health and Human Services (DHHS). The Secretary of DHHS must then publish the notice in the **Federal Register** and provide opportunity for interested persons to submit comments to assist DHHS in preparing scientific and medical evaluations about the drug or substance.

The Secretary of DHHS received the following notice from WHO on behalf of the Secretary-General:

> The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform His Excellency's Government that he has been asked to assist the Director General of The World Health Organization in obtaining data on certain substances. A WHO expert group will review these substances in March 1983 with a view to determining whether any of them should be brought under international control.
>
> The expert group will review buphrenorphine, butorphanol, cyclazocine, nalbuphine and pentazocine to determine whether WHO should recommend to the Commission on Narcotic Drugs that any of them should be brought under the control of the Single Convention on Narcotic Drugs, 1961, and of that Convention as amended by the 1972 Protocol.
>
> The Secretary-General would accordingly be most grateful if His Excellency's Government would submit data on each substance concerning liability to abuse, the production of ill effects, convertibility into a drug, recoverability and any therapeutic advantages.
>
> The expert group will further review the above-mentioned five substances, as well as chloralhydrate, paraldehyde, phenobarbitone and potassium bromide, to determine whether WHO should recommend that any of them should be brought under the control of the Convention on Psychotropic Substances, 1971.
>
> In the latter context, His Excellency's Government is kindly requested to submit data on each substance concerning the extent or likelihood of abuse, the degree of seriousness of the public health and social problems associated with such abuse and the usefulness in medical therapy.
>
> It would also be very useful if His Excellency's Government would indicate whether any of the above-mentioned substances have been seized from the illicit drug traffic during the past three years, and, if so, the amounts seized, the number of such seizures and, where this could be determined, the provenance of the substances. Any additional information on clandestine laboratories where these substances may have been manufactured and on precusors used in this process would also be valuable.
>
> In view of the fact that the Secretary-General must prepare a report for WHO on this subject, it would be apreciated if the information requested in this note could be sent to the Director, United Nations Division of Narcotic Drugs, Vienna International Centre, P.O. Box 500, A–1400 Vienna Austria, as soon as possible, and preferably before 1 December 1982.

Therefore, as required by section 201(d)(2)(A) of the Controlled Substances Act (21 U.S.C. 811(d)(2)(A)), FDA on behalf of DHHS invites interested persons to submit data or comments regarding the named sedative hypnotic and analgesic drugs.

As stated in the notice above, the named sedative hypnotic drugs are: Chlorohydrate, paraledehyde, phenobarbitone (known in this country as phenobarbital), and potassium bromide. Each of these four drugs is marketed in the United States and chloralhydrate, paraldehyde, and phenobarbitone are currently controlled in schedule IV of the CSA. Also, of these four drugs, only phenobarbitone is now controlled internationally (schedule IV of the Psychotropic Convention). WHO will review these drugs for possible control or change in control status under the 1971 Convention on Psychotropic Substances.

The WHO notice also requests information on five analgestic drugs which are to be considered by the WHO expert group with a view to determining whether any of them should be recommended for control under either the Single Convention on Narcotic Drugs, or the Convention on Psychotropic Substances. These analgesic drugs are buphrenorphine, butorphanol, cyclazocine, nalbuphine and pentazocine. Cyclazocine and buprenorpine are not now commerically available in the United States. Each of the other analgesic drugs listed above is commerically available in the United States. However, only pentazocine and buphrenorphine are currently controlled domestically under the CSA, in schedules IV and II, respectively. None of the analgesic drugs are currently scheduled internationally.

Information on each of these analgesic drugs was previously solicited in 1981 (see 46 FR 21447, April 10, 1981). This information was concurrently reviewed in 1981 by DHHS and the Drug Enforcement Administration (DEA) of the Department of Justice. An information package about these analgesic drugs was forwarded to WHO through the Secretary of State. The information pertaining to these analgesic drugs that was sent to WHO in 1981 has been placed in this docket's file in FDA's Dockets Management Branch. Therefore, the same information on these analgesic drugs should not be resubmitted at this time in response to this notice. DHHS will accept, however, any new information generated since April 1981 on these five analgesic drugs for its consideration. Copies of all written comments received because of this notice regarding these analgesic drugs will be sent to DEA for their concurrent review because traditionally, DEA has reviewed matters under the Single Convention on Narcotic Drugs.

Data and information received in response to this notice will be used to prepare scientific and medical information on these drugs, with a particular focus on each drug's abuse liability. DHHS will forward that information to WHO, through the Secretary of State, for WHO's consideration in deciding whether to recommend international control or change in control of any of these drugs. Such control could limit, among other things, the manufacture and distribution (import/export) of these drugs, and could impose certain recordkeeping requirements on them.

DHHS will not now make any recommendations to WHO regarding whether any of these sedative hypnotic drugs or analgesic drugs should be subjected to international controls. Rather, DHHS will defer such consideration until WHO has made official recommendations to the Commission on Narcotic Drugs, which

are expected to be made in the spring or fall of 1983. Any DHHS position regarding international control of these drugs will be preceded by another **Federal Register** notice soliciting public comment as required by 21 U.S.C. 811(d)(2)(B).

Interested persons may, on or before October 15, 1982, submit to the Dockets Management Branch (address above), written comments regarding this action. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the handing of this documents. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday and Friday.

Dated: August 26, 1982.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-23950 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

Diamond Shamrock Corp.; Arsanilic Acid-Nitrofurazone Custom Mix; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Diamond Shamrock Corp. providing for use of Arsanilic Acid-Nitrofurazone Custom Mix for growth promotion and prevention of coccidiosis in chickens and turkeys. The firm requested the withdrawal of approval.

EFFECTIVE DATE: September 10, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Diamond Shamrock Corp., 1100 Superior Ave., Cleveland, OH 44114, is the sponsor of NADA 9-013 which provides for use of an arsanilic acid-nitrofurazone premix for growth promotion and prevention of coccidiosis in chickens and turkeys.

The product, originally sponsored by Nopco Chemical Co., Harrison, NJ, originally became effective April 2, 1953. Approval of this NADA had not been codified in the Code of Federal Regulations. The product is one of several that was the subject of a notice of opportunity for a hearing published on August 17, 1976 (41 FR 34899). In its submission of May 19, 1982, to the Bureau of Veterinary Medicine, Diamond Shamrock requested withdrawal of approval of the NADA under 21 CFR 514.115(d) because the product is not being marketed.

Section 514.115(d) (21 CFR 514.115(d)) of the animal drug regulations allows the voluntary withdrawal of an approved NADA. Section 514.115(d) normally does not apply if the holder of the application whose withdrawal has been requested already has been afforded an opportunity for hearing on a proposal to withdraw approval of the NADA. In this case, however, Diamond Shamrock's request is being granted because of the extended time which has elasped since the notice of opportunity for hearing was published and also because the public interest will be served and the firm's interests will not be prejudiced by the withdrawal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 9-013 and all supplements for Diamond Shamrock's Arsanilic Acid-Nitrofurazone Custom Mix is hereby withdrawn, effective September 10, 1982.

Dated: August 23, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-23716 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority

Part H of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect revisions in Chapter HA (Office of the Assistant Secretary for Health), and to establish a new Chapter HB (Health Resources and Services Administration) which replaces Chapters HR and HS in their entirety. Specifically:

(1) The statement for the Office of the Assistant Secretary for Health (42 FR 61317, December 2, 1977, as most recently amended at 45 FR 63932, September 26, 1980 and 45 FR 67776, October 14, 1980) is amended to reflect the transfer of the Office of Health Maintenance Organizations (HA2) to the Health Resources and Services Administration (HB).

(2) The Health Resources Administration (HR) (43 FR 39432, September 5, 1978, as most recently amended at 45 FR 78231, November 25, 1980) is abolished and all of its programs and functions transferred to the Health Resources and Services Administration (HB).

(3) The Health Services Administration (HS) (39 FR 10463, March 20, 1974, as most recently amended at 45 FR 78231, November 25, 1980) is abolished and all of its programs and functions transferred to the Health Resources and Services Administration (HB).

The Health Resources and Services Administration (HRSA) absorbs, consolidates and/or modifies the programs of the affected organizations as follows:

(1) The programs of the Indian Health Service, Health Services Administration (HSA), are transferred with no change in organization and functions and established as a bureau-level organization in the new HRSA.

(2) The programs of the Office of Health Maintenance Organizations, OASH, the Bureau of Health Planning, Health Resources Administration (HRA), and the Bureau of Health Facilities, HRA, are consolidated in a new Bureau of Health Maintenance Organizations and Resource Development.

(3) The program of the Bureau of Health Professions, HRA, the health resources opportunity and the graduate medical education programs of the Office of the Administrator, HRA, and the health professions student loan programs of the Bureau of Health Personnel Development and Service, HSA, are consolidated in a new Bureau of Health Professions, HRSA.

(4) The programs of the Bureau of Community Health Services, HSA, and the Bureau of Medical Services, HSA, together with the National Health Service Corps programs, including scholarships, administered by the Bureau of Health Personnel Development and Service, HSA, are consolidated in a new Bureau of Health Care Delivery and Assistance, HRSA.

Health Resources and Services Administration

Under Part H, delete Chapter HR in its entirety. Delete Chapter HS in its entirety.

Section HB-00 Mission. The Health Resources and Services Administration (HRSA) provides leadership and direction to programs and activities

designed to improve the health services for all people of the United States and to develop health care and maintenance systems which are adequately financed, comprehensive, interrelated and responsive to the needs of individuals and families in all levels of society. Specifically: (1) provides leadership and support efforts designed to integrate health services delivery program with public and private health financing programs, including the health maintenance organizations; (2) administers the health services block grants, categorical grants, and formula grant-supported programs; (3) provides or arranges for personal health services, including both hospital and out-patient care to designated beneficiaries; (4) administers programs to improve the utilization of health resources through health planning; (5) provides technical assistance for modernizing or replacing health care facilities; (6) provides leadership to improve the education, training distribution, supply, use and quality of the Nation's health personnel; and (7) provides advice and support to the Assistant Secretary for Health in the formulation of health policies.

Section HB-10. Organization & Functions. HRSA is directed by an Administrator who is responsible to the Assistant Secretary for Health. It consists of the following major components with functions indicated: Office of the Administrator (HBA); Indian Health Service (HBN); Bureau of Health Professions (HBP); Bureau of Health Maintenance Organizations and Resource Development (HBH); and Bureau of Health Care Delivery and Assistance (HBC).

Office of the Administrator (HBA)

Immediate Office of the Administrator (HBA1). (1) Provides leadership and direction to the programs and activities of the Health Resources and Services Administration; (2) advises the Assistant Secretary for Health on policy matters concerning the Agency's programs and activities; (3) coordinates the Agency's international health activities; and (4) provides guidance and support to the Regional Health Administrators for the implementation of decentralized Health Resources and Services Administration programs.

Office of Equal Employment Opportunity (HBA12). (1) Reports to and advises the Health Resources and Services Administration Administrator and his/her staff on matters related to the equal opportunity programs and policies of the Health Resources and Services Administration; (2) develops, manages, plans, coordinates, provides policy direction, monitors, and evaluates execution of the Equal Opportunity Program, including the HRSA Affirmative Action Program, the Federal Women's Program, the Hispanic Employment Program, the program for the Handicapped and the Complaints Program; (3) maintains liaison with HRSA components which administer programs to increase the participation of minorities in health resources and services programs; (4) provides for review of complaints of discrimination, provides for the investigation of Commissioned Corps complaints, assures counseling of complainants and fair and judicious processing of complaints, including preparation of proposed disposition of complaints for the Administrator; (5) coordinates with Personnel and other responsible organizational elements in the development of the Equal Opportunity Recruitment Program and provides leadership for the program; (6) consults with and advises responsible officials in bureaus regarding problems and progress of equal employment opportunity programs in their respective organizations; (7) represents the Administrator, Health Resources and Services Administration, in contacts with groups, both within and outside HRSA, concerned with equal opportunity and maintains liaison with the Office of Personnel Management, the Department of Health and Human Services, the Public Health Service, and other Federal agencies concerned with Federal equal employment opportunity programs; (8) participates with other organizations in the continuing development of an equal employment opportunity data system and its use; (9) arranges and provides support to advisory groups concerned with equal opportunities in HRSA; (10) participates with the Division of Personnel in planning, developing and conducting training in Equal Employment Opportunity for HRSA top management, equal employment opportunity counselors, supervisors, etc.

Office of Program Coordination (HBA3). Under the direction of an Associate Administrator for Program Coordination who is a member of the Administrator's immediate staff: (1) Advises the Administrator and, upon his direction, other top Health Resources and Services Administration officials, in the identification and, where appropriate, resolution of program policy issues, initiatives, and problems; (2) performs the secretariat function for the Administrator in his role as Chairperson of the Health Resources and Services Administration Policy Board; (3) plans, organizes and directs the Executive Secretariat of the Administration, with primary responsibility for preparation and management of written communications to and from the Administrator; (4) coordinates the preparation of proposed rules and regulations relating to HRSA programs, and coordinates HRSA review and comment on other Public Health Service and Department of Health and Human Services regulations that may affect HRSA programs; and (5) oversees and coordinates the committee management system of the Administration.

Office of Operations and Management (HBA4). Under the direction of the Associate Administrator for Operations and Management, who is a member of the Administrator's immediate staff: (1) Provides Administration-wide leadership, program direction, and coordination of all phases of management; (2) provides management expertise and staff advice and support to the Administrator in program and policy formulation and execution; (3) plans, directs, and coordinates the Administration's activities in the areas of management policy, financial management, personnel management, debt management, manpower management, grants and contracts management, procurement, real and personal property accountability and management, data systems management, and administrative services; (4) oversees the development of annual operating objectives and coordinates HRSA work planning and appraisals; (5) directs HRSA Civil Rights programs; and (6) directs the Equal Employment Opportunity activities for the Office of the Administrator.

Division of Program Support (HBA42). For the Office of the Administrator, the Executive Officer: (1) Plans, directs and coordinates administrative management activities; (2) provides administrative management services including personnel, financial, materiel management, and general administrative services; (3) develops and recommends management policies, procedures, systems and practices; (4) provides liaison with the Office of the Assistant Secretary for Health on financial, personnel, organization, supply, and other management concerns of the Office of the Administrator; and (5) acts for the Associate Administrator for Operations and Management concerning space, parking, and communications management for headquarters and represents him/her in matters relating to the management of the Parklawn Building complex.

Division of Financial Management (HBA43). (1) Provides advice and assistance to the Administrator or Associate Administrator for Operations and Management on financial planning and analysis; (2) collaborates with the Office of Planning, Evaluation and Legislation and other administrative components in the development of the long-range program and financial plan for the Administration; (3) develops policies and instructions for budget preparation and presentation; (4) prepares budget submissions; (5) participates in budget hearings; (6) allocates resources, including dollars and positions; (7) manages a system of budgetary fund and position controls; and (8) maintains liaison with the Office of the Assistant Secretary for Health and the Office of the Secretary.

Division of Personnel (HBA44). (1) Provides personnel management advice and assistance to the Administrator and staff on matters affecting the Administration as a whole; (2) provides personnel management advice and assistance to bureau directors on bureau-wide matters affecting both headquarters and field components; (3) within its servicing area, provides the full range of personnel management and personnel administration services, including manpower planning and utilization, employment, recruitment, compensation and classification, executive and career development, upward mobility, labor relations and employee relations; (4) advises on the application of Commissioned Corps personnel guidelines and assists in preparation and review of Corps personnel actions; (5) represents HRSA in personnel management matters within and outside the Department of Health and Human Services.

Division of Management Policy and Systems (HBA45). Provides Agencywide leadership and direction in the areas of management policies and procedures, manpower management, and automated data processing (ADP) and information systems. Specifically: (1) Provides advice and guidance for the establishment or modification of organizational structures, functions, and delegations of authority; (2) conducts and coordinates the Agency's issuances, records, reports, and forms management programs; (3) negotiates solutions to intra- and inter-agency management problems; (4) conducts Agencywide management improvement programs; (5) conducts management and information studies and surveys; (6) plans, directs, and coordinates the Agency's manpower management program, including manpower deployment and utilization, work measurement and productivity, and manpower forecasting and budgeting; (7) coordinates the Agency's participation in the Department's management tracking system; (8) oversees and coordinates the implementation of legislation, directives, and policies relating to the Privacy Act and to the ADP systems security program; (9) promotes planning for and optimal use of ADP, word processing, and telecommunications systems in support of the Agency's mission and program goals, including the establishment of the Agency's Data Base Administration program; (10) participates in audits of ADP activities to insure compliance with policies and procedures issued by OASH, the Department, the Office of Management and Budget, and the General Services Administration; and (11) provides a focal point for liaison with OASH on all ADP-related matters.

Division of Grants and Procurement Management (HBA46). Provides leadership in the planning, development, and implementation of policies and procedures for grants, contracts, and other assistance mechanisms; (2) exercises the sole responsibility within HRSA for the award and management of contracts; (3) provides advice and consultation on interpretation and application of Public Health Service and Department of Health and Human Services policies and procedures governing contracts and grants management; (4) develops and issues policy and procedural materials for the Administration's contracts and grants programs; (5) establishes standards and guides for and evaluates contracts and grants management operations throughout the Administration; (6) coordinates the Administration's positions and actions with respect to the audit of grants and contracts, and also coordinates responses to General Accounting Office audit reports and monitors the implementation of General Accounting Office management of contracts and grants; (8) maintains liaison, directly or through the Regional Health Administrators, with grantee and contractor institutions and organizations and with the Office of the Assistant Secretary for Health and other components of the Department; (9) advises on and coordinates administration-wide policies and procedures required to implement General Services Administration and departmental regulations governing materiel management, including transportation, motor vehicles, and utilization and disposal of personal property; and (10) administers the Perry Point Supply Service Center.

Division of Fiscal Services (HBA47). (1) Provides accounting and fiscal services for activities of the Health Resources and Services Administration, the Office of the Assistant Secretary for Health and other designated Public Health Services Agencies; (2) provides full accounting services related to debt management for the applicable Public Health Service Agency; (3) directs planning and implementation of accounting systems and procedures; (4) furnishes fiscal advice to contracting officers; (5) provides technical guidance to headquarters program offices and field accounting activities relative to accounting and fiscal matters for varied programs within selected activities of the Public Health Service; (6) maintain central and other accounts of designated health activities; (7) prepares and reviews requests for legal decisions relating to expenditures; (8) prepares financial statements and reports for internal and external use; (9) analyzes and audits financial transactions for headquarters activities; (10) participates in the design and development of new or revisions to accounting systems and makes recommendations as to the appropriateness of proposed modifications to ongoing systems; (11) serves as liaison with Departmental and external control agencies relative to fiscal and accounting matters of the serviced health activities; and (12) provides for major Departmental interfacing of accounting and related control systems.

Office of Communications (HBA5). Under the direction of the Associate Administrator for Communications, who is a member of the Administrator's immediate staff: (1) Provides leadership and general policy and program direction for, and conducts and coordinates communications and public affairs activities of the Health Resources and Services Administration; (2) provides communications and public affairs expertise and staff advice and support to the Administrator in program and policy formulation and execution consistent with policy direction established by the Assistant Secretary for Public Affairs; (3) develops and implements policies related to external media relations and internal employee communications; (4) establishes and implements procedures for the development, review, processing, quality control, and dissemination of Administration communications materials; (5) serves as Communications and Public Affairs Officer for the Administration including the

establishment and maintenance of productive relationships with the communications media; (6) provides central communications services to all Administration programs; (7) serves as focal point for coordination of Administration communications activities with those of other health agencies within the Department of Health and Human Services and with regional, State, local, voluntary and professional organizations; and (8) coordinates the implementation of Freedom of Information Act for the Agency.

Office of Planning, Evaluation and Legislation (HBA6). Under the direction of the Associate Adminstrator for Planning, Evaluation and Legislation, who is a member of the Administrator's immediate staff: (1) Serves as the Administrator's primary staff element and principal source of advice on program planning, program evaluation, and legislative affairs; (2) develops, in collaboration with financial management staff, the long-range program and financial plan for the Administration; (3) oversees, in coordination with the Office of the Assistant Secretary for Health, communications between HRSA and higher levels of the Department on all matters that involve long-range plans, evaluations of program performance, or legislative affairs; (4) develops long-range goals, objectives, and priorities for the Administration; (5) directs all activities within the Administration which compare the costs of the Agency's programs with their benefits, including the preparation and implementation of comprehensive program evaluation plans; (6) directs all the legislative affairs of HRSA, including the development of legislative proposals and a legislative program; and (7) conducts policy analyses and develops policy positions in programmatic areas for HRSA.

Division of Program Planning (HBA62). (1) Serves as the Administrator's primary staff unit and principal source of advice on program planning; (2) oversees communications between the Administration and higher levels of the Department on all matters that involve program plans; (3) maintains liaison with other Federal and non-Federal health agencies on matters within its areas of responsibility; (4) develops long-range goals, objectives and priorities for the Administration; (5) coordinates interrelated bureau activities which influence programmatic planning; (6) develops in collaboration with financial management staff the long-range program and financial plan for the Administration; (7) analyzes budgetary data with regard to planning guidelines; (8) prepares policy analysis papers and other planning documents as required in the Administration's forward planning process; and (9) collaborates with the Office of Management in the development of the current and budget year financial plans.

Division of Evaluation and Analysis (HBA63). (1) Serves as the Administrator's primary staff unit and principal source of advice on program evaluation and analysis; (2) oversees communications between the Administration and higher levels of the Department on all matters that involve evaluation and analysis of program performance; (3) maintains liaison with other Federal and non-Federal health agencies on matters within its area of responsibility; (4) provides technical assistance to support the statistical, economic, operations research, and other scientific analyses of policy questions undertaken in the Administration; (5) directs all activities within the Administration compare the costs of the Agency's programs with their benefits; (6) identifies for the Administrator any program performance data required for use in the management and direction of Administration programs; (7) provides technical assistance to the other components of the Office of Planning, Evaluation and Legislation, and evaluates and analyzes trends and makes forecasts about national health services delivery systems for use in the program management and decisionmaking process; (8) monitors ongoing information systems which produce evaluative and analytical data about the Agency's programs; (9) performs analyses of the impact of Agency programs on specific groups within the population, including minorities, and develops appropriate solutions to problems of illness and disease; and (10) coordinates the Administration's public use reports clearance function.

Division of Legislation (HBA64). (1) Serves as the Administrator's primary staff unit and principal source of advice on legislative affairs; (2) oversees communications between the Administration and higher levels of the Department on legislative matters; (3) oversees the legislative program for the Administration; (4) develops legislative proposals and a legislative program for the Administration; (5) prepares the Administration's analyses, position papers, and reports on proposed legislation; (6) supervises the preparation of testimony and backup materials on the Administration's legislative program for presentation to Congressional Committees; (7) monitors hearings and Congressional activities affecting the Administration; (8) in conjunction with the OAS(L), coordinates the preparation of information requested by, and provides technical assistance to, Congressional Committees, Members of Congress, or their staffs in relation to the Administration's legislative program; and (9) coordinates the distribution of legislative materials and serves as a legislative reference center.

Indian Health Service (HBN)

The Indian Health Service (IHS) assures a comprehensive health services delivery system for American Indians and Alaska Natives with sufficient options to provide for maximum tribal involvement in meeting their health needs. The goal for IHS is to raise the health level of the Indian and Alaska Native people to the highest possible level.

To carry out its mission and to attain its goal, IHS: (1) Assists Indian tribes in developing their capacity to man and manage their health programs through activities including health and management training, technical-assistance and human resource development; (2) facilitates and assists Indian tribes in coordinating health planning, in obtaining and utilizing health resources available through Federal, State and local programs in operation of comprehensive health programs, and in health program evaluation; (3) provides comprehensive health care services, including hospital and ambulatory medical care, preventive and rehabilitative services, and development of community sanitation facilities; (4) serves as the principal Federal advocate for Indians in the health field to assure comprehensive health services for American Indians and Alaska Natives.

Office of the Director (HBN1). Provides overall direction and leadership for IHS by: (1) Establishing goals, objectives, policies and priorities in pursuit of the IHS mission; (2) delivering high quality, comprehensive health services; (3) coordinating IHS activities and resources internally and externally with those of other governmental and nongovernmental programs, promoting optimum utilization of all available health resources; (4) developing and demonstrating alternative methods and techniques of health services management and delivery providing Indian tribes and other Indian community groups with optional ways of participating in the

Indian health program; and (5) developing individual and tribal capacities to participate in the operation commensurate with means and modalities which they deem appropriate to their needs and circumstances.

Office of Tribal Affairs (HBN12). The Office: (1) Advises on the tribal affairs implications of IHS policies, plans and programs and operations; (2) coordinates the development of optimal, supportive relationships with tribal governments, intertribal governing bodies, national Indian interest groups, and other individuals and groups interested and active in Indian affairs; (3) participates in the Service-wide executive policy formulation and execution.

Office of Program Support (HBN13). The Office: (1) Provides management support services for IHS; (2) maintains official policy manuals; (3) advises on the management services implications of the Service policies, plans, programs and operations.

Office of Research and Development (HBN14). The Office: (1) Develops and demonstrates new methods and techniques for Indian community participation in and management of their health program; (2) provides consultation and technical assistance to all operating and management levels of IHS and Indian tribes in the evaluation, design and implication of health management systems and health delivery systems; (3) coordinates health research and development activities within the Service directed to the improvement of the health of the Indian people.

Division of Program Formulation (HBNA). (1) Coordinates formulation of Service-wide executive policy and participates in its execution; (2) coordinates the development of program strategies and innovative directions for IHS and advises on the strategic implications of program and management policies, plans and operations; (3) assists in the formulation and evaluation of legislation and regulations; (4) provides Service-wide leadership in the development of long-range plans and planning strategies, and the evaluation of health needs and operations in relation to Service strategies, policies and long-range plans.

Division of Program Operations (HBNB). (1) Participates in Service-wide executive policy formulation and execution; (2) advises on the operational implication of the Service's plans, programs and operations; (3) provides Service-wide leadership in program operations and internal coordination in relation to IHS goals, objectives, policies and priorities; (4) provides direction and coordination for day-to-day operations of Area Offices.

Division of Indian Community Development (HBNC). (1) Participates in Service-wide executive policy formulation and execution; (2) identifies the needs for and characteristics of optional methods and techniques for Indian program participation; (3) implements new methods and techniques for Indian community participation in and management of their health programs; (4) coordinates provision of technical assistance, training and consultation to tribes and other Indian communities desiring to implement local control options; (5) advises on the Indian community development implications of the Service's plans, programs and operations; (6) provides direction and coordination for day-to-day operations of special programs.

Division of Resource Coordination (HBND). (1) Participates in the Service-wide executive policy formulation and execution; (2) provides leadership in coordinating development of optimal liaison with governmental agencies and organizations within the Department of Health and Human Services and without which have authorities, programs and resources applicable, or potentially applicable to Indian health needs; (3) advises on the resource coordination implications of IHS policies, plans, programs and operations; (4) coordinates development of the IHS budget; (5) coordinates the development and implementation of health services standards, quality control, evaluation of health programs, and operational planning activities.

Aberdeen Area Office (HBNFL).
Albuquerque Area Office (HBNFM).
Billings Area Office (HBNFN).
Navajo Area Office (HBNFP).
California Program Office (HBNFQ).
Oklahoma City Area Office (HBNFR).
Phoenix Area Office (HBNFS).
Alaska Native Health Area Office (HBNFT).
United Southeastern Tribal Program Office (HBNFU).
Bemidji Program Office (HBNFV).
Portland Area Office (HBNFW).

The mission of IHS is accomplished in the field through line elements called Area Offices and Program Offices. Within these can be Subarea Offices, Service Units, Special Programs, Hospitals, Medical Centers, Health Centers, Health Stations, and other elements. Each Area of Program Office is headed by a Director who reports to the Director of IHS. For the population served by their respective health delivery systems, each Area Office or Program Office is responsible for: (1) participating in and establishing goals and objectives, and interpreting and determining policies and priorities within the framework of IHS policy in pursuit of the IHS mission; (2) delivering and assuring the delivery of high quality, comprehensive health services; (3) providing coordination or assuring the coordination of IHS activities and resources internally and externally with those of other governmental and nongovernmental programs, promoting optimum utilization of all available health resources; (4) participating in the development and demonstration of alternative means and techniques of health services management and delivery to provide Indian tribes and other Indian community groups with optimal ways of participating in the Indian health programs; and (5) assuring the development of individual and tribal capacities to participate in the operation of IHS commensurate with the means and modalities which Indian tribal groups deem appropriate to their needs and circumstances.

Bureau of Health Maintenance Organizations and Resources Development (HBH)

Develops, administers, directs, coordinates, monitors, and supports Federal policy and programs pertaining to health planning and resources allocation for health care systems and organizations, including financial, capital, organizational, and physical matters. Specifically: (1) Administers grant, loan, loan guarantee, and interest subsidy programs under Titles VI and XVI of the PHS Act, as amended, relating to the construction, modernization, conversion or closure of health and health care organizations; (2) plans, directs, administers, coordinates, and evaluates national health planning and resources development program activities conducted under Title XV of the PHS Act and section 1640 of the Act, as amended; (3) implements and administers the grant, contract, and loan aspects of Title XIII, Health Maintenance Organizations (HMOs), of the PHS Act and is the Department's advocate in efforts to improve the organization and delivery of health services by use of the health maintenance organization approach; (4) develops national policies and objectives for the planning and initial development of HMOs; (5) develops long- and short-range program goals and objectives for planning, facilities, and HMOs; (6) serves as the Departmental focal point in the areas of HMO qualification, ongoing regulation, and

employer compliance efforts; (7) promotes reduction of costs associated with facility design, construction, modernization and replacement, and non-medical operation (e.g., energy and maintenance); (8) serves as advisor to, and coordinates activities with other Administration organizational elements, other Federal organizations within and outside the Department, State and local bodies, and professional and scientific organizations, on matters pertaining to the planning and development of health delivery systems; (9) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health care systems, organizations, and facilities; (10) provides technical assistance to planning organizations, HMOs, and health care delivery systems and facilities in a wide variety of specific technical and technological systems; (11) ensures that Federal policies with respect to planning, facility financing and distribution, replacement and construction, and HMOs are carried-out and administered in a consistent manner; (12) coordinates its programs and maintains liaison with other PHS components and programs, the Department, and other Federal gencies and departments, as appropriate; and (13) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of its missions and objectives.

Office of the Director (HBH1). Provides leadership and direction for the programs and activities of the Bureau and oversees its relationships with other national health programs. Specifically: (1) Directs the internal functions of the Bureau and its relationships with other national health programs; (2) establishes program objectives, alternatives, and policy positions consistent with legislation and broad Administration guidelines; (3) develops and administers operating policies and procedures, and provides guidance and assistance to the Regional Health Administrators or regional staff as appropriate; (4) evaluates program accomplishments; (5) serves as principal contact and advisor to the Department, the National Council for Health Planning and Development, and other parties concerned with matters relating to planning and development of health delivery systems; (7) provides technical and administrative support to the National Council on Health Planning and Development; (8) directs and coordinates Bureau activities carried out in support of Equal Employment Opportunity programs; (9) provides direction for the Bureau's Civil Rights compliance activities; and (10) provides information about Bureau programs to the general public, health professions associations, and other interested groups and organizations.

Office of Program Support (HBH12). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities. Specifically: (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (3) in cooperation with the Division of Financial Management, HRSA, provides guidance to the Bureau on financial management activities, including budget formulation, presentation, and execution functions; (4) provides communications advice and services to the Bureau; (5) coordinates the various ADP systems of the Bureau and supplies ADP services to the Office of the Director and its immediate offices; directs the formulation of ADP policy for the Bureau, plans, develops and evaluates the Bureau's ADP systems, and develops, manages, and operates the Bureau's information systems; (6) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates the Bureau's contracts and cooperative agreement operations; (7) provides support to the PHS Regional Offices as appropriate by program; (8) provides organization amd management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; (9) coordinates the Bureau's program and administrative delegations of authority activities; (10) manages the Bureau's performance appraisal and employee performance management systems; (11) provides staff services to the Bureau Director in day-to-day operational planning and program analysis; (12) serves as liaison or provides the Bureau with support services such as supply management, equipment utilization, printing, property management, space management, correspondence control, manual issuances, forms, records, reports, Freedom of Information Act and Privacy Act coordination, and the support of Civil Rights compliance activities; (13) provides direction regarding technological developments in office management activities; and (14) directs, conducts, and coordinates the Bureau's manpower management activities and advises the Bureau Director on the allocation of the Bureau's personnel resources.

Office of Program Development (HBH13). Serves as the Bureau focal point for planning, evaluation, legislation, and legislative implementation activities, including the development and dissemination of program objectives, alternatives, and policy positions. Advises the Bureau Director and Associate Directors in the development of plans and legislative proposals to support Administration goals. Interprets evaluation requirements and coordinates the development of annual evaluation plans, as well as specific project proposals. Coordinates its activities closely and continuously with the Office of Planning, Evaluation, and Legislation, HRSA. Specifically: (1) Stimulates, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's forward plan; (2) promotes and oversees evaluation and monitoring activities to provide objective measurements of program performance; (3) provides staff services and coordinates activities pertaining to legislative policy development and interpretation, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation, to assure the fullest possible consideration of programmatic requirements in meeting established Departmental, PHS, and HRSA goals, liaison with other agencies, and distribution of legislative materials; (4) participates in the development and and coordination of program policies, implementation plans and processes for health planning, health facilities, and HMO legislation, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating precedures; and (5) directs the production of program management information and progress reports.

Office of the Associate Director for Health Planning (HBHB). Carries out the Bureau of Health Maintenance Organizations and Resources Development's health planning program nationwide under the direction of an Associate Director who is responsible to the Bureau Director. Specifically: (1) Plans, directs, administers, coordinates, and evaluates National Health Planning and Resources Development Program activities conducted under Title XV of the PHS Act and section 1640 of the Act, as amended; (2) coordinates health planning policies with other related policies of the Bureau; (3) serves as advisor to, and coordinates activities

with other Administration organizational elements, othe Federal organizations within and outside the Department, State and local bodies, and professional and scientific organizations, on matters pertaining to the planning and development of health delivery systems; (4) coordinates and oversees the development and clearance of health planning policies and procedures and coordinates the preparation, dissemination, and control of formal health planning policy issuances; (5) in consultation with the Office of the Director, BHMORD, the Office of the Administrator, HRSA, and the Office of the Assistant Secretary for Health, provides program assistance and guidance to the Regional Office personnel who assist in the implementation of the health planning program; (6) coordinates technical assistance strategies and practices for health planning and administers a national program of technical assistance for State and local planning agencies through the Centers for Health Planning; (7) manages and conducts health planning's participation in the preparation of regulations; (8) ensures that the health planning program policies and operating procedures are consistent with general DHHS, PHS, HRSA, Bureau, and other Federal policies and requirements; (9) provides health planning liaison with the Office of the General Counsel, interacting with the Office of the Administrator, HRSA, and the Office of the Director, BHMORD, as required; (10) establishes and maintains working relationships with various national associations, such as the National Governors' Conference and the National Conference of State Legislatures, in order to solicit views and keep such groups informed of evolving health planning regulations and policy; (11) provides information about the health planning program to the general public, health professions organizations, and other interested groups; (12) represents Health Planning in meetings with concerned public organizations, provider organizations, and consumer groups; and (13) maintains health planning central files, and provides for timely and effective response to outside inquiries.

Division of Regulatory Activities HBHB2). Functions as the focal point for all regulatory activities of Health Systems Agencies (HSAs) and State Health Planning and Development Agencies (SHPDAs). Specifically: (1) Develops and promulgates policy, regulations, and guidelines for certificate of need programs, review programs under section 1122 of the Social Security Act, the program for review and approved by HSAs, of certain proposed uses of PHS funds, and the program of appropriateness review of existing institutional health services; (2) reviews and analyzes existing and proposed agreements with States under section 1122 and State Certificate of need laws to detect inconsistencies with Federal requirements, disseminates models which can be used by State and area agencies, and encourages improvements in these programs; (3) serves as the Bureau's consultative resource regarding review practices, standards, and criteria; (4) develops, directly and in cooperation with the Division of Planning Assistance and Assessment, methods, criteria, standards and other materials for technical assistance specifically related to aiding agencies in their new institutional health services and section 1122 review activities; (5) interprets regulatory policy for PHS Regional Office staff and grantee agencies, PHS agencies, and other operating components within the Department, other Federal departments and agencies, and the public; (6) in collaboration with the Division of Planning Assistance and Assessment, establishes systems for monitoring and assessing review activities at the State level and performs, as necessary, a problem resolution and information-sharing supportive role; (7) defines data sets, identifies data sources, collects and analyzes data on regulatory acitivites for trends and problems which require Bureau involvement, and prepares dats reports; (8) cooperates with PHS agencies and other operating components of the Department and with other Federal departments and agencies in the development and operation of enforcement mechanisms for regulations; (9) researches and assesses public and private regulatory programs outside the health field to learn of innovative and effective methodologies which might be applied to health planning and resources development; (10) prepares and revises performance and compliance standards for regulatory activities for use by the Division of Planning Assistance and Assessment; (11) in cooperation with other Bureau components, develops evaluation strategies and carries out, directly or through contract, evaluation activities to detemine the outcomes and impact of these programs; (12) serves as the Bureau's major liaison with the Health Care Financing Administration in regard to the rate setting demonstration program; (13) participates in the development of policy or program changes which impact on regulatory activities; (14) analyzes and formulates strategy for those intermediate and long range issues which impact on Federal and State regulatory activities; (15) evaluates and recommends means for overcoming impediments to Federal and State program regulatory progress; and (16) suggests Federal and State legislative actions which will further the attainment of regulatory goals.

Division of Planning Assistance and Assessment (HBHB3). (1) Directs Bureau activities which support the development and maintenance of integrated health planning; (2) facilitates the development of effective and well managed Health Systems Agencies (HSAs), State Health Planning and Development Agencies (SHPDAs), and Statewide Health Coordinating Councils (SHCCs) by providing them with technical assistance and policy guidance related to health planning and the operations of HSAs, SHPDAs, and SHCCs; (3) develops and oversees a program of periodic assessment of agency performance; (4) serves as the national focal point for the development and disemmination of regulations, guidance, planning approaches, and methodologies for use by State and local agencies and other concerned parties in the development of plans and their use in developing health delivery systems; (5) reviews, upon a Department initiative or request of a Governor, the appropriateness of designated health service areas; (6) establishes specific plans and procedures to link agency assistance activities of the bureau with assistance available from other Federal and non-Federal resources; (7) coordinates Division activities closely with other components of the bureau and of the Agency, especially with the Bureau of Health Professions (BHPr), and with the National Center for Health Statistics (NCHS) and the National Center for Helath Services Research (NCHSR), in the development of methodologies for plan development and data collection; (8) coordinates Division activities closely with other components of the Department, such as the Health Care Financing Administration (HCFA); and (9) develops operative policies and procedures and provides guidance to Regional Office staff who manage health planning grants.

National Health Planning Information Center (HBHB4). Serves as the focal point for obtaining and disseminating information necessary to carry out the requirements of the National Health Planning and Resources Development Act, as amended. Specifically: (1) Designs, develops standards and

definitions, operates, and maintains systems for the storage, retrieval, and dissemination of the required information; (2) develops, edits, and prepares technical publications, films, exhibits, and visual aids for the Associate Directorship and the Bureau; (3) provides consultation and assistance to other health planning information facilities on the design, establishment, and operation of such facilities, their linkage to the Center, and the use of the information they develop or maintain; and (4) serves as the Bureau's focal point on policy and program coordination with international institutions and organizations on international health matters and information needs for planning.

Office of the Associate Director for Health Facilities (HBHC). Carries out the Bureau of Health Maintenance Organizations and Resources Development's health facilities program nationwide under the direction of an Associate Director who is responsible to the Bureau Director. Specifically: (1) Plans, directs, coordinates, monitors, and supports and develops policy for Federal programs pertaining to the financial, capital, organizational, and physical matters of health care organizations; (2) administers loan, loan guarantee, and interest subsidy programs relating to the construction, modernization, conversion, or closure of health facilities; (3) enforces institutional compliance with required reasonable volume of uncompensated care assurances applicable to receipt of assistance for the construction or modernization of health facilities; (4) in close coordination with the Office of the Associate Director for Health Planning and the Office of the Associate Director for Health Maintenance Organizations, develops policy and administers programs for the system planning, construction, modernization, conversion, or discontinuance of health facilities; (5) in close coordination with the Bureau of Health Professions, HRSA, administers grant programs for the construction of health professions teaching facilities and nurse training facilities; (6) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health facilities; (7) develops and implements policies and programs designed to achieve more efficient use of energy resources in health facilities and the development and utilization of less costly and/or more reliable energy sources for such facilities; (8) coordinates its programs and maintains liaisons with other HRSA and PHS components, the Department, and other Federal departments and agencies concerned with health facilities and energy matters; and (9) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of its mission and objectives.

Division of Facilities Compliance (HBHC2). Is responsible for ascertaining whether health facilities are in compliance with the various reasonable volume of uncompensated care assurances given by them at the time they applied for Federal assistance, and for ensuring that the Federal Government takes appropriate action as prescribed by Title VI and Title XVI of the Public Health Service Act. Specifically: (1) Establishes, develops, and monitors the implementation of regulations, policies, procedures, and guidelines for use by Regional Offices, State agencies, and health care facilities in ascertaining that uncompensated care assurances are met; (2) maintains a system for receiving and responding to patient complaints and for their analysis, evaluation, and disposition; (3) develops and initiates monitoring activities necessary to insure enforcement of provisions regarding the reasonable volume of uncompensated care assurances; (4) directs periodic investigations of health care facilities to ascertain the extent of compliance with the uncompensated care assurances and recommends any action authorized by law to effect compliance with these assurances; (5) coordinates its activities with other components of the Bureau, HRSA, other PHS agencies, and other concerned Departmental components, especially the Health Care Financing Administration, the Office of the General Counsel, and the Office for Civil Rights; and (6) prepares replies to inquiries on patient complaints and facility assurances compliance.

Division of Facilities Conversion and Utilization (HBHC3). Develops and administers programs for planning, cost effective operation, modernization, and/or conversion and discontinuance of non-Federal health facilities. Specifically: (1) Provides required consultation and guidance to PHS Regional Offices, State entities responsible for facilities management, State Health Planning and Development Agencies (SHPDAs), Health Systems Agencies (HSAs), and Centers for Health Planning on planning and appraisal of facilities construction requirements, operation, modernization, and discontinuance or conversion to new uses; (2) seeks to enhance facilities management and cost effectiveness by working with professional associations, Government agencies, and others in seminars, workshops, and conferences, and conducts studies for health care institutional planning and operation, directed toward increasing productivity and enhancing cost effective operations; (3) develops and works with States in administering requirements for State inventories of health care facilities for continuing evaluation of their physical condition; (4) develops and administers requirements for inclusion of health care facilities and medical equipment in State Health Plans; (5) reviews and analyzes State Health Facility inventory and plant evaluation data to assist DHHS policy making; (6) works with the Health Care Financing Administration (HCFA), the National Center for Health Services Research (OASH), and the Office of the Associate Director for Health Planning in efforts toward assuring efficient, non-duplicative collection of health data; (7) works with States to assist them in the discontinuance or conversion of unneeded hospital services and in their efforts to manage excess capacity; (8) in consultation with appropriate PHS units and national professional organizations, develops and, as necessary, revises general standards of construction, modernization and equipment as required by statute; (9) coordinates its activities with other components of the Bureau and HRSA, other PHS agencies, other DHHS components (particularly HCFA), and other Federal agencies; (10) participates in the development of technical publications designed to enhance efficiency in the planning, utilization, and operation of health facilities; and (11) collaborates with the Bureau's Division of Energy Policy and Programs and other concerned parties on energy matters pertaining to health facilities.

Division of Facilities Financing (HBHC4). Plans and directs the development of regulations and program guidelines for administering grant support, loans, loan guarantee and interest subsidy programs for health care, health professions educational, and nurse training facilities. Specifically: (1) Develops regulations, policy and procedures for administering loan and loan guarantee with interest subsidy programs; (2) administers the PHS responsibility for facility construction, renovation, and modification as prescribed in interagency memoranda of agreement with other departments of the Federal Government; (3) develops regulations, policy and procedures for administering a grant support program designed to help health facilities eliminate or

prevent imminent safety hazards or avoid noncompliance with State or voluntary licensure or accreditation standards; (4) in close coordination with the Bureau of Health Professions, HRSA, develops regulations, policy and procedures for administering and monitoring health professions educational and nurse training facilities construction grant or loan programs; (5) develops regulations, policy and procedures to insure that the Federal Government takes appropriate recovery action as prescribed by Titles VI and XVI of the Public Health Service Act; (6) reviews in their entirety and recommends action to, or on behalf of, the Administrator, HRSA, on: (a) proposals for new health facilities or additions to or modernization of existing facilities under programs assigned to the Division, (b) requests for mortgage relief, such as forbearance of principal and/or interest payments, suspension of sinking fund deposits, modifications of loan terms, etc., and (c) requests for recovery and/or waiver of recovery of Federal funds; (7) provides advice and guidance to the Regional Offices and State Health Planning and Development Agencies on statutory and regulatory provisions and policy and procedures for administering programs assigned to the Division; and (8) maintains liaison with and coordinates its activities and jointly develops pertinent programmmatic materials with other components of the Bureau, HRSA, other PHS agencies, DHHS, and other concerned Federal agencies.

Division of Energy Policy and Programs (HBHC5). Provides leadership in developing, stimulating, and implementing effective energy management principles and techniques in health care services delivery, and in encouraging the transition to non-exhaustible energy forms by health institutions. Provides a focal point for the acquisition, interpretation, and dissemination of information on energy development which will contribute to improved cost containment in the delivery of health services and to the maintenance of high quality, accessible care. Specifically: (1) Develops, analyzes, and recommends policies relating to the impact of energy resource developments on health institutions and health resource programs; (2) provides planning leadership and policy guidance for the incorporation of effective energy management in health resource programs; (3) participates in the development and implementation of legislation, guidelines, regulations, and standards relating to energy needs and use in health facility operations and health services delivery; (4) promotes and guides the development and incorporation of energy related concerns in the planning and execution of health programs; (5) conducts, supports, and assists analyses and applied research activities relating to improved energy utilization in the delivery of health care services, including the adoption of alternate fuel sources; (6) provides technical assistance to public agencies and private entities on energy management programs and activities as they relate to health services and resources; (7) develops and disseminates information on energy resources and management to assure awareness of the impact of emerging energy problems on the health sector and identification of new initiatives for resolving those problems; (8) conducts or participates in conferences and seminars, prepares papers and articles, and plans, develops, and/or conducts training and education programs in energy management for health personnel; and (9) maintains liaison with Federal, State, and local health and energy agencies and organizations, and develops or participates in joint activities to assure appropriate participation by the health sector in energy related deliberations and initiatives.

Office of the Associate Director for Health Maintenance Organizations (HBHE). Carries out the Bureau of Health Maintenance Organizations and Resources Development's health maintenance organizations program nationwide under the direction of an Associate Director who is responsible to the Bureau Director. (1) Develops national policies and objectives for the planning and initial development of Health Maintenance Organizations (HMOs); (2) develops long- and short-range program goals and objectives; (3) serves as the Departmental focal point in the areas of HMO qualification, ongoing regulation, and employer compliance efforts; (4) plans, coordinates and directs the development and preparation of legislative proposals, regulations, and policy documents; (5) acts as focal point for all HMO research and evaluation study activity in the Department, and external to the Department; (6) develops and implements programs to encourage greater access of Federal beneficiaries to HMOs; (7) monitors and analyzes Federal activities and policies regarding Federal beneficiaries in Medicare, Medicaid, CHAMPUS, and the Federal Employees Health Benefits programs; (8) coordinates the development and implementation of health education and health promotion programs in health maintenance organizations; (9) provides correspondence management for control of written communications and action documents, including substantive policy review and followup to insure timely and appropriate action and clearances.

Division of Analysis and Technical Assistance (HBHE2). (1) Conducts technical assessments of HMOs for regulatory and loan purposes in support of the development, compliance, and qualification functions of the Office of the Associate Director for Health Maintenance Organizations (OADHMO). Assessments are in the areas of medical care and health services delivery, utilization management, HMO organization and administration, benefit structure, claims management, financial management, actuarial analysis, marketing, legal requirements, management information and the design and equipping of health care facilities; (2) provides technical assistance to assist HMOs to achieve and maintain fiscal soundness and to protect Federal grant and loan investments. This assistance is provided in the areas identified in (1) above; (3) conducts special studies on HMO operations and operating data. Based on such studies, identifies trends and develops HMO performance measures which can be used by OADHMO and by the industry to assess the development and operation of individual HMOs; (4) develops and issues technical guidance documents for use by the industry in the development of HMOs and the improvement of operations in existing HMOs; (5) develops and maintains close relationships with national organizations representing the HMO industry to enhance technical assistance capability and to establish appropriate performance measures; (6) participates in the development and/or presentation of training programs for staff in OADHMO and/or in developing and operating HMOs; for the purpose of strengthening the operation of HMOs (7) manages the HMO audit activity and provides leadership for the overall direction of audit resolution. Directs the establishment of procedures, policies, and objectives and issues regular reports on the audit activity; (8) monitors the progress of HMOs developing with the assistance of Federal grant funds to assure that grant funds are properly used and that the HMO is being developed in such a way as to give assurance that, upon qualification, it will become a financially viable organization. Works closely with the Regional Offices of Grants Management and the Regional

Operations for Facility Engineering and Construction; and (9) designs and implements a comprehensive management training program for the HMO industry and OADHMO staff.

Division of HMO Qualification (HBHE3). (1) Establishes qualification standards, and determines the acceptability of entities seeking to become "Qualified HMOs"; (2) refines review procedures as necessary to facilitate the qualification process; (3) coordinates and insures consistency of regional office activities related to the qualification process; (4) assists the Office of the General Counsel in the development of legal actions concerning HMO qualification status; (5) performs DHHS and other intergovernmental liaison related to HMO qualification activities; (6) develops policy and regulations related to HMO qualification; (7) evaluates the impact of policies, legislation, and regulations on the ability of projects to become qualified; and (8) provides guidance as to interpretation of policy guidelines and regulations related to qualification.

Division of HMO Compliance (HBHE4). (1) Assures the continuing compliance of HMOs with the statutory requirements of Title XIII of the PHS Act; (2) assures compliance by employers with a mandatory offering of the HMO alternative in employee health benefits plans; (3) assists the Office of General Counsel in the development of legal actions against HMOs and employers considered not to be in compliance with applicable standards and regulatory requirements; (4) reviews standards, procedures, and reporting requirements for monitoring of HMOs that receive financial assistance under grants, loans, and loan guarantees; (5) establishes and updates standards and procedures for compliance monitoring of qualified HMOs and prepares status reports for internal and external use; (6) assures compliance by loan recipients with the legislative requirement for fiscal viability; (7) establishes and maintains liaison with concerned state and local regulatory and monitoring agencies; (8) develops policy and regulations related to HMO compliance; (9) evaluates the impact of policy, legislation, and regulations on the ability of qualified HMOs to remain in compliance; (10) provides guidance as to interpretation of policy guidelines and regulations related to HMO compliance; (11) establishes standards and procedures for all loan applications, awards, and reviews; (12) directs and coordinates HMO loan management activities; (13) analyzes needs and develops forecasts for the loan and loan guarantee programs; (14) develops policy and implements strategy related to rehabilitation or liquidation; and (15) utilizes computerized data systems to maintain and monitor national HMO activity and statistics.

Division of Private Sector Initiatives (HBHE5). (1) Develops and implements national strategies to encourage the financing, development, and growth of HMOs through private capital sources; (2) generates educational, information exchange and outreach programs designed to encourage HMO development and growth; (3) coordinates Federal activities with national professional and trade organizations, and the investor, business, labor and provider communities to promote effective joint action beneficial to HMO development; (4) develops, implements, and coordinates program activities designed to encourage voluntary activities of the private sector; and (5) coordinates activities of HRSA, PHS and the Department in their relations with the National Industry Council for HMO Development.

Bureau of Health Professions (HBP)

Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Assesses the Nation's health personnel supply and requirements and forecasts supply and requirements for future time periods under a variety of health resources utilization strategies; (2) collects and analyzes data and disseminates information on the characteristics and capacities of the Nation's health personnel production systems; (3) proposes new or modifications of existing Departmental legislation, policies, and programs related to health personnel development and utilization; (4) develops, tests and demonstrates new and improved approaches to the development and utilization of health personnel within various patterns of health care delivery and financing systems; (5) provides financial support to institutions and individuals for health professions education programs; (6) administers Federal programs for targeted health personnel development and utilization; (7) provides leadership for assuring equity in access to health services and health careers for the disadvantaged; (8) provides technical assistance, consultation, and special financial assistance to national, State, and local agencies, organizations, and institutions for the development, production, utilization, and evaluation of health personnel; (9) provides linkage between Bureau headquarters and PHS Regional Office activities related to health professions education and utilization by providing training, technical assistance, and consultation to Regional Office staff; (10) coordinates with the programs of other agencies within PHS, the Department, and in other Federal Departments and agencies concerned with health personnel development and health care services; (11) provides liaison and coordinates with non-Federal organizations and agencies concerned with health personnel development and utilization; and (12) in coordination with the Office of the Administrator, Health Resources and Services Administration, serves as a focus for technical assistance activities in the international aspects of health personnel development, including the conduct of special international projects relevant to domestic health personnel problems.

Office of the Director (HBP1). Provides national leadership in coordinating, evaluating, and supporting the development and utilization of the Nation's health personnel. Specifically: (1) Directs the national health professions education, student assistance and development programs and activities; (2) provides policy guidance and staff direction to the Bureau; (3) maintain liaison with other Federal and non-Federal organizations and agencies with health personnel development interests and responsibilities; (4) provides guidance and direction for technical assistance activities in the international aspects of health personnel development; (5) provides guidance and assistance to the Regional Health Administrators or regional staff as appropriate; and (6) directs and coordinates Bureau programs in support of Equal Employment Opportunity.

Office of Program Support (BHP12). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management support activities; directs and coordinates the Bureau's legislative implementation activities; performs the Bureau's grants management, financial management, and generalized contracts liaison functions; and provides Bureau liaison with the PHS Regional Offices. Specifically: (1) Provides and/or serves as liaison for the Bureau's program support services and resources, including equipment and supplies, printing, property, space, correspondence control, manual issuances, forms, records, and reports; (2) directs, conducts, and coordinates the Bureau's position management

activities and advises the Bureau Director on the allocation of the Bureau's personnel resources; (3) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies, procedures, and systems; (4) coordinates the Bureau's program and administrative delegations of authority activities; (5) in cooperation with the Division of Financial Management, HRSA, develops and conducts all financial management activities for the Bureau; (6) in cooperation with the Division of Personnel, HRSA, coordinates the acquisition of personnel services for the Bureau; (7) provides administrative support services to the Office of the Bureau Director and staff offices; (8) provides technical and administrative support for the National Advisory Council on Health Professions Education; (9) participates in the development of implementation plans and processes for health professions legislation, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (10) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates contracts activities; (11) manages the Bureau's performance appraisal and employee performance management systems; (12) maintains continual and routine contact with PHS Regional Office staff responsible for supporting health professions programs; and (13) serves as liaison between Bureau programs and the Office of the Administrator, HRSA, with regard to these matters in the PHS Regional Offices.

Office of Program Development (HBP13). Serves as the Bureau focal point for planning, evaluation, and legislation, including the development and dissemination of program objectives, alternatives, and policy positions. Specifically: (1) Stimulates, guides, and coordinates program planning, reporting, and evaluation activities of the Divisions and staff offices; (2) provide staff services to the Bureau Director for program planning and its relation to the budgetary process, congressional reports, and evaluation; (3) prepares the Bureau's forward plan; (4) coordinates the development and implementation of the Bureau's evaluation programs; (5) provides staff services and coordinates activities pertaining to legislative policy development, interpretation, and implementation, including the development of legislative proposals, the analysis of existing and pending legislation, liaison with other agencies, and distribution of legislative materials; and (6) serves as the Bureau's focus for coordinating technical assistance activities in the international aspects of health personnel development.

Office of Debt Management (HBP14). Serves as the Bureau focal point for directing the program-oriented financial aspects of all debt collections, billings, and reimbursements due from program recipients. Specifically: (1) Develops and operates program-oriented fiscal services and maintains fiscal coordination for billings and collections; (2) participates in the development and interpretation of financial policies, procedures, and plans for effective billing collection practices; (3) reviews accounting reports to determine the existence of financial trends in billing and collection practices; (4) recommends legislative changes needed to fulfill effective debt collection practices and the prevention of fraud, abuse, and waste; (5) provides guidance, training, and technical assistance to recipients on good financial management practices, acceptable accounting procedures, and proper financial reporting methods; (6) maintains liaison and close coordination with the Division of Fiscal Services, HRSA, the PHS Claims Officer, the Office of General Counsel, the Office of the Inspector General, and DHHS with respect to cases of claims, frauds, and petitions for bankruptcy; (7) provides recommendations for the resolution of audit findings; (8) works with other agencies and departmental components to update and maintain good debt collection practices; (9) prepares responses to Bureau and Agency requests concerning financial management aspects of debt collection practices; and (10) advises and assists management officials of the Bureau, Agency, and PHS by supplying financial reports and advice necessary to make sound management decisions in relation to debt management.

Office of Data Analysis and Management (HBP15). Serves as the Bureau focal point for health professions data policy analysis, coordination and development of health professions data collection and analytical activities, and data and information systems management. Specifically: (1) Provides policy and technical support and advice to the Office of the Director in the establishment and conduct of a cohesive and comprehensive Bureau program involving both intramural and contract activities; (2) provides technical expertise to all Bureau components on methodologies for data collection, data development forecasting, data analysis, and interpretation; (3) develops and conducts research on data collection and analytic methodologies, economic forecasting, and health personnel systems modeling, both intramurally and through contracts; (4) provides technical and other assistance and expertise to other Bureau components for the purpose of modifying, refining, and updating health professions forecasting models employed in the preparation of forecasts and reports; (5) plans, coordinates, and reviews the development of health professions reports and studies which involve cross-discipline analysis or multiple Bureau components in their preparation; (6) develops, plans for, assembles, coordinates, and directs ad hoc task forces consisting of various Bureau components for planning and completing multi-discipline and cross-cutting studies, surveys, fact books and black books, and major reports on health professions for the Bureau, Agency, Department, and others; (7) prepares technical reviews and data policy impact analyses of health professions studies, reports, and activities performed by other Bureau and non-Bureau components; (8) conducts studies of geographic distribution of health personnel related to the establishment and implementation of criteria for designating health manpower shortage areas, both intramurally and by contract, and assembles, coordinates, and directs ad hoc task forces composed of various Bureau components for these studies as needed; (9) establishes and implements criteria for designating health manpower shortage areas, designates health manpower shortage areas, and identifies foreign physician labor certification areas; (10) maintains the Bureau computerized health professions analytic databases and database system and maintains and develops associated software systems for managing and accessing the database, through use of intramural and contract mechanisms. Integrates data collected and compiled by other Bureau components and by sources outside the Bureau into the Bureau analytic database, and provides technical assistance to other Bureau components to aid them in accessing and utilizing the database in their program activities; (11) maintains and updates the Bureau's computerized program information system, and maintains and develops associated software systems for managing and accessing the system,

through both intramural and contract activities. Prepares program management reports and provides technical consultation and assistance to Bureau and Agency staff as well as congressional, academic, research, and other private and public organizations concerning Bureau program data; (12) maintains and updates the Bureau's computerized student assistance information system and maintains and develops associated software systems for managing and accessing the system, through both intramural and contract activities. Operates the system for provision of student assistance information; and (13) maintains liaison with governmental, professional, voluntary, and other public and private organizations, institutions, and groups for the purpose of providing information exchange and assessing health professions data availability and needs related to cross-cutting Bureau activities.

Division of Associated and Dental Health Professions (HBP2). Serves as a principal focus with regard to health professions education, practice, and service research in the fields of dentistry, optometry, pharmacy, veterinary medicine, public health, health administration, allied health professions and occupations and dental hygienists, expanded function auxiliaries, dental assistants, and dental technicians. Specifically: (1) Provides professional expertise, direction, and leadership required by the Bureau in carrying out its responsibilities for planning, coordinating, evaluating, and supporting the development and utilization of health professions resources in these fields; (2) supports and conducts programs with respect to the need, quality, development, utilization, credentialing, and distribution of such personnel; (3) administers grants, cooperative agreements, and contract programs of special support for educational, competency assurance, and related activities; (4) supports and conducts analyses, statistical studies, and surveys concerning the education and utilization of dental and associated health professionals; (5) evaluates educational programs for dental and associated health professionals; (6) engages with other Bureau programs in cooperative efforts of research, development, and demonstration of the capacity of and the interrelationships between individual members of the health care team, their tasks, educational requirements, and related training modalities; (7) supports and conducts studies and demonstrations concerned with multidisciplinary and interdisciplinary health personnel development activities; (8) supports and conducts special educational initiatives to improve the Nation's capacity to respond in areas related to health promotion and disease prevention, nutrition, long-term care and geriatrics, dental care and other personnel-related health service delivery and environmental health and hazard control issues; (9) maintains liaison with dental health, associated health, and allied health professional groups and others, including consumers, having common interests in the Nation's capacity to deliver services; (10) maintains liaison with Federal, State, local and other agencies, institutions and groups; and (11) provides consultation and technical assistance to public and private organizations agencies, and institutions, including agencies of the Federal Government, PHS Regional Offices, and international agencies and foreign governments, on all aspects of the Division's functions.

Division of Medicine (HBP3). Serves as the principal focus with regard to education, practice, and research of medical personnel; with special emphasis on allopathic and osteopathic and podiatric medicine, and closely associated assistants, particularly physician assistants. Specifically: (1) Provides professional expertise in the direction and leadership required by the Bureau planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel for these professions; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of such personnel; (3) engages in other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between the members of the health care team, their tasks, education requirements, and training modalities; (4) conducts and supports studies and evaluations of physician and podiatric personnel requirements, distribution and availability and cooperates with other components of the bureau and Agency in such studies; (5) analyzes and interprets physician and podiatric programmatic data collected from a variety of sources; (6) conducts, supports, or obtains analytical studies to determine the present and future supply and requirements of physicians and podiatrists by specialty and geographic location, including the linkages between their training and practice characteristics; (7) conducts and supports studies to determine potential national goals for the distribution of physicians in graduate medical education programs and develops alternative strategies to accomplish these goals; (8) supports and conducts programs with respect to activities, associated with the international migration, domestic training, and utilization of foreign medical graduates and U.S. citizens studying abroad; (9) maintains liaison with relevant health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver health services; and (10) provides consultation and technical assistance to public and private organizations, agencies, and institutions, including PHS Regional Offices, other agencies of the Federal Government, and international agencies and foreign governments, on all aspects of the Division's functions.

Division of Nursing (HBP4). Serves as principal focus for nursing education, practice, and research. Specifically: (1) Provides the professional nursing expertise and leadership required by the Bureau in planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel resources; (2) supports and conducts programs with respect to the need for and the development, use, credentialing, and distribution of nursing personnel, including registered nurses, practical or vocational nurses, and nursing aides; (3) assists State and local areas in planning, developing, and improving nursing services and educational programs; (4) conducts and supports programs related to the provision of nursing care to advance the health status of individuals, families, and communities; (5) conducts and supports studies and evaluations of nursing personnel requirements, distribution, and availability, and cooperates with other components of the Bureau and Agency in such studies; (6) analyzes and interprets nursing programmatic data collected from a variety of sources; (7) engages with other Bureau programs in cooperative efforts of research, development, and demonstration on the interrelationships between individual members of the health care team, their tasks, education requirements, and related training modalities; (8) maintains liaison with health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver nursing services; (9) fosters, supports, and conducts projects to expand the scientific base of nursing practice and role reformulation and to develop and incorporate new knowledge into practice and education; and (10)

provides consultation and technical assistance to public and private organizations, agencies, and institutions, including the PHS Regional Offices, other agencies of the Federal Government, and international agencies and foreign governments, on all aspects of the Division's functions.

Division of Student Assistance (HBP5). Serves as the focal point for the Health Professions and Nursing Student Loan and Scholarship Program, the Exceptional Financial Need Scholarship Program, the Health Educational Assistance Loan and Loan Repayment Programs, the Health Professions and Nurse Education Loan Repayment and Loan Cancellation Programs, and the Cuban Refugee Health Professions Loan Program. Specifically: (1) Directs and administers these student assistance, training and support programs, including the awarding of loan and scholarship funds; (2) develops and implements program plans and policies and operating and evaluation plans and procedures in coordination with the Office of Program Development; (3) monitors and assesses educational and financial institutions with respect to capabilities and management of Federal support for students; (4) develops and conducts training activities for staff of educational and financial institutions, (5) maintains liaison with and provides assistance to program-related public and private professional organizations and institutions; (6) maintains liaison with the Office of the General Counsel and the Office of the Inspector General, DHHS, components of the Department of Education and the Department of Defense, and State agencies concerning student assistance; (7) in coordination with the Office of Program Development, develops legislative proposals and related administrative and management information and control documents; (8) in consultation with the Office of Debt Management, coordinates financial aspects of programs with educational institutions; and (9) in coordination with the Office of Analysis and Data Management, develops program data needs, formats, and reporting requirements, including collection, collation, analysis and dissemination of data.

Division of Disadvantaged Assistance (HBP6). Provides the Bureau focal point and leadership for assuring equity in access to health resources and health careers for the disadvantaged. Specifically: (1) Provides technical assistance to groups that represent and seek to improve the health status of the disadvantaged, and facilitates the access of such groups to Bureau and other Federal programs and resources; (2) provides leadership and direction for the development and implementation of Bureau objectives as they relate to the disadvantaged; (3) develops and recommends health resources and health career opportunities for the disadvantaged; (4) initiates, stimulates, supports, coordinates, and evaluates Bureau programs for improving the availability and accessibility of health careers for the disadvantaged; (5) initiates, stimulates, supports, coordinates, and evaluates in conjunction with other Bureau units, comprehensive data systems and analyses on requirements, resources, accessibility, and accountability of the health delivery system for the disadvantaged; (6) conducts extramural programs, including the use of grants and contracts, specifically designed to promote equity in access to health careers; (7) assures contract compliance and implementation of the PHS Policy Statement on Civil Rights in the Bureau; (8) provides leadership for and assures the implementation of program initiatives through coordination with the Bureau's divisions and in collaboration with other appropriate Agency entities; (9) conducts and coordinates Bureau programs in health careers for women; (10) provides leaderhsip to develop and coordinate Bureau program support to student health organizations; and (11) provides advice and consultation to the Office of the Assistance Secretary for Health and PHS agencies on policy and other matters related to assuring equity is access to health resources and health careers for the disadvantaged.

Bureau of Health Care Delivery and Assistance (HBC)

Serves as a national focus for efforts to assure the availability and delivery of health care services in medically underserved areas and to special service populations. Specifically: (1) assists States through program and clinical efforts to provide health care to underserved populations through the Primary Health Care Block Grant and through the Maternal and Child Health Services Block Grant which provides a principal means of support in maintaining and improving the health of mothers and children; (2) provides through project grants to State, local, voluntary, public and private entities, funds to help them meet the health needs of special populations such as migrants and victims of black lung disease; (3) provides leadership and direction for the Bureau of Prisons Medical Program, the National Hansen's Disease Program, and support for Health Unit #1, the Federal Employees Occupational Health Program, CHAMPUS Program and the Cuban and Haitian Refugee Program; (4) administers a comprehensive health program for designated PHS beneficiaries including active duty members of the Coast Guard, PHS, and the National Oceanic and Atmospheric Administration; and (5) administers the National Health Service Corps program which assures accessibility of health care in underserved areas.

Office of the Director (HBC1). (1) Provides leadership and direction for Bureau activities including Equal Employment Opportunity; (2) provides guidance and coordination to each major block and categorical program provided for by legislation and appropriation; (3) serves as a central point of reference for program continuity and information; (4) establishes program policies, goals and objectives; (5) provides program development and support services for Bureau activities; (6) communicates and interprets program policies, guidelines, and priorities and provides support to RHAs or Regional Staff as appropriate; (7) stimulates, coordinates and evaluates development and progress of the Bureau activities; (8) maintains relationships with OASH, other Department operating divisions, other Federal agencies, and through the Regional Offices, State and local governments, consumer groups and national organizations concerned with health affairs; (9) plans the activities of the National Health Service Corps and the Migrant Health Advisory Councils; (10) in coordination with other PHS components, supports the national effort to improve the health of Cuban and Haitian refugees; and (11) integrates functions and activities of the Bureau programs related to PHS Regional Offices and State and local governments.

Division of Beneficiary Medical Programs (HBC2). Plans, directs, and evaluates the delivery of health services for designated Public Health Service (PHS) beneficiaries, including active duty members of the Coast Guard, PHS, and National Oceanic and Atmospheric Administration. Specifically, (1) directs the contract health care program and operates a payment authorization system; (2) assures that adequate resources are available to provide comprehensive health care to eligible beneficiaries; (3) maintains relationships with health officials in other Federal and private agencies; (4) develops and implements Division standards for acceptable levels of utilization, cost, and efficiency of health care services; (5) evaluates the quality and

appropriateness of Division health care programs and operations; (6) recommends automated systems activities for the beneficiary medical programs; (7) recommends financial management approaches to assure the integrity and appropriateness of provider reimbursement; (8) provides clinical and programmatic consultation, guidance and assistance to beneficiaries on their health care entitlement; (9) operates PHS Health Unit #1; (10) carries out all Departmental responsibilities with regard to the Civilian Health and Medical Care Program of the Uniformed Services (CHAMPUS); (11) directs and provides support to a comprehensive medical program for prisoners in Federal prisons and correctional institutions; (12) participates in the development of forward plans, legislative proposals and budgets for the Bureau; and (13) responsible for overall direction of the Beneficiaries Medical Program's Data Records Center.

Division of Maternal and Child Health (HBC3). Provides national leadership in identifying and interpreting national trends and issues of significance in promoting the health of mothers and children by: (1) administering a program of block grants to the States to (a) assure mothers and children (especially those with low income or limited availability of health services) access to quality maternal and child health services; (b) reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, reduce the need for inpatient and long-term care services, and otherwise promote the health of mothers and children; (c) provide for rehabilitation services for blind and disabled persons under the age of 16 receiving benefits under Title XVI of the Social Security Act; (d) provide services for crippled children or children suffering from conditions leading to crippling; and (e) provide services in areas of special concern such as mental retardation, sudden infant death syndrome, lead-based paint poisoning, metabolic disorders and adolescent pregnancy; (2) administering special projects of regional or national significance, training, and research, and supports genetic disease testing, counseling, and information development and dissemination programs and comprehensive hemophilia diagnostic and treatment centers; (3) promoting coordination at the Federal level of activities authorized under Title V and Title XIX of the Social Security Act, especially early and periodic screening, diagnosis and treatment and related activities funded by the Departments of Agriculture and Education; (4) disseminating information to the States on preventive health services and advances in the care and treatment of mothers and children; (5) providing clinical and programmatic consultation and assistance, on request, to the States in program planning, establishment of goals and objectives, standards of care, and evaluation; (6) cooperating with the National Center for Health Statistics, collects, maintains, and disseminates information relating to the health status and health service needs of mothers and children in the United States; (7) assisting in the preparation of reports to Congress on the activities and accomplishments achieved under Title V of the Social Security Act from reports by the States; and (8) participating in the development of forward plans, legislative proposals, and budgets.

Division of Primary Care Services (HBC4). (1) Implements efforts to improve the organization and delivery of health services by serving as the point of accountability for Primary Health Care Services Delivery programs; (2) provides leadership and direction for legislative activities in the program area; (3) develops and establishes policies for such national programs and develops long- and short-range program goals and objectives; (4) is accountable for the administration of funds and other resources for grants, contracts, and clinical and programmatic consultation and assistance; (5) ensures that delegated responsibilities are being carried out; (6) coordinates the development and establishment of guidelines and standards for professional services, and for the effective organization and administration of health programs, and the improvement of health services and staff development; (7) interprets policies, regulations, guidelines, standards, and priorities to higher echelons, within the Public Health Service, to Regional Offices, grantee agencies, institutions and organizations; (8) coordinates with other programs providing health services including voluntary, official, and other community agencies and provides clinical and programmatic consultation and assistance, on request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation; (9) establishes and provides liaison in program matters with other entities within BHCDA and the Agency, within the Public Health Service, with the Department and with other Federal agencies, consumer groups and national organizations concerned with health matters, and through the Regional Offices, with State and local governments; (10) participates in the development of forward plans, legislative proposals, and budgets; and (11) coordinates the integration of Primary Care projects and services with other health care delivery systems.

Division of Family Planning (HBC5). (1) Directs nationwide efforts to improve the organization and delivery of Family Planning services, training, information and education, and services delivery improvement research by serving as the point of accountability for the specific categorical programs; (2) provides leadership and direction for legislative activities in the program area; (3) develops and establishes policies for national programs and develops long and short-range program goals and objectives; (4) is accountable for the administration of funds and other resources for grants, contracts, and technical assistance; (5) ensures that delegated responsibilities are being carried out; (6) develops guidelines, and standards for professional services, and for the effective organization and administration of health programs, and the improvement of health services and staff development; (7) interprets policies, regulations guidelines, standards, and priorities and provides clinical and programmatic consultation and assistance, on request, to the Regions, States and nonprofit, private entities in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation; (8) provides coordination with other programs providing health services including voluntary, official, and other community agencies; (9) establishes and provides liaison in program matters with other programs within the Department, other Federal agencies, consumer groups and national organizations concerned with health matters and through the Regional Offices with State and local governments; (10) participates in the development of forward plans, legislative proposals, and budgets; and (11) assesses performance of Title X grantee operations and determines those areas where improvement is needed.

Division of National Health Services Corps (HBC6). (1) Directs nationwide efforts to improve the availability and distribution of health care delivery professionals; (2) plans, directs, administers and coordinates clinical services and related professional health care activities at the national level; (3) in coordination with the Office of Policy Coordination, develops legislative proposals; (4) directs and implements

policies and long- and short-range goals and objectives for programs and activites related to the National Health Services Corps (NHSC); (5) administers programs for: (a) recruitment and placement of volunteer health professionals and placement of NHSC Scholarship obligors; (b) Private Practice Opinion and Private Practice Grants for NHSC scholarship recipients; and (c) Start-up Loans for NHSC Sites; (6) provides coordination with other programs providing health services, including voluntary, official, and other community agencies; establishes and provides liaison in program matters within the Bureau, the Department, and other Federal agencies, consumer groups and national organizations concerned with health matters, and through the Regional Offices with State and local governments; (7) plans, develops, and implements state and local clinical and programatic consultation and assistance programs to: (a) improve the quality and effectiveness of patient care delivery systems for underserved population groups; and (b) improve the quality of staffing and knowledge of specific types of health care delivery providers; (8) in coordination with the Office of Data Management, develops program data needs, formats, and reporting requirements including collection, collation, analysis and dissemination of data; and (9) participates in the development of forward plans, legislative proposals, and budgets.

Division of Health Services Scholarships (HBC7). Responsible for the administration of the Public Health Service Scholarship Training Program, and the NHSC Scholarship Program. Specifically: (1) Directs and administers these programs, including the recruitment, application, selection and awarding of scholarship funds and deferment and service monitoring systems in close coordination with NHSC; (2) develops and implements program plans and policies and operating and evaluation plans and procedures in coordination with the Office of Program Development; (3) monitors obligatory service requirements and conditions of deferment for compliance; (4) provides guidance and technical assistance for PHS staff in Regional Offices and to staff of educational institutions; (5) maintains liaison with and provides assistance to program-related public and private professional organizations and institutions; (6) maintains liaison with the Office of General Counsel and the Office of the Inspector General, DHHS; (7) in coordination with the Office of Policy Coordination, prepares legislative proposals; (8) in consultation with the Office of Financing Services, coordinates financial aspects of programs with educational institutions; and (9) in coordination with the Office of Data Management, develops program data needs, formats, and reporting requirements including collection, collation, analysis and dissemination of data; (10) participates in the development of forward plans, legislative proposals, and budgets.

Division of National Hansen's Disease Programs (HBC8). (1) Plans, directs, and evaluates a comprehensive program of health care for designated persons with Hansen's disease; (2) manages administrative and professional support for ambulatory and contract Hansen's Disease treatment; (3) carries out the training of health services personnel; (4) conducts research; (5) plans and performs activities in support of and in cooperation with intra-agency, interagency, and internationally sponsored programs; and (6) operates the National Hansen's Disease Center at Carville, Louisiana.

Division of Federal Employee Occupational Health (HBC9). (1) Provides consultation on, and stimulates the development of, improved occupational health and safety programs throughout the Government; (2) evaluates upon request Federal agency occupational health services in relations to standards; (3) administers employee occupational health programs for other Federal agencies on a reimbursable basis; (4) conducts research studies, training and demonstration projects; (5) develops occupational medical standards and methods for Federal employee occupational health programs; (6) promotes activities designed to protect the working health and safety of Federal employees in order to maximize their productivity; and (7) provides for the operation of a Federal agency contract formulation and assistance program for the standardization of contracting, cost comparison and analysis, and health program formulation for agencies desiring health units.

Office of Program Development (HBC12). (1) Serves as the Bureau's principal staff for program planning and coordination, including the development of alternative program positions; (2) oversees planning and tracking functions in support of policy formulation and program implementation; (3) advises the Bureau Director and staff on program policy and operational implications arising from activities of the Office; (4) collaborates with the Office of Program Support in the development and implementation of the 5-year program and financial plan for the Bureau's program planning and budgeting system; and (5) conducts special inquiries and studies; and (6) manages the Bureau's correspondence activities.

Office of Policy Coordination (HBC13). (1) Directs and administers the development of (a) policy, regulations, guidelines and related standards necessary for the operation, management and evaluation of legislated health care programs administered by the Bureau; and (b) criteria, methods and guides for program performance, and for the annual allocation of funding resources; (2) develops and reviews regulations and specifications which affect Bureau programs and policies; (3) manages inter- and intra-agency agreement activities designed to enhance and further the program objectives of the Bureau, including affiliation agreements; (4) develops and reviews proposals for new or amended legislation affecting the Bureau; (5) advises Bureau staff on the implications of other Federal and State legislation as it relates to BHCDA programs; (6) develops model State legislative specifications for health care programs impacted by the Bureau; and (7) responsible for the Privacy Act and the Freedom of Information Act and regulations.

Office of Program Support (HBC14). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; and maintains close liaison with officials of the Agency, the Office of the Assistant Secretary for Health, and the Department on matters relating to Management and administrative support activities. Specifically: (1) Provides or serves as liaison for providing program support services and resources, including procurement of equipment and supplies, printing, property, etc.; (2) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources; (3) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Bureau's management policies, procedures, and systems; (4) develops and coordinates program and administrative delegations of authority activities; (5) responsible for the Bureau's paperwork management functions including the development and maintenance of manual issuances; (6) coordinates the development and processing of Bureau contract

procurement activities and maintains liaison with the Administration, Office of Contracts and Grants, Office of the Assistant Secretary for Health; (7) develops and carries out a full range of financial management activities, including development of the annual budget; (8) in cooperation with the Office of Personnel, HSRA, coordinates personnel activities for the Bureau; (9) responsible for planning, directing, coordinating, evaluating Bureau-wide Grants Management activities to include assistance to Headquarters and Regional staffs; (10) responsible for Bureau-wide activities associated with the management of national committees.

Office of Data Management (HBC15). Directs and coordinates all systems and information management activities. Specifically: (1) Directs, analyzes, designs, develops, implements, and monitors data systems, data collection activities, data analyses and interpretations; (2) represents the Director on systems and data matters external to the Bureau; (3) conducts training for staff on data systems; (4) interfaces with all data systems support organizations; and (5) coordinates data reporting to common PHS data systems.

Office of Financing Services HBC16). Directs and coordinates the financing aspects of Bureau programs. Specifically: (1) Develops and operates fiscal program services and maintains fiscal program coordination for obligations, disbursements, repayments, cancellations, and close-out of open NHSC Scholarship awards; (2) responsible for coordinating with Division staff and Agency fiscal office staff in the payment of medical bills associated with PHS beneficiaries; (3) reviews, analyzes, evaluates, and reports on program accomplishments in implementing internal project audits and makes financial recommendations for improvements; (4) maintains liaison with the Internal Revenue Service (IRS) and provides information pertaining to applicable tax laws and IRS exceptions for the guidance of participating educational institutions and other program recipients; (5) administers the reimbursement program of the NHSC field sites; (6) maintains liaison with the Office of Fiscal Services, the Office of General Counsel, and the Office of the Inspector General, DHHS, concerning debt management; (7) coordinates the fiscal aspects of programs with the Bureau's Office of Program Support, BHCDA and HSRA's Office of Fiscal Services and the PHS and departmental fiscal management offices; (8) in coordination with Office of Data Management, develops program data needs, formats and reporting requirements including collation, analysis, and dissemination of data; and (9) coordinates activities through Regional Office staff.

Section HB–20. Order of Succession. During the absence or disability of the Administrator or in the event of a vacancy in that office, the first official listed below who is available shall act as Administrator, except that during a planned period of absence, the Administrator may specify a different order of succession. The order of succession will be: (1) Deputy Administrator; (2) Associate Administrator for Operations and Management; (3) Associate Administrator for Planning, Evaluation and Legislation; (4) Associate Administrator for Program Coordination; (5) Director, Bureau of Health Care Delivery and Assistance; (6) Director, Bureau of Health Professions; (7) Director, Bureau of Health Resources and Development; and (8) Director, Indian Health Service.

Section HB–30. Delegations of Authority. All delegations of authority made to; (1) the Administrator, Health Resources Administration; (2) the Administrator, Health Services Administration; and (3) the Director, Health Maintenance Organizations/OASH, which were in effect immediately prior to the effective date of this reorganization, are hereby vested in the Administrator, Health Resources and Services Administration, with authority to redelegate consistent with the previous delegations of authority to: (1) the Administrator, Health Resources Administration; (2) the Administrator, Health Services Administration; (3) the Deputy Assistant Secretary for Health Research, Statistics, and Technology/OASH; and (4) the Director, Health Maintenance Organizations/OASH.

All delegations and redelegations made to other PHS officials within: (1) The Health Resources Administration; (2) the Health Services Administration; (3) the Office of Health Research, Statistics, and Technology/OASH; (4) the Office of Health Maintenance Organizations/OASH; and (5) PHS Regional Offices, which were in effect immediately prior to this reorganization shall continue in effect in them or their successors, pending further redelegation.

This reorganization is effective September 1, 1982.

August 20, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 82–23846 Filed 8–26–82; 4:19 pm]

BILLING CODE 4160–17–M

Cooperative Agreement Program for Occupational Health and Safety Surveillance; National Institute for Occupational Safety and Health; Public Health Service; Centers for Disease Control

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces that competitive applications for cooperative agreements are being invited for the purpose of developing State occupational health and safety surveillance systems. Applications will be accepted until September 15, 1982.

Authority

The cooperative agreements will be awarded and administrated by NIOSH under the research and demonstration grant authority of section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)). Program regulations applicable to these grants are contained in Part 87 of Title 42, Code of Federal Regulations, "National Institute for Occupational Safety and Health Research and Demonstration Grants." This program is not subject to OMB requirements relating to evaluation, review, and coordination of Federal and federally assisted programs and projects.

Eligible Applicants

Applicants may be States or, in consultation with and with the written approval of the State Health Authority, any public or private organization, institution, university, or college.

Availability of Funds

Each new cooperative agreement will be of 3 years duration. Where cooperative agreements are extended to awardees who participated in the pilot demonstration program, awards may be made for periods not to exceed 5 years. The average direct cost for each new agreement is expected to be $70,000 per year and $50,000 per year for the State agencies that participated in the pilot demonstration program. The award of cooperative agreements under this announcement is subject to availability of funds for this purpose. Applications will be subject to a competitive review procedure. Recipients will be required to share a minimum of 5 percent of the costs.

Purpose and Objectives

To develop a national occupational health and safety surveillance network as rapidly as possible, it is necessary to utilize existing State health and safety data systems. Although some of

NIOSH's surveillance needs can be met by using existing national data systems, many needs, such as monitoring recognizable occupational diseases and determining the incidence and prevalence of occupational disease and mortality, presently cannot be addressed on a national basis. For this reason, NIOSH undertook a cooperative agreement pilot demonstration program to develop, at the State level, four occupational health surveillance systems.

Three principal objectives guided these initial activities:

(1) To strengthen the State's capabilities in occupational health surveillance;

(2) To increase the likelihood of continued State involvement through the demonstrated effectiveness of these systems; and

(3) To enhance the flow of information between NIOSH and State health departments and other State agencies.

The program emphasized a joint NIOSH-State health agency approach to occupational health surveillance.

The present solicitation furthers three objectives: (1) Continue the initiative of the pilot demonstration program; (2) increase the base of cooperating agencies to include all States, U.S. Territories, and the District of Columbia; and (3) broaden the surveillance focus to include both health and safety parameters in all industrial sectors.

Scope

In this program, it is necessary that there be substantial CDC/NIOSH and State-level involvement and collaboration in the development of State-level occupational health and safety surveillance activities and in the development and implementaion of the surveillance strategy described below:

A. The recipient will be expected to:

1. Review and assess, in collaboration with NIOSH, the suitability of the State's data base for occupational health and safety surveillance purposes. The following factors will be considered:

a. Coverage of the potential target population;

b. Number of years, type, and quantity of information maintained by the health or safety data bases;

c. Description of coding schemes employed in processing the data base(s);

d. The degree and extent of data maintained in computer files (magnetic tape or cards);

e. The quality control maintained for the data collection and processing;

f. Compatibility with other data bases, both within and outside the reporting area or State; and

g. A flow diagram showing the time and events from data collection to data processing.

2. Develop a protocol that describes a specific and well-defined occupational health or safety surveillance technique usable for the applicant's health or safety surveillance data bases. Examples of health surveillance techniques include analyses of proportionate mortality or morbidity ratios or a system of case reviews of selected files for sentinel health events. Similar techniques are applicable to the development of a safety surveillance component if workers' compensation or other accident and injury data files are available for analysis.

3. Develop a timetable for the planning and implementation of the proposed occupational health and safety surveillance protocol.

4. Submit the proposed protocol and timetable to NIOSH for review and approval. Upon approval by NIOSH, the recipient will implement the proposed surveillance strategy.

5. Collaborate with NIOSH staff, as necessary, in developing program descriptions, guidelines, and documentation of data processing procedures and systems that would be used to introduce other States to State-based occupational health and safety surveillance techniques.

6. Collaborate with NIOSH, as necessary, in the interim and final evaluation of the proposed surveillance activities.

B. The CDC/NIOSH involvement will be as follows:

1. *Program Organization and Development.*

a. Collaborate in assessing the completeness and specificity of information on occupation, industry, and health outcomes that is available on State records (e.g., death certificates and workers' compensation claims); recommend changes; and determine the feasibility of implementing the changes. The same type of assessment and recommendations would also be made for the coding schemes used to summarize these data.

b. Collaborate in assessing the adequacy and extent of data maintenance for the State data systems to ensure that all data items necessary for occupational health and safety analyses are accessible to computer analysis. In general, NIOSH and the recipients will jointly review the data management system in terms of the surveillance activities expected to be supported.

c. Assist in adaptation of the recipients' statistical procedures and methods for the purpose of conducting proportionate mortality/morbidity studies or monitoring sentinel health events (e.g., selected International Classification of Diseases rubrics and occupational diseases). NIOSH and the recipients will work together in exploring and developing new epidemiologic and statistical methods and determining their feasibility.

2. *Implementation of the Proposed Surveillance Technique.* Joint analysis of the occupational health and safety surveillance data will allow NIOSH to familiarize the recipients with health and safety data systems at the national level and in other States and with their utility for comparative analyses and standardization purposes. NIOSH will provide technical assistance throughout this phase and assist in the quality control maintained for the data collection and processing.

3. *Program Evaluation.* Collaborate in the evaluation of all activities toward the development and implementation of the proposed surveillance program. In addition, NIOSH will assist in the evaluation of other health and safety data bases at the State or local level. This evaluation will focus on the application of these data bases for occupational health and safety surveillance purposes and the feasibility of expanding the scope of activities to utilize these health and safety data bases.

4. *Interchange of Information.* NIOSH will collaborate with all recipients with the intent of assuring the development of occupational health and safety surveillance programs at the State level. Consistent with this intent, NIOSH will coordinate and facilitate the interchange of technical information with recipients. As health and safety data systems develop, NIOSH will collaborate with the recipients to establish quarterly or other periodic reports of occupational health and safety import. This exchange is consistent with the national need for a network of States with compatible resources and surveillance capabilities for meeting the States' needs and for providing occupational health and safety data to NIOSH on a timely basis.

Methods and Criteria for Review and Award

Applications will be evaluated according to the following review criteria:

A. *Scientific and Technical Merit Review Criteria.*

The review for scientific and technical merit will evaluate the applications according to criteria based on the standard National Institutes of Health

(NIH) criteria used for research grant applications. These criteria are:

1. Relevance of the proposal to the scope and objective provided in the Request for Applications Announcement (RFA);

2. Technical merit and originality of the proposed approach to the problem;

3. Training, experience, and competence of the proposed Project Director and staff. The Project Director must be a recognized scientist and technical expert and must assure a major time commitment to this program;

4. Adequacy of the methodology and approach;

5. Suitability of the facilities; and

6. Appropriateness of the requested budget relative to the work proposed.

B. *Programmatic (Secondary) Review Criteria.* These criteria are:

1. Capability of the applicant to carry out the tasks involved in the Surveillance Program;

2. Soundness and innovation of the proposed approach to the range of activities presented in the description of the Surveillance Program contained in the announcement;

3. Capability of the applicant's administrative structure to foster the development of an ongoing occupational health and safety surveillance system using State data bases;

4. Availability and commitment of qualified personnel to the project; and

5. Suitability, accessibility, and adaptability of the State's health and safety statistics system(s) proposed to be used by the applicant in meeting national surveillance needs.

C. *Awards.* Awards will be based on priority score ranking by the Safety and Occupational Health Study Section and the evaluation by NIOSH according to the Programmatic (Secondary) Review Criteria.

Application

Application Form—Applications shall be submitted on Form PHS 5161–1 for State and local governments. The application forms are available from State governments or from the Grants Management Officer, NIOSH, Parklawn Building, Room 8–23, 5600 Fishers Lane, Rockville, Maryland 20857. The conventional presentations for grant applications should be utilized, except as follows, with the points under the Methods and Criteria for Review being fulfilled.

In the "Program Narrative" section of the application, the design must follow the SCOPE strictly. The "Objective" and "Background" sections of the Program Plan may refer to the RFA as necessary but should be more fully developed. The "Rationale" section should discuss the qualifications of the applicant to conduct the program. Details of the program design beyond the SCOPE should be included in the "Methods of Procedure" section to aid reviewers in assessing the quality of the proposed program, the program team, and the study setting.

Application Procedure—The standard procedures for submitting grant applications to the Division of Research Grants (DRG) at NIH should be followed except as noted otherwise. The words "CDC/NIOSH Cooperative Agreement Program for Occupational Health and Safety Surveillance" and the RFA number (CDC–NIOSH–82–1) should be typed in block letters in the upper right hand corner of the face page of the application. A brief cover letter should accompany the application indicating that it is in response to the RFA Announcement "Cooperative Agreement Program for Occupational Health and Safety Surveillance".

Applications must be received on or before September 15, 1982, for consideration for funding in Fiscal Year 1983. Future application receipt dates will be announced annually. An original and two copies of the application should be sent or delivered to: Division of Research Grants, NIH, 5333 Westbard Avenue, Westwood Building—Room 125, Bethesda, Maryland 20205.

Applicants may meet the deadline by either delivering or mailing the application on or before the above specified date provided the following conditions are met:

1. Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Division of Research Grants, NIH, or

b. Sent by first class mail, postmarked on or before the deadline date, and received by the granting agency in time for submission to the independent review group. (Applicants must be cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified mail and to obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received at a place specified above before close of business on or before the deadline date (4:30 p.m. E.D.T., September 15, 1982).

3. Late applications. Applications which do not meet the criteria in either paragraph 1. or 2. are considered late applications. In that event, an application will not be considered in the current competition and will be returned to the applicant.

NIOSH will provide, insofar as possible, consultation concerning the preparation of an application or any other matter relevant to this program to those that desire such assistance. The inability to provide such consultation cannot, however, justify extensions of the deadline for receipt of applications or any other special consideration.

Schedule for Receipt and Review of Applications

Receipt of Application: September 15, 1982.

Initial Review Group: December 1982 or January 1982.

Earliest Award Date: April 1982.

FOR FURTHER INFORMATION CONTACT:

Technical: John P. Sestito, Chief, Illness Effects Section, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, Robert A. Taft Laboratory, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Phone: (513) 684–3284.

Business: Joseph West, Grants Management Officer, NIOSH, Parklawn Building, Room 8–23, 5600 Fishers Lane, Rockville, Maryland 20857, Phone: (301) 443–3122.

(Catalog of Federal Domestic Assistance Program No. 13.262, Occupational Safety and Health Research Grants)

Dated: August 26, 1982.

J. Donald Miller,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 82–23934 Filed 8–30–82; 8:45 am]

BILLING CODE 4160–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

New Community Development Corporation

[Docket No. D–82–680]

Delegation of Authority

AGENCY: New Community Development Corporation, HUD.

ACTION: Delegation of authority.

SUMMARY: The Secretary is delegating authority to the Supervisor or, in his absence, to the Deputy Supervisor for Development, Cincinnati Multifamily Service Office, to execute closing documents, including deeds related to the sale of Federally-owned land in

Sycamore Woods, City of Trotwood, Montgomery County, Ohio (referred to hereafter as Sycamore Woods).

EFFECTIVE DATE: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Grant E. Mitchell, Assistant General Counsel, New Communities Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202–755–6550. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The subject real property includes an approximately 420 acre tract of land known as Sycamore Woods. The Sycamore Woods property consists of developed and undeveloped parcels of the former Newfield New Community currently managed by the New Community Development Corporation. Several closings are scheduled in 1982 and more sales are expected throughout 1983. In order to have prompt closings, avoid excessive costs and avoid the necessity of returning all the closing documents to Central Office for signature, the closing functions are being delegated to the Cincinnati Multifamily Service Office.

Section A. Authority Delegated. The Secretary of the Department of Housing and Urban Development delegates to the Supervisor or, in his absence, to the Deputy Supervisor for Development, Cincinnati Multifamily Service Office, pursuant to Part B of the National Urban Policy and New Community Development Act of 1970, Title VII of the Housing and Urban Development Act of 1970, Pub. L. 91–609, the authority to take all necessary actions at closing, including execution of deeds, to convey any parcel of real property shown on Exhibit A.[1]

Section B. Authority to Redelegate. The General Manager of the New Community Development Corporation is authorized to redelegate to any of the employees of the Department the authority to take all necessary actions at closing, including execution of deeds, to convey any parcel of real property shown on Exhibit A.

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: August 24, 1982.

Donald I. Hovde,

Under Secretary, Department of Housing and Urban Development.

[FR Doc. 82-23834 Filed 8-30-82; 8:45 am]

BILLING CODE 4210-01-M

[1] Exhibit A filed as part of original document.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 7048]

Ohio; Termination of Proposed Withdrawal and Reservation of Land

Notice of The Department of the Interior, Fish and Wildlife Service application ES 7048 for withdrawal and reservation of the following described land from all forms of appropriation under the public land laws except the mineral leasing laws, was published as FR Doc. 78–31206 on page 51727 of the **Federal Register**, on November 6, 1978. The applicant has canceled the application in its entirety.

Michigan Meridian, Ohio

T. 9 S., R. 11 E.

That part of West Sister Island and Tract 37, lying west of a line bearing north and south through a point which is east 200 feet distant from the center of the West Sister Island lighthouse tower (the geographic positon of said lighthouse is lat. 40°44'13" N., and long. 88°6'38" W., from Greenwich), containing approximately 3.00 acres in Lucas County, Ohio.

Pursuant to the regulations contained in 43 CFR 2310.2–1(c), these lands shall at 7:30 a.m. on September 30, 1982 be relieved of the segregative effect resulting from the above referenced publication.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-23867 Filed 8-30-82; 8:45 am]

BILLING CODE 4310-84-M

Florida; Sanibel/Pine Island Sound Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Florida; Sanibel/Pine Island Sound Plan.

SUMMARY: Pursuant to the responsibilities outlined in 43 CFR 1601.3(e), the Eastern States Office (ESO) of the Bureau of Land Management (BLM) announces that the *Sanibel/Pine Island Sound Plan* has received final approval of the Eastern States Director.

The plan considers, as a single planning unit, all public lands, islands, and Federal mineral ownership (FMO) under BLM jurisdiction in Lee, Charlotte, and Collier Counties, Florida. Included are sixty surface tracts, totalling approximately 875 acres of public domain land, and approximately 7,300 acres of FMO. Preparation by BLM of a planning document for the three-county area was first announced in the October 22, 1980 **Federal Register.**

Notice of the availability of the draft plan, including background of the plan and a summary of its recomendations, appeared in the May 13, 1982 **Federal Register.** Copies of that notice are available from the Tuscaloosa Office of BLM, at the address given below.

Summary of Public Comment on the Draft Plan

A 45-day public review and comment period on the draft plan began with the May 13, 1982 **Federal Register** notice and ran until June 28, 1982. A public meeting to discuss the draft plan was held in Fort Myers, Florida, on May 28, 1982.

During the public review and comment period, the Tuscaloosa Office received 36 letters and telephone calls commenting on the draft plan. Thirty-four of these (including comments from a U.S. Senator, a State Representative, State and county government representatives, potential management agencies, public interest groups, and the general public) were supportive of the plan recommendations, with only minor suggested amendments. The remaining two letters were follow-ups from speakers at the public meeting, who claimed ownership to parcels addressed in the plan and wish to resolve any title conflicts.

The public meeting was attended by 24 persons representing Federal, State and county governments, regional and local planning agencies, public interest groups, and the media. Nine attendees made public statements, the majority of which were supportive of the plan recommendations, with, again, only minor suggested amendments.

Most of the suggested amendments received during the public review and comment period, involved minor changes in the plan recommendations regarding potential management agencies for specific tracts. These recommendations remained unchanged; however, the comments and responses to the comments have been included as an appendix to the plan.

Other public comments included suggestions for stipulations to be included in the eventual transfers of specific parcels. These will be considered by BLM when withdrawal applications for these parcels are processed.

Finally, in reference to potential title conflicts: these will be resolved as part of the adjudication process when specific lands applications are considered.

For questions on any aspect of the planning process in general or the

Sanibel/Pine Island Sound Plan in particular, please contact Ed Roberson, Environmental Specialist, Tuscaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, Alabama 35401. Telephone: (205) 759–5441. Copies of the summary of the plan, and of the Wilderness Inventory Summary included therein, are available from the same address.

Pieter J. VanZanden,

Acting Eastern States Director.

[FR Doc. 82–23826 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–84–M

California; South Sierra Foothills Grazing Management Program, Intent To Prepare an Environmental Impact Statement

August 20, 1982.

The Department of the Interior, Bureau of Land Management, Bakersfield District, California will prepare an Environmental Impact Statement for a proposed grazing management program on approximately 198,000 acres of public land located in the South Sierra Foothills Planning Area in Kern and Tulare Counties, California. The statement will analyze anticipated environmental consequences which would result from the implementation of alternative grazing plans proposed by the Caliente Resource Area Manager. These alternative plans will incorporate variations in forage allocation, seasonal use, and intensity of livestock grazing management. The final statement is scheduled for completion by September 30, 1983.

Mailouts will be distributed to interested individuals detailing issues which will be addressed in the document. Some of the major issues identified by the Bureau of Land Management to date are: Impacts on Mineral King and Walker Pass deer herds, impact on watershed conditions and water quality, and economic impacts of grazing management. The public will be asked to review and comment on these issues. Comments should be submitted by September 30, 1982.

Further information on the South Sierra Foothills Draft Grazing Environmental Impact Statement may be obtained from: Glenn A. Carpenter, Area Manager, Caliente Resource Area, Bureau of Land Management, 1430 Truxtun Avenue, Suite 456, Bakersfield, California 93301, (805) 861–4236.

Garold W. Lamb,

Acting District Manager.

[FR Doc. 82–23821 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–84–M

[N–26467]

Nevada; Classification Vacated

August 19, 1982.

Pursuant to the authority designated by Bureau Order 701 and amendments thereto, Recreation and Public Purposes classification N–26467 is hereby vacated in its entirety. The land affected is described as follows:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 2, N½NE¼SW¼, SE¼NE¼SW¼.

The area described comprises 30 acres in Clark County, Nevada.

The segregative effect of the classification order is removed upon publication of this notice in the **Federal Register.**

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82–23815 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–84–M

[Serial Number: OR 10152]

Oregon; Realty Action-Recreation and Public Purposes Classification and Sale of Public Lands in Umatilla County, Oregon

August 23, 1982.

The following described lands have been examined and classified as suitable for sale under the Recreation and Public Purposes Act of June 14, 1926, as amended, (43 U.S.C. 869 et. seq.):

Willamette Meridian, Oregon

T. 4 N., R. 28 E.,
Sec. 14: That portion of the S½SE¼SW¼ lying north of the centerline of Railroad Right-of-Way Oregon 01781, now assigned to the Union Pacific Railroad Company.

The above described lands, comprising 7.47 acres, are being offered by sale to the Hermiston Cemetery District No. 8, for expansion of the existing cemetery.

This Decision/Notice is based on the following reasons:

1. The lands have been found to be valuable for recreation and public purposes and the disposition of the land will not be adverse to any known public or private interests.

2. The land is not of national significance and not essential to any Bureau of Land Management Program.

3. Disposal of the subject land is consistent with the Bureau's land use planning and has been discussed with state and local officials.

4. The proposed action will have no significant (including controversial) environmental effects on the human and natural environment.

5. Disposal of the land to the Hermiston Cemetery District No. 8 will serve important public objectives i.e., provide additional land for expansion of the existing cemetery.

6. The classification, and patenting of the land to the Hermiston Cemetery District No. 8, is in conformance with the Secretary of the Interior's "Good Neighbor Program".

7. The land is isolated, irregular in size and shape and receives only custodial management.

Classification of the land for sale to the Hermiston Cemetery District No. 8, under the provisions of the above cited authority segregates them from all appropriations, including locations under the mining laws, except as to applications under the Mineral Leasing Laws and applications under the Recreation Public Purposes Act.

Detailed information concerning this Recreation and Public Purposes Application, including the environmental assessment record, land report, terms and conditions and special stipulations that will be included in the patent is available for review at the Baker Resource Area Office, Federal Building, P.O. Box 987, Baker, Oregon 97814.

Petition for Classification OR 10152 is approved as to the land described above.

Name of the Petitioner: Hermiston Cemetery District No. 8, by its Director

Type of Petition: Recreation and Public Purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended.

On or before September 22, 1982, interested parties may submit comments to the District Manager, Bureau of Land Management, 365 "A" Street West, P.O. Box 700, Vale, Oregon 97918. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of this Department.

Fearl M. Parker,

District Manager,

[FR Doc. 82–23809 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management

and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the Office of Management and Budget reviewing official, Mr. Jeff Hill, at 202–395–7340.

Title: Off-road Vehicle Permit Application, to issue permits for use of such vehicles on national wildlife refuges
Bureau Form Number: N/A
Frequency: On occasion
Description of Respondents: Individuals or households
Annual Responses: 1,000
Annual Burden Hours: 100
Service Clearance Officer: Arthur J. Ferguson, 202–653–8770

Don W. Minnich,

Acting Associate Director—Wildlife Resources.

August 25, 1982.

[FR Doc. 82–23819 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Nevada; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by Section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Department Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1 G, and Secretarial Order 3071, the following described lands are hereby revoked as the Fly Ranch Northeast Known Geothermal Resources Area, effective May 28, 1982:

(28) Nevada

Fly Ranch Northeast Known Geothermal Resources Area

Mount Diablo Meridian, Nevada

T. 35 N., R. 24 E.,
Secs. 21 through 28, and 33 through 36.

The revoked area described contains 7,680 acres, more or less.

August 23, 1982.

Andrew V. Bailey,

Acting Associate Director for Onshore Minerals Operations.

[FR Doc. 82–23814 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Bureau Forms Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Mr. Jefferson B. Hill, at 202–395–7340.

Title: Urban Park and Recreation Recovery Program Project Performance Report
Bureau Form Number:
Frequency: Annually
Description of Respondents: Local units of government
Annual Responses: 1,200
Annual Burden Hours: 1,800
Bureau clearance officer: Russell K. Olsen

Russell K. Olsen,

Information Collection Clearance Officer.

August 18, 1982.

[FR Doc. 82–23816 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 20, 1982. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 15, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

ALABAMA

Jackson County

Scottsboro, *Brown-Proctor House,* 208 S. Houston St.

ARKANSAS

Clark County

Arkadelphia vicinity, *Hudson-Jones House,* E of Arkadelphia on SR 2

Washington County

Fayetteville, *Mount Nord Historic District,* Mount Nord Ave.

ILLINOIS

Lake County

Highland Park, *Adams, Mary W., House (Highland Park MRA),* 1923 Lake Ave.
Highland Park, *Beatty, Ross J., House (Halcyon Hall) (Highland Park MRA),* 344 Ravine Dr.
Highland Park, *Beatty Ross, House (Highland Park MRA),* 1499 Sheridan Rd.
Highland Park, *Braeside School (Highland Park MRA),* 142 Pierce Rd.
Highland Park, *Campbell, Albert, House (Highland Park MRA),* 434 Marshman
Highland Park, *Churchill, Richard, House (Highland Park MRA),* 1214 Green Bay Rd.
Highland Park, *Dubin, Henry, House (Highland Park MRA),* 441 Cedar
Highland Park, *Evert House (Highland Park MRA),* 2687 Logan
Highland Park, *Florsheim, Harold, House (Highland Park MRA),* 650 Sheridan Rd.
Highland Park, *Geyso, Mrs. Frank, House (Highland Park MRA),* 450 and 456 Woodland Rd.
Highland Park, *Goldberg, Julius, House (Highland Park MRA),* 185 Vine
Highland Park, *Granville-Mott House (Highland Park MRA),* 80 Laurel Ave.
Highland Park, *Hazel Avenue/Prospect Avenue Historic District (Highland Park MRA),* St. Johns, Hazel, Dale, Forest, and Prospect Aves.
Highland Park, *Highland Park Water Tower (Highland Park MRA),* N of Central Green Bay Rd.
Highland Park, *Holmes, Samuel, House (Highland Park MRA),* 2693 Sheridan Rd.
Highland Park, *Humer Building (Highland Park MRA),* 1894 Sheridan Rd.
Highland Park, *James, Jean Butz, Museum of the Highland Park Historical Society (Highland Park MRA),* 326 Central Ave.
Highland Park, *Lanzl, Haerman, House (Highland Park MRA),* 1635 Linden
Highland Park, *Lichtstern House (Highland Park MRA),* 105 S. Deere Park Dr.
Highland Park, *Linden Park Place/Belle Avenue Historic District (Highland Park MRA),* roughly bounded by Sheridan Rd., Elm Pl., Linden, Park, and Central Aves.
Highland Park, *Loeb, Ernest, House (Highland Park MRA),* 1425 Waverly
Highland Park, *Maple Avenue/Maple Lane Historic District (Highland Park MRA),* Maple Ave. and Maple Lane between St. Johns Ave. and Sheridan Rd.
Highland Park, *Millard, George Madison, House (Highland Park MRA),* 1689 Lake Ave.
Highland Park, *Millard, Sylvester, House (Highland Park MRA),* 1623 Sylvester Pl.
Highland Park, *Obee House (Highland Park MRA),* 1642 Green Bay Rd.
Highland Park, *Pick, George, House (Highland Park MRA),* 970 Sheridan Rd.
Highland Park, *Ravinia Park Historic District (Highland Park MRA),* roughly bounded by Lambert Tree Ave., Sheridan Rd., St. Johns Ave., Rambler Lane, and Ravinia Park Ave.
Highland Park, *Rosewood Park (Highland Park MRA),* Roger Williams Ave.

Highland Park, *Soule, C. S., House (Highland Park MRA)*, 304 Laurel Ave.

IOWA

Dubuque County

Dubuque, *Central High School*, 1500 Locust St.
Dubuque, *Old Chapel Hall*, 2050 University Ave.

Linn County

Mt. Vernon vicinity, *Beach School*, NW of Mt. Vernon off US 30

Polk County

Des Moines, *Hotel Fort Des Moines*, 10th and Walnut Sts.

LOUISIANA

West Feliciana Parish

St. Francisville, *St. Francisville Historic District*, (boundary increase) Ferdinand and Sewell Sts.

MISSOURI

Carroll County

Carrollton, *Wilcoxson and Company Bank*, 1 W. Washington, Ave.

Greene County

Springfield, *Stone Chapel*, Benton and Central Sts.

Henry County

Clinton, *Williams, C. C., House*, 303 W. Franklin St.

Jackson County

Kansas City, *Corrigan Thos., Building*, 1828 Walnut St.
Kansas City, *Downtown Hotels in Kansas City*, Roughly bounded by 11th, 14th, Wyandote, and Baltimore Sts.

Jasper County

Webb City, *Middle West Hotel, 1 S. Main St.*

Ray County

Richmond, *Dougherty Auditorium*, 203 W. Main St.

St. Louis (Independent City)

Wiltshire and Versailles Historic Buildings, 725 and 709 Skinker Blvd.

St. Louis County

Glendale, *McPherson-Holland House*, 115 Edwin Ave.

NEVADA

Clark County

Las Vegas vicinity, *Brownstone Canyon Archeological District*

NEW JERSEY

Union County

Elizabeth, *St. John's Parsonage*, 633 Pearl St.

NEW MEXICO

Bernalillo County

Albuquerque, *Armijo, Juan Cristobal, Homestead*, 207 Griegos Rd. NE.
Albuquerque, *Garcia, Juan Antonio, House*, 7442 Edith Blvd., N.E.

NEW YORK

Kings County

Brooklyn, *St. Luke's Protestant Episcopal Church*, 520 Clinton Ave.

New York City

New York, *Civic Club*, 243 E. 34th St.

Richmond County

Tottenville vicinity, *Ward's Point Conservation Area (A085–01–0030)*, SW of Tottenville at Author Kill and Hylan Blvd.

St. Lawrence County

Morley, *Harrison Grist Mill*, NY 345

OHIO

Clermont County

New Richmond vicinity, *Roas-Ilhardt Farm and Winery*, N of New Richmond at 3233 Cole Rd.

Cuyahoga County

Brecksville, *Snow, Russ and Holland, Houses*, 12911 and 13114 Snowville Rd.

Franklin County

Columbus, *Krumm House*, 975–979 S. High St.
Columbus, *Miller, Orlando C., House*, 141 W. 11th Ave.

Hamilton County

Cincinnati, *Grace Church*, 3626 Reading Rd.
Cincinnati, *Ropes, Nathaniel, Building*, 917 Main St.
Cincinnati, *Wright, Daniel Thew, House*, 3716 River Rd.
Cincinnati, *Young Women's Christian Association of Cincinnati*, 9th and Walnut Sts.

Portage County

Deerfield, *Diver, John, House and Storebuilding*, 9465 Akron-Canfield Rd.

Stark County

Canton, *First Reformed and First Lutheran Churches*, 901 and 909 E. Tuscarawas St.

UTAH

Beaver County

Beaver, *Willden, Charles, House (Beaver MRA)*, 180 E. 300 South

VIRGINIA

Norfolk (Independent City)

Attucks Theatre (Attucks Theatre and Office Building), 1008–1012 Church St.

Emporia (Independent City)

Village View, 221 Briggs St.

Harrisonburg (Independent City)

Rockingham County Courthouse, Courthouse Square

Richmond (Independent City)

Shockoe Slip Historic District, Roughly bounded by Seaboard RR tracks, Downtown Expressway, Main, Dock, and 12th Sts. (Boundary Increase)

Richmond (Independent City)

St. Luke Building, 900 St. James St.

Staunton (Independent City)

Merrillat, J. C. M., House, 521 E. Beverley St.

Albemarle County

Scottsville vicinity, *Cliffside*, N of Scottsville on VA 6

Augusta County

Greenville vicinity, *Clover Mount*, W of Greenville on VA 674
Spottswood vicinity, *Alexander, James, House*, N of Spottswood on VA 671
Swoope vicinity, *Glebe Burying Ground and Schoolhouse*, S of Swoope on VA 876

Buchanan County

Grundy, *Buchanan County Courthouse*, Walnut and Main Sts.

Campbell County

Altavista vicinity, *Avoca*, N of Altavista on US 29

Dickenson County

Clintwood, *Dickenson County Courthouse*, Main and McClure Sts.

Halifax County

Halifax, *Halifax County Courthouse*, Jct. US 360 and US 501

Hanover County

Ashland, *Ashland Historic District*, Center, Racecourse, James, Howard, Clay Sts., Hanover and Railroad Aves.

Newport News (Independent City)

Boldrup Plantation Archaeological Site,

Richmond (Independent City)

Columbia, 1142 W. Grace St.

WASHINGTON

Lewis County

Packwood vicinity, *Packwood Lake Guard Cabin*, E of Packwood in Gifford Pinchot National Forest

WISCONSIN

Dane County

Madison, *St. Patrick's Roman Catholic Church*, 404 E. Main St.
Rutland, *Graves, Sereno W., House (Graves Stone Buildings TR)*, 4006 Old Stage Rd.
Rutland, *Hunt, Samuel, House (Graves Stone Buildings TR)*, 632 Center Rd.
Rutland, *Lockwood Barn (Graves Stone Buildings TR)*, Old Stage Rd.

[FR Doc. 82–23863 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–70–M

Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Santa Monica Mountains National Recreation Area Advisory Commission will be held on Tuesday, September 28, 1982 at 7:30 p.m. in the cafeteria at Calamigos Star C

Ranch at Mulholland Highway, ½ mile west of Kanan Dume, Malibu, CA.

The Advisory Commission was established by Public Law 95–625 to provide for free exchange of ideas between the National Park Service and the public to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service in Los Angeles and Ventura Counties.

Members of the Commission are as follows:

Dr. Norman P. Miller, Chairperson
Honorable Marvin Braude
Ms. Sarah Dixon
Ms. Margot Feuer
Dr. Henry David Gray
Mr. Edward Heidig
Mr. Frank Hendler
Ms. Mary C. Hernandez
Mr. Peter Ireland
Mr. Bob Lovellette
Ms. Susan Barr Nelson
Mr. Carey Peck
Mr. Donald Wallace

The major agenda items include the following:

Public Hearing and Commission Recommendation on the Management of Parklands Study
Summary of Public Meetings on Paramount Ranch Development Concept Plan
Committee Reports including the Resource Management Committee and Development Monitoring Committee
Superintendent's status report.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning issues to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

Minutes of the meeting will be available for public inspection by November 1, 1982, at the above address.

Dated: August 23, 1982.

William Webb,

Acting Superintendent, Santa Monica Mountains National Recreation Area.

[FR Doc. 82–23864 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–70–M

Office of the Secretary

Intent To Propose Guidelines for Transactions Between Nonprofit Conservation Organizations and Federal Agencies

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of intent to propose guidelines and opportunity for comment.

SUMMARY: The Assistant Secretary for Fish and Wildlife and Parks intends to propose guidelines for transactions between nonprofit conservation organizations and Federal agencies which utilize the Land and Water Conservation Fund (LWCF). The guidelines should provide broad instructions to the four Federal agencies in their use of nonprofit conservation organizations to assist in securing the natural, cultural, wildlife, and recreation values in greatest need of protection.

The proposed guidelines will apply to the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management in the Department of the Interior and the Forest Service in the Department of Agriculture.

The guidelines developed based upon the comments received will be published in the **Federal Register** in draft form for additional reaction.

DATE: The Department will consider all comments received by September 30, 1982.

ADDRESS: Comments and data should be sent to Ric Davidge, Chairman, LWCF Policy Group, Room 3156, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: William Hartwig, Staff Director, LWCF Policy Group (202–343–4945).

SUPPLEMENTARY INFORMATION: The Office of Management and Budget and the General Accounting Office have urged that guidelines be developed. The General Accounting Office's concerns have been expressed in recent reports including *Overview of Federal Land Acquisition and Management Practices* (CED 81–135), which noted that 4.5 percent of the land acquired by the National Park Service, the Fish and Wildlife Service, and the Forest Service during the period 1965–1979 was acquired through the use of nonprofit conservation organizations, and recommended that the Department develop a written policy for dealing with these groups. Such a policy, the report stated, should provide guidance on "when to use nonprofits, what the working relationship should be, and what unique land acquisition procedures might be appropriate."

Comments should address the following concerns:

- The necessity of this working relationship to provide flexibility for nonprofits and accountability to current statutory, budgetary, and policy matters for the Federal agencies.
- The need for actions by nonprofits to support rather than guide actions by Federal agencies.
- The requirement that land acquisitions in Federal areas are to be in accordance with agency plans and priorities and are to be conducted with full knowledge and support of the local unit land manager.
- Affirmation that an agent of the Federal Government cannot obligate the Government to purchase property from a nonprofit organization prior to signing and approval of a formal purchase agreement.

August 24, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82–23641 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-454N)]

Conrail Abandonment Between Mt. Calvary and Atlantic City, NJ; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Mt. Calvary and Atlantic City in the County of Atlantic, NJ, a total distance of 5.0 miles effective on July 15, 1982.

The net liquidation value of this line is $548,312. If within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value of this line, it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23802 Filed 8–30–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–167 (Sub-314N)]

Conrail Abandonment Between Pleasantville and Linwood, NJ; Findings

Notice is hereby given pursuant to Section 308(e) of the Regional Rail Reorganization Act of 1973 that the Commission, Review Board Number 3 has issued a certificate authorizing the Consolidated Rail Corporation to abandon its rail line between Pleasantville and Linwood in the County of Atlantic, NJ, a total distance of 3.9 miles effective on July 15, 1982.

The net liquidation value of this line is $228,686. If within 120 days from the date of this publication, Conrail receives a bona fide offer for the sale, for 75 percent of the net liquidation value, of this line it shall sell such line and the Commission shall, unless the parties otherwise agree, establish an equitable division of joint rates for through routes over such lines.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23803 Filed 8-30-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 (formerly section 5) of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsiderations; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1132.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective noitice. The notice wil indicate that consummation of the transfer will be presumed to occur on the 20th day following service of the notice, unless either applicant has advised the Commission that the transfer will not be consummated or that an extension of time for consummation is needed. The notice will also recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 30 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is Ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-79960. By decision of August 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to ALLEGHENY-BEDFORD EXPRESS, INC., of New Stanton, PA, of Certificate No. MC-85886 (Sub-Nos. 1 and 5) and Certificate of Registration No. MC-85886 (Sub-No. 2), issued to DAN GAICH TRUCKING, INC., of Rillton, PA, which authorize the transportation of (1) *glass products, rubber products, toys, iron and steel products, and furniture,* over regular routes, between Jeannette and Pittsburgh, PA, serving the off-route point of Grapeville, PA; (2) *general commodities* (with exceptions), over regular routes, between Latrobe and Pittsburgh, PA, serving the intermediate point of Greensburg, PA; and (3) *property* (with restrictions), between Allegheny County, and Bedfore, Everett, Jeannette, Greensburg, South Greensburg, Southwest Greensburg, Irwin, Claysburg, East Freedom, McKee, Roaring Spring, and Martinsburg, PA. Approval of the transfer of the Certificate of Registration is conditioned upon Transferee furnishing the Commission with a certified copy of the Pennsylvania Public Utility Commission Certificate as reissued to it, or if the Pennsylvania Public Utility Commission does not reissue the certificate, a certified copy of the order which approved the transfer of the underlying Pennsylvania intrastate certificate, together with a statement in writing confirming the date of consummation of the intrastate transaction. Representatives: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219; and John A. Pillar, 1500 Bank Tower, 307 Fourth Avenue, Pittsubrgh, PA 15222.

Notes.—Transferee is not a carrier. TA has been filed.

MC-FC-79961. By decision of August 9, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to CUSTOM MOVING & STORAGE, INC., of Fayetteville, NC, of Certificate No. MC-129050 (Sub-No. 2) issued July 23, 1976, to Fayetteville Moving & Storage, Inc., of Fayetteville, NC, authorizing: household goods, between Whiteville, NC, and points in NC within 50 miles of Whiteville, on the one hand, and, on the other points in FL, GA, SC, MD, PA, and DC. Representative: Vaughan S. Winbourne, 1108 Capital Club Building, Raleigh, NC 27601. Phone: (919) 832-5732. TA lease is not sought. Transferee is not a carrier.

MC-FC-79976. By decision of August 9, 1982 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3 approved the transfer to Interco Freight Systems, Inc. of Permit Nos. MC-145947 (Sub-Nos. 3, 4 and 5) issued to SHELTON D. SMITH, d.b.a. PROTOCOL TRUCKING COMPANY authorizing: contract carriage operations transporting drillings muds from the facilities of Fritz Chemical Co., at Mesquite, TX, to points on the Texas Gulf Coast and to points in LA under contracts with Hallibarton Services of Duncan, OK, and drilling bits and drilling tools between the facilities of Dressen Industries, at Dallas, TX, on the one hand, and, on the other points in LA, under contract with Dressen Industries. Representative: James Gordon Bradberry, 3201 N. Hwy 67, Suite J-2, Mesquite, TX 75150. TA lease is sought. Transferee is not a carrier.

MC-FC-79979. By decision of August 10, 1982, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1132, Review Board Number 3, approved the transfer to COLORADO-DENVER/ WAREHOUSE DELIVERY, INC. of Denver, CO of Certificate No. MC-153156 (Sub-No. 1) issued to DEN-COL CARTAGE & DISTRIBUTION, INC., of Denver, CO authorizing the transportation of general commodities (except classes A and B explosives), between Denver, CO, on the one hand, and, on the other points in CO, ID, NM, UT, and WY. Representative: Russell R. Sage, 6121 Lincolnia Rd., Alexandria, VA 22312. TA lease is sought. Transferee is not a carrier.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23800 Filed 8-30-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriér Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting

evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board No. 1, Members Parker, Chandler and Fortier.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP2-197

Decided: August 18, 1982.

FF-612, filed July 30, 1982. Applicant: METRO WAREHOUSES, INC., d.b.a. METRO INTERNATIONAL, 8300 Military Rd. So., Seattle, WA 98108. Representative: Jim Pitzer, 15 So. Grady Way, Ste. 321, Renton, WA 98055-3273, (206) 235-1111. *As a freight forwarder,* in connection with the transportation of (1) *used household goods and automobiles,* between points in the U.S. (including AK and HI) and (2) *household goods,* between points in the U.S. (including AK and HI).

MC 52793 (Sub-109), filed August 11, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A Gallagher (same address as applicant), 312-547-2184. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with The Goodyear Tire & Rubber Company, of Akron, OH.

MC 117592 (Sub-5), filed August 11, 1982. Applicant: GERALD L. KRAMER, Route 4, Quakertown, PA 18951. Representative: Francis W. Doyle, 323 Maple Ave., Southampton, PA 18966, (215) 357-7220. Transporting *pulp, paper and related products,* between points in the U.S. in and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the United States and Canada.

MC 131043 (Sub-1), filed August 11, 1982. Applicant: UNITED FREIGHT DISPATCH, INC., 2220-1 Toledo Rd., U.S. 20-E, Elkhart, IN 46516. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 So. Second St., Elkhart, IN 46516, 219-293-3597. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with (1) Mardan Corp., d.b.a. C. G. Conn Ltd., (2) Elkhart Products Corporation, and (3) The Selmer Company, all of Elkhart, IN.

MC 158872 (Sub-1), filed August 6, 1982. Applicant: CHEM-TRUCK, INC., 960 U.S. Hwy 1—North, Edison, NJ 08817. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, 212-466-0220. Transporting *commodities in bulk,* between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, OH, DE, MD, VA, WV, NC, SC, TN, KY, IN, IL, MI, and DC.

MC 162802 (Sub-1), filed August 6, 1982. Applicant: JONEL, INC., d.b.a. WILL-CIN TRANSPORTATION COMPANY, 350 Carlson—P.O. Box 2229, Richmond, CA 94802. Representative: Eldon M. Johnson, 650 California St.—Suite 2808, San Francisco, CA 94108, 415-986-8696. Transporting *household goods,* between points in the U.S.

MC 163312, filed August 9, 1982. Applicant: BURCHILL TRUCKING, INC., 12115 Pulaski Hwy., Bradshaw, MD 21021. Representative: Carl L. Steiner, 29 South LaSalle St., Chicago, IL 60603, 312-236-9375. Transporting *glass,* between points in Allegheny and Blair Counties, PA, on the one hand, and, on the other, points in Baltimore County, MD.

Volume No. OP2-198

Decided: August 19, 1982.

MC 39963 (Sub-4), filed August 10, 1982. Applicant: JOSEPH P. ELMS, d.b.a. ARVADA TRANSFER, 18683 Weld County Road #15, Johnstown, CO 80534. Representative: Robert R. Redmon, 4701 Sangamore Road, Bethesda, MD 20816, (301) 320-5500. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CO, KS, MT, NE, NM, ND, OK, SD, TX, UT and WY. Condition: Issuance of this certificate is subject to prior or coincidental cancellation, at applicant's written request, of Certificate of Registration No. MC-39963 Sub 2, issued March 6, 1981.

MC 47583 (Sub-153), filed August 9, 1982. Applicant: TOLLIE FREIGHTWAYS, INC., 1020 Sunshine Rd., Kansas City, KS 66115. Representative: Pamela J. Clayton (same address as applicant), (913) 321-6914. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 52793 (Sub-110), filed August 11, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), (312) 547-2184. Transporting *used household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Shell Oil Company, of Houston, TX.

MC 58522 (Sub-16), filed August 12, 1982. Applicant: RIVER TRAILS TRANSIT LINES, INC., Highway 20 West, Galena, IL 61036. Representative:

Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705–0086, (608) 238–3119. Transporting *passengers and their baggage*, in the same vehicle with passengers, in round-trip charter and special operations, beginning and ending at points in WI, and extending to points in the U.S. (including AK, but excluding HI).

MC 69402 (Sub-6), filed August 6, 1982. Applicant: BEE LINE TRUCKING CO., INC., 3300 Chouteau Ave., St. Louis, MO 63103. Representative: T. M. Tahan, 2001 South 7th St., St. Louis, MO 63104, 314–772–6666. Transporting *general commodities* (except classes A and B explosives and household goods), between points in MA, CT, NY, PA, NJ, DE, MD, and VA, on the one hand, and, on the other, points in AL, AR, FL, GA, IL, IN, IA, KS, KY, LA, MI, MO, MN, MS, NE, OH, OK, TN, TX, WI, and WV.

MC 87103 (Sub-97), filed July 30, 1982. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Winnebago County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant holds regular route authority with which a direct service may be provided.

MC 87103 (Sub-98), filed August 2, 1982. Applicant: MILLER TRANSFER AND RIGGING CO., P.O. Box 322, Cuyahoga Falls, OH 44222. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215,(614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Rock County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant holds regular route authority with which a direct service may be provided.

MC 107513 (Sub-5), filed August 6, 1982. Applicant: STAR CARRIERS, INC., Blue Ball, PA 17506. Representative: John W. Metzger, 49 North Duke St., Lancaster, PA 17602, 717–299–1181. Transporting (1) *stone*, between points in Lancaster County, PA, on the one hand, and, on the other, Bridgeton, NJ, and points in MD and DE, and (2) *agricultural limestone*, between points in Lancaster County, PA, on the one hand, and, on the other, points in NJ.

MC 108453 (Sub-47), filed August 6, 1982. Applicant: BARBLINE, INC., P.O. Box 1166, 51027 State Rd. 13, Middlebury, IN 46540. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, 616–459–6121. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in in the U.S. (except AK and HI), under continuing contract(s) with Bell Fibre Products Corporation, of Marion, IN.

MC 127172 (Sub-10), filed August 11, 1982. Applicant: MARC BAGGAGE LINES, INC., 9033 Hollyberry Avenue, Des Plaines, IL 60016. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Chicago, IL, Charlotte, NC, Birmingham, AL, Columbia, SC, and Atlanta, GA.

MC 128302 (Sub-27), filed August 11, 1982. Applicant: THE MANFREDI MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: David A. Turano, 100 East Broad St., Columbus, OH 43215, 614–228–1541. Transporting *commodities in bulk*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ohio Pure Foods, Inc., of Akron, OH.

MC 151142 (Sub-9), filed August 11, 1982. Applicant: H & H TRANSPORTATION, INC., 1425 E. Main St., P.O. Box 401, Newark, OH 43055. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, 614–228–8575. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in KY, MN, WI, MI, WV, IN, IL, OH, PA, NJ, NY, CT, RI, NH, MA, VT, and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 158012 (Sub-1), filed August 9, 1982. Applicant: HENRY L. TAYLOR, Box 173, R.D. 1, Biglerville, PA 17307. Representative: David H. Radcliff, 407 North Front Street, Harrisburg, PA 17101, (717) 236–9318. Transporting *lumber, wood products and machinery*, between points in NY, PA, MD, OH, IN, IL, MI, MN, TN, VA, GA, and FL, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK, and TX.

MC 161212, filed August 9, 1982. Applicant: GENE BELK FRUIT PACKERS, 10380 Alder Ave., Bloomington, CA 92316. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633, 714–738–3889. Transporting *building materials and lumber and lumber products* between points in MI, WI, OH, IL, IN, PA, WV, NY, KY, and TN, on the one hand, and, on the other, points in CA, OR, WA, AZ, NV, CO, UT, and NM, (2) between points in IN and MI, on the one hand, and, on the other, points in KY, and (3) between points in OR, WA, ID, MT, UT, and AZ, on the one hand, and, on the other, points in AZ, CA, and NV.

MC 162463 (Sub-1) (correction), filed June 23, 1982, published in the **Federal Register** issue of August 18, 1982, and republished, as corrected, this issue. Applicant: MELVIN W. FRIESZ, d.b.a. RAINBOW BUS LINES, P.O. Box 688, Hayden Lake, ID 83835. Representative: Melvin W. Friesz (same address as applicant), 208–772–2952. The previous publication remains the same.

Note.—The purpose of this correction is to correct the docket number.

MC 163303, filed August 6, 1982. Applicant: ORVILLE McMILLIN, d.b.a. COAST VANNING, P.O. Box 93, Sumner, WA 98390. Representative: Kenneth R. Mitchell, 2320A Milwaukee Way, Tacoma, WA 98421, (206) 383–3998. Transporting *horses, including race or show horses, and accompanying equipage and tack*, between points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, and WY.

[FR Doc. 82–23805 Filed 8–30–82; 8:45 am]
BILLING CODE 7035–01–M

[Volume No. 291]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: August 24, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in

light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 117940 (Sub-373)X, filed August 9, 1982. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. Sub-362F certificate: remove restriction limiting service to or from named shipper association facilities in its nation-wide general commodities (with exceptions) authority.

MC 135936 (Sub-37)X, filed July 20, 1982, and previously noticed in **Federal Register**, August 4, 1982, republished to notice the following omission. Applicant: C & K TRANSPORT, INC., P.O. Box 205, Webster City, IA 50595. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Subs 1, 2, 7, 10, 14, 15, 17, 18, 21, 25F, 26F, 27F, 28F, and 31F certificates: Broaden Sioux City, IA to Dakota County, NE, in addition to Plymouth and Woodbury Counties, IA in Subs 28F and 31F as previously noticed.

MC 140827 (Sub-19)X, filed August 12, 1982. Applicant: MARKET TRANSPORT, LTD., 110 North Marine Drive, Portland, OR 97217. Representative: Richard H. Streeter, 1729 H Street N.W., Washington, D.C. 20006. MC–138946 Subs 2, 3, 6, 7, 8, 11 and 12 permits (1) broaden (a) to "food and related products" from malt beverages and empty malt beverage containers, in Subs 2 and 8; from pickles, relishes, and sauerkraut, in Sub 3; from canned fruit, canned fruit juices and canned fruit concentrates (except frozen fruit, etc . . .), and commodities otherwise exempt from economic regulation. . . . in Sub 6; (b) to "such commodities as are dealt in by retail and wholesale grocery stores" from pickled cucumbers (in drums or tote bins), species, sugar (in sacks), printed lables, fibre, metal, and plastic drums, fibre and plastic pails, glass and plastic bottles and caps and lids or glass and plastic bottles, iron and steel cans, can ends, and cardboard boxes, and commodities, in Sub 7; and (c) to "containers" from empty containers, in Sub 12. (2) broaden to between points in the U.S. (except AK and HI), under continuing contract(s) with named shipper, in all of the above Subs.

MC 146024 (Sub-5)X, filed August 12, 1982. Applicant: G & R PETROLEUM, INC., 253 S.W. 4th Ave., Ontario, OR 97914. Representative: Timothy R. Stivers, P.O.B. 1576, Boise, ID 83701. Subs 2F and 4: (1) broaden petroleum and petroleum products to "petroleum, natural gas and their products"; and (2) change territorial description to between points in the U.S. (except AK and HI), under continuing contract(s) with named shippers.

MC 160423 (Sub-1)X, filed August 12, 1982. Applicant: RELIABLE CARRIERS, INC., 2098 Kellogg Avenue, Memphis, TN 38114. Representative: Henry E. Seaton, 1024 Penna. Bldg., 425 13th St. NW., Washington, D.C. 20004. MC 120693 (Sub-6) certificate acquired in MC–FC–79707: (1) eliminate all restrictions in the general commodities authority "except classes A and B explosives, household goods, and commodities in bulk;" (2) authorize service at all intermediate points along regular routes between Nashville and Camden, TN; and between Camden and Memphis, TN: and (3) remove restrictions (a) limiting service to that portion of the Memphis, TN, commercial zone which falls within TN, (b) against traffic "originating at, destined to or interchange at" named points involving service at Memphis, Camden, and Jackson, TN, and (c) against the transportation of specified commodities at points in Benton County, TN.

[FR Doc. 82–23804 Filed 8–30–82; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-236)]

Rail Carriers; the Atchison, Topeka and Santa Fe Railway Co.; Exemption for Contract Tariff ICC–ATSF–C–0105 (Potash)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

The grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 24, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–23801 Filed 8–30–82; 8:45 am]
BILLING CODE 7035–01–M

[Ex Parte No. 387 (Sub-232)]

Rail Carriers; Burlington Northern Railroad Co. Exemption for Contract Tariff ICC–BN–C–0117 (Canned Goods)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESSES: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

This action will not be significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 24, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23807 Filed 8-30-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-230)]

Rail Carriers; Consolidated Rail Corp. Exemption for Contract Tariff ICC-CR-C-0131, Supplement 1, (Corn Syrup)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATE: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 24, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-23806 Filed 8-30-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General

Certification of the Attorney General

In accordance with Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Butts County, Georgia. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under Section 4(b) of the Voting Rights Act of 1965 and published in the **Federal Register** on August 7, 1965 (30 FR 9897).

Edward C. Schmults,

Acting Attorney General of the United States.

August 25, 1982.

[FR Doc. 82-23764 Filed 8-30-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in

other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect of such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Administrator, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000—Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C. this 25th day of August 1982.

Robert S. Kenyon,

Director, Office of Program Operations.

Applications Received During the Week Ending August 28, 1982

Name of Applicant, Location of Enterprise and Principal Product or Activity

Glen & Mohawk Milk Association, Inc., Fultonville, New York—Milk processing, bottling and manufacture and sales of plastic jugs.

[FR Doc. 82-23794 Filed 8-30-82; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefit Programs Office

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Tuesday, September 14, 1982, in Room N-4437 C, U.S. Department of Labor, Third and Constitution Avenue NW., Washington, D.C.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

1. Administrator's Report.

2. Advisory Council Work Group Reports: Collective bargaining, Investment and fiduciary, Portability, Communications, Reporting, disclosure and recordkeeping.

3. Statements from the Public.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before Monday, September 13, 1982, to the Administrator, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room S-4522, Third and Constitution Avenue NW., Washington, D.C. 20216.

Persons desiring to address the Council should notify Edward F. Lysczek, Executive Secretary of the Advisory Council, in care of the above address or by calling (202) 523-8753.

Signed at Washington, D.C. this 26th day of August 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs Office.

[FR Doc. 82-23762 Filed 8-30-82; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Availability of Current Index to Decisions Issued by the Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice of availability of current index to decisions issued by the Board.

SUMMARY: This notice describes the Index to decisions issued by the Board and identifies the location at which the index is available.

EFFECTIVE DATE: August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Michael H. Hoxie, Director, Legal Publications Division, Office of the Secretary, Merit Systems Protection Board, 5205 Leesburg Pike, Suite 1404, Falls Church VA, 22041, (703) 756-6388.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires agencies to publish quarterly, or more frequently, a current index to all final opinions. 5 U.S.C. 552(a)(2). Accordingly, the Merit Systems Protection Board publishes monthly the Digest, which indexes and summarizes its final opinions. The Digest summaries are keynumbered in accordance with the indexing system used in *Decisions of the United States Merit Systems Protection Board.* The Digest is available by subscription from the Superintendent of Documents.

Additionally, the Board indexes and publishes the full text of its final opinions in *Decisions of the United States Merit Systems Protection Board.* Volumes 1 through 4, covering decisions issued from the Board's creation in the January 1979 through December 1980, are available from the Superintendent of Documents. Volumes covering the decisions issued through September 1981 will be publishes in the fall.

The Digest and *Decisions of the United States Merit Systems Protection Board* are available for public inspection at the Board's Legal Publications Division, 5205 Leesburg Pike, Suite 1404, Falls Church, VA 22041, and the Library of the Merit Systems Protection Board, 1120 Vermont Avenue NW., Washington, D.C. 20419.

For the Board.

Dated: August 23, 1982.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 82-23820 Filed 8-30-82; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (82-47)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces the forthcoming meeting of the NASA Advisory Council, Informal Ad Hoc Solar System Exploration Committee.

DATE AND TIME: September 16-21, 1982, 8:30 a.m. to 5:30 p.m.

ADDRESS: Aspen Conference Center, 515 South Galena Street, Aspen, Colorado 81611.

FOR FURTHER INFORMATION CONTACT: Mrs. Diane M. Mangel, National Aeronautics and Space Administration, Code EL-4, Washington, DC 20546 (202/755-6038).

SUPPLEMENTARY INFORMATION: The Informal Ad Hoc Solar System Exploration Committee was established under the NASA Advisory Council to translate the scientific strategy developed by the Committee on Planetary Exploration (COMPLEX) into a realistic, technically sound sequence of missions consistent with that strategy and with resources expected to be available for solar system exploration.

The committee will report its findings to the Council and to NASA. The committee is chaired by Dr. Noel W. Hinners and is composed of six other members of the Council and its standing committees, who will meet with about 9 other invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons, including committee members and invited meeting participants). Visitors will be requested to sign a visitor's register.

Type of Meeting: Open

Agenda

September 16, 1982
8:30 a.m.—Program Status
1 p.m.—Review of Draft Report
September 17, 1982
8:30 a.m.—Mission Priorities Programmatic Considerations
September 18, 1982
8:30 a.m.—Review of Draft Report
1 p.m.—Mission Sequences
September 19, 1982
8:30 a.m.—Preparation of Final Report
September 20, 1982
8:30 a.m.—Continue Preparation of Final Report
September 21, 1982
8:30 a.m.—Conclusions and Recommendations
5:30 p.m.—Adjourn

Richard L. Daniels,

Director, Management Support Office, Office of Management.

August 24, 1982.

[FR Doc. 82-23759 Filed 8-30-82; 8:45 am]

BILLING CODE 7510-01-M

OFFICE OF PERSONNEL MANAGEMENT

Contract and Procurement Series, GS-1102; Comment Period on Proposed Final Occupational Standards

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management is now taking comments on the revised occupational standards for the Contract and Procurement Series, GS-1102.

DATE: Comments must be received by September 30, 1982, to be considered.

ADDRESSES: Send or deliver written comments to Raymond E. Moran, Chief, Medical and Legal Occupations Division, Office of Standards Development, Staffing Group, U.S. Office of Personnel Management, 1900 E Street NW., Room 3K49, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Raymond E. Moran, 202-254-8527.

Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 82-23859 Filed 8-30-82; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish & Wildlife Program; Columbia River Basin

AGENCY: Pacific Northwest Electric Power & Conservation Planning Council.

ACTION: Notice of intent to discuss and release draft fish and wildlife program.

SUMMARY: The staff of the Pacific Northwest Electric Power and Conservation Planning Council ("the Council") plans to brief the Council on elements of a proposed draft fish and wildlife program when the Council meets in Portland, Oregon on September 1 and 2. Briefing papers on the proposed draft program will be available for public distribution at that time. An opportunity to comment on the briefings will be provided during the public comment period on the Council's agenda.

The Council intends to consider the draft fish and wildlife program for adoption at its September 15-16 meeting.

The draft fish and wildlife program initially had been scheduled for release in late July. However, the Council determined that it was necessary to devote additional time to consultation on proposed sections of the program with the state and federal fish and wildlife agencies; Indian tribes; federal agencies responsible for managing, operating or regulating hydroelectric facilities located in the Columbia River Basin; the Bonneville Power Administration (BPA) and BPA customers which own or operate hydroelectric facilities on the Columbia River and its tributaries.

Although the Council is allowing additional time for consultation, it intends to adopt its final fish and wildlife program on November 15, 1982, as required by the Pacific Northwest Electric Power and Conservation Planning Act ("the Act"). Section 4(h)(9) of the Act directs the Council to adopt a fish and wildlife program "within one year of the time provided for receipt of the recommendations." The Council asked for submission of such recommendations by November 15, 1981.

The Council will present proposed draft program elements to the Fish and Wildlife Subcommittee of its Scientific and Statistical Advisory Committee on September 9, 1982 in the Council's central office, Suite 200, 700 S.W. Taylor Street, Portland, Oregon, beginning at 9:00 a.m. This meeting is open to the public.

Following adoption, the draft program will be published in the **Federal Register**. It also will be distributed to all entities which submitted program recommendations and supporting documents to the Council, and to any other entities and individuals who request copies.

To assure timely distribution of the draft program, the Council requests anyone wishing to receive copies to write Ms. Beata Teberg at the Council's central office, Suite 200, 700 SW. Taylor Street, Portland, Oregon 97205, or call Ms. Teberg at (toll free) 1-800-547-0134 in Montana, Idaho, Washington, California and Nevada or collect (503) 222-5161 in Oregon and all other states. The requests should be made by September 10, 1982.

Following adoption of the draft fish and wildlife program, the Council will open a public comment period. Copies of all comments received will be placed in the Council's official administrative record and its public reading room located in the Council's central office.

The Council also will provide opportunities during the comment period for all interested parties and individuals to present oral testimony and written comments at public hearings to be held in the region.

The format and schedule for public hearings on the draft program and the deadline for submitting written comments will be distributed with copies of the draft program.

The draft fish and wildlife program will be available during the comment period for inspection and copying at the Council's central office public reading room, Suite 200, 700 S.W. Taylor Street, Portland, Oregon, on weekdays between the hours of 8:30 a.m. and 4:30 p.m.

Copies of the draft program also will be available for public inspection at the Council's state offices and Bonneville Power Administration area and district offices at the following addresses:

Council State Offices

1. Towers Building, 3rd Floor, Boise, Idaho
2. 155 Cottage Street NE., Salem, Oregon
3. Old Board of Health Building, 1301 Lockey, Helena, Montana
4. Washington State Energy Office, 400 East Union, Olympia, Washington

Bonneville Power Administration Offices

1. Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon
2. Room 206, Federal Building, 211 East Seventh Street, Eugene, Oregon
3. Suite 117, Morris Building, 23 S. Wenatchee Avenue, Wenatchee, Washington
4. 1620 Regent, Missoula, Montana

5. Room 561, United States Courthouse, West 920 Riverside Avenue, Spokane, Washington
6. West 101 Popular, Walla Walla, Washington
7. Highway 2 District Office, Kalispell, Montana
8. 531 Lomax Street, Idaho Falls, Idaho
9. 415 1st Ave. No. Room 250, Seattle, Washington 98109.

FOR FURTHER INFORMATION CONTACT: Ms. Torian Donohoe (toll free) 1–800–547–0134 in Montana, Idaho, Washington, California and Nevada or (503) 222–5161 in Oregon and all other states.

SUPPLEMENTARY INFORMATION: Congress provided for the establishment of the Council with passage of the Act, Pub. L. 96–501, 94 2697, 16 U.S.C. 839 et seq. The Council is composed of two gubernatorial appointees from each of the states of Montana, Idaho, Oregon and Washington.

Congress charged the Council with two major responsibilities:

(1) Preparation of a program to protect, mitigate, and enhance fish and wildlife, including habitat and related spawning grounds, affected by the development, operation and management of hydroelectric facilities on the Columbia River and its tributaries; and,

(2) Development of a conservation and electric power plan and an associated electric demand forecast for the Pacific Northwest.

The Act requires the Council to first adopt its fish and wildlife program and thereafter incorporate it into its conservation and electric power plan.

The Council initiated development of its fish and wildlife program on June 10, 1981 with the adoption of a motion asking for program recommendations pursuant to Sections 4(h)(2)(A)(B)(C) of the Act including:

(1) Measures which can be expected to be implemented by Bonneville Power Administration and other federal agencies to protect, mitigate and enhance fish and wildlife, including related spawning grounds and habitat affected by the development and operation of hydroelectric facilities on the Columbia River and its tributaries;

(2) Objectives for the development and operation of hydroelectric facilities on the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife; and,

(3) Fish and wildlife management coordination research and development activities, including funding, which would assist protection, mitigation, and enhancement of anadromous fish at and between the region's hydroelectric dams.

As provided in the Act, the Council issued its request for recommendations to federal and state fish and wildlife agencies, appropriate Indian tribes, federal and regional water management and electric power producing agencies, Bonneville Power Administration customers and members of the public.

Pursuant to Sections 4(h)(4)(B) and 4(h)(5) the Council provided for public participation in the development of its fish and wildlife program by requesting written and oral comments on the program recommendations and supporting documents. The Council conducted five days of public hearings on the program recommendations in Oregon, Washington, Montana and Idaho in March, 1982. Following the hearings, the Council and staff have been drafting the draft fish and wildlife program in consultation with affected parties.

Edward Sheets,

Executive Director.

[FR Doc. 82-23832 Filed 8-30-82; 8:45 am]

BILLING CODE 0000-00-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 17, 1982, in Room 330, Old Executive Office Building, Washington, D.C. The meeting will begin at 9:00 a.m. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

A portion of the meeting will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President, and information the premature disclosure of which likely would significantly frustrate implementation of our agency's action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin at 9:00 a.m. Because of security in the Old Executive Office Building, persons wishing to attend the open portion of the meeting should contact Jerry Jennings, Executive Director of the Office of Science and Technology Policy at (202) 456–7740, prior to 4:00 PM on September 16. Mr. Jennings is also available to provide further information.

Jerry Jennings,

Executive Director, Office of Science and Technology Policy.

August 25, 1982.

[FR Doc. 82-23768 Filed 8-30-82; 8:45 am]

BILLING CODE 3170-01-M

White House Science Council; Panel on Federal Laboratories; Meeting

Notice is hereby given that the Panel named above will meet at 9:00 a.m. on September 16, 1982, in Room 5104, New Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20500.

The Panel will discuss with the representatives of the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) the management of DOE national laboratories and their use by the NRC.

The meeting will be open to the public from 9:00 a.m. to 11:00 a.m., and closed for the remainder. Discussion during the closed meeting pertains to classified research at the DOE laboratories. Authority for closing: 5 U.S.C. 552C(1).

Because of security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Mrs. Minh-Triet Lethi, Senior Policy Analyst, OSTP, (202) 395–4626 prior to 12:00 p.m. on September 15. Mrs. Lethi is also available to provide further information.

Jerry Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 82-23770 Filed 8-26-82; 11:12 am]

BILLING CODE 3170-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0256]

FSA Capital, Limited; Filing of Application for Approval of Conflict of Interest Transaction Between Associates

Notice is hereby given that FSA Capital, Limited (FSA), 301 West Sixth Street, Austin, Texas 78767, a Federal licensee under the Small Business Investment Act of 1958, as amended, has filed an application pursuant to § 107.1004 of the regulations governing small business investment companies (13 CFR 107.1004 (1982)), for approval of a conflict of interest transaction.

FSA desires to invest $150,000 in DWS Energy Corporation (DWS), Edwards Avenue, Charlotte, Texas 78011. This amount is part of a private placement ($1,300,000 minimum—$1,500,000 maximum).

DWS is considered an Associate of FSA because Mr. H. A. Abshier, Jr., Chairman of the Board is a director of FSA Capital Advisors, Inc. (FSACA), the General Partners of FSA. In addition, Mr. Abshier owns 20 percent of Financial Services of Austin, Inc. which in turn owns 20 percent of the voting stock of FSACA, and is also a general partner in a partnership which owns 12 percent of the voting stock of FSACA.

DWS is also considered an Associate of FSA because Mr. Williams Ward Greenwood, and officer and employee of FSACA, is Secretary of DWS and a general partner of the partnership which holds approximately 1.3 percent of the outstanding voting stock of DWS. In addition, certain limited partners of FSA own voting stock of DWS, and it is contemplated that FSA Investments, Inc., an Associate of FSA, may acquire approximately 3.3 percent of the outstanding voting stock of DWS (in addition to any shares which it will be entitled to purchase upon exercise of the warrants).

The proposed transaction falls within the purview of § 107.1004 of the SBA Rules and Regulations and requires a written exemption granted by SBA.

Notice is hereby given that any person may, not later than September 15, 1982, submit written comments on the proposed transaction. Any such comments should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in Austin, Texas and Charlotte, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 24, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-23870 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0260]

Omega Capital Corp.; License To Operate as a Small Business Investment Company

On June 18, 1982, a notice was published in the **Federal Register** (47 FR 26489), stating that Omega Capital Corporation located at 755 South 11th Street, Beaumont, Texas 77704, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1982), for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business July 6, 1982, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 06/06-0260 to Omega Capital Corporation on August 12, 1982.

(Catalog of Federal Domestic Program No. 59.011, Small Busimess Investment Companies)

Dated: August 24, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-23871 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The Small Business Administration, Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting at 9:00 a.m. on Tuesday, October 5, 1982 and 9:00 a.m. on Wednesday, October 6, 1982 at the Best Western in Philadelphia, Pennsylvania, City Line at I-76 Expressway, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400-East Lobby, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004 (215) 596-5801.

Dated: August 26, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Council.

[FR Doc. 82-23868 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0116]

Tamco Investors (SBIC), Inc.; Filing an Application for Transfer of Ownership and Control

Notice is hereby given that an application has been filed with the Small Business Administration (SBA), pursuant to § 107.701 of the Regulations governing small business investment companies (13 CFR 107.701 (1982)), for transfer of ownership and control of Tamco Investors (SBIC), Inc. (Tamco), 375 Victoria Road, Youngstown, Ohio 44515, a Federal Licensee under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.). The proposed transfer of ownership and control of Tamco, which was licensed June 21, 1977, is subject to the prior written approval of SBA.

On December 21, 1981, Giant Eagle Markets, Inc. (Giant Eagle), formed a new wholly-owned Ohio subsidiary, The New Tamarkin Company ("Subsidiary"). Thereafter, on December 23, 1981, the Subsidiary purchased all of the assets of The Tamarkin Company. One of the assets so purchased was all of the issued and outstanding shares of Tamco. After the purchase was consummated, the Subsidiary changed its name to The Tamarkin Company (Tamarkin). Accordingly, at the present time, Giant Eagle owns all of the issued and outstanding shares of Tamarkin which in turn owns all of the issued and outstanding shares of Tamco.

Giant Eagle is a Pennsylvania corporation with offices at Alpha and Kappa Drives, Pittsburgh, Pennsylvania 15238. Giant Eagle operates a chain of corporately owned supermarkets with 47 in Western Pennsylvania, 5 in Ohio and 2 in West Virginia.

Tamarkin is a wholesale grocery company engaged principally in the sale of food and allied products to retail supermarkets, superettes and convenience type food stores.

The officers, directors and 10 percent or more shareholders of Tamco are as follows:

Name and Address, Office, and Percent of Ownership

Nathan H. Monus 1380 Virginia Trail, Youngstown, Ohio 44505, President and Director, 0

Jack B. Tamarkin, 6255 Sodum-Hutching Road, Girard, Ohio 44420, Vice President and Director, 0
Jerome P. Tamarkin, 3553 Fifth Avenue, Youngstown, Ohio 44505, Treasurer and Director, 0
Bertram Tamarkin, 926 Ravine Drive, Youngstown, Ohio 44505, Secretary and Director, 0
Michael I. Monus, 5341 Logan Arms Drive, Girard, Ohio 44420, Assistant Treasurer, Assistant Secretary and Director, 0
The Tamarkin Company, 375 Victoria Road, Youngstown, Ohio 44515, Shareholder, 100%
Giant Eagle Markets, Inc., Alpha and Kappa Drives, Pittsburgh, Pennsylvania 15238, 100% owner of The Tamarkin Company
Milton NMI Chart, 1462 North Highland Avenue, Pittsburgh, Pennsylvania 15206, 14% owner of Giant Eagle Market, Inc.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed new owners, and the probability of successful operations of the company under this ownership, including adequate profitability and financial soundness in accordance with the Act and Regulations.

Notice is given that any person may, not later than September 15, 1982, submit written comments on the proposed transfer of ownership and control to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Youngstown, Ohio.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1982.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 82-23869 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Providence, Rhode Island, will hold a public meeting at 12:00 noon, on Tuesday, September 28, 1982, at Micheletti's Restaurant, 23 Rathbone Street, Providence, Rhode Island, to discuss such matters as may be presented by members of the Small Business Administration, and others attending.

Further information, write or call James A. Hague, District Director, U.S. Small Business Administration, 40 Fountain Street, Providence, Rhode Island 02903—(401) 528–4580.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 23, 1982.

[FR Doc. 82-23749 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council Meeting; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting at 9:30 a.m., on Wednesday, September 29, 1982, at One Hartford Square West, Suite 201 (2nd floor), Hartford, Connecticut, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Robert S. Garrett, District Director, U.S. Small Business Administration, One Hartford Square West, Suite 201, Hartford, Connecticut, 06106—(203) 244–2511.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 25, 1982.

[FR Doc. 82-23751 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The Small Business Administration, Region VI Advisory Council, located in the geographical area of Albuquerque, New Mexico, will hold a public meeting at 10:00 a.m., on Friday, September 17, 1982 at the office of the Small Business Administration, 5000 Marble NE., Suite 320, Albuquerque, New Mexico, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call E. Maine Shafer, District Director, U.S. Small Business Administration, 5000 Marble NE, Suite 320, Albuquerque, New Mexico (505) 766–3574.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 25, 1982.

[FR Doc. 82-23750 Filed 8-30-82; 8:45 am]

BILLING CODE 8025-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists a revision. The entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed forms and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC, 20420 (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Karen Sagett, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–6880.

DATES: Comments on forms should be directed to the OMB Desk Officer on or before November 1, 1982.

Dated: August 24, 1982.

By Direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Revision

(1) Office of Budget and Finance.

(2) Application for Refund of Educational Contributions (VEAP).

(3) VA Form 4–5281.

(4) On occasion.

(5) All applicants for refund from the VEAP Program (Chapter 32).

(6) 75,000 responses.

(7) 12,500 hours.

(8) Not applicable under 3504(H).

[FR Doc. 82-23833 Filed 8-30-82; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 169
Tuesday, August 31, 1982

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

: CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Wednesday, September 1, 1982.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Over-the-Counter Antihistamines*
The staff will brief the Commission on the issue of whether the Commission should propose to require special packaging under the Poison Prevention Packaging Act for over-the-counter antihistamines.
2. *Final Crib Amendments*
The staff will brief the Commission on amendments to the regulations for full-size baby cribs and non-full-size cribs. The amendments, which concern the strangulation hazard presented by crib cutouts, were proposed on December 16, 1980.
3. *NEISS Product Codes*
The staff will brief the Commission on options for reducing the National Electronic Injury Surveillance System (NEISS) product codes.

For a recorded message containing the latest Agenda information, call (301) 492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, Bethesda, Md. 20207; (301) 492–6800.

[S–1241–82 Filed 8–27–82; 3:54 pm]
BILLING CODE 6355–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Thursday, August 26, 1982 the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a personnel matter.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Doyle L. Arnold, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Dated: August 27, 1982.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[S–1240–82 Filed 8–27–82; 3:29 pm]
BILLING CODE 6714–01–M

3

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 37741, August 26, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9 a.m., September 1, 1982.

CHANGE IN THE MEETING: Addition of the following item to the closed session:

1. Petition of Puerto Rico Maritime Shipping Authority for Relief—Consideration of the record.

[S–1239–82 Filed 8–27–82; 11:34 am]
BILLING CODE 6730–01–M

4

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 10 a.m., Tuesday, September 7, 1982.

PLACE: 20th Street and Consitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: August 27, 1982.
James McAfee,
Associate Secretary of the Board.

[S–1242–82 Filed 8–27–82; 4:02 pm]
BILLING CODE 6210–01–M

federal register

Tuesday
August 31, 1982

Part II

Environmental Protection Agency

Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 413 and 433

[WH–FRL 2152–6]

Electroplating and Metal Finishing Point Source Categories; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA proposes a regulation to limit the effluent that metal finishing facilities may discharge to waters of the United States or to publicly owned treatment works (POTW). This proposal provides effluent limitations based on "best practicable technology" and "best available technology," and establishes now source performance standards and pretreatment standards under the Clean Water Act. After considering comments received in response to this proposal, EPA will promulgate a final rule.

The preamble contains the legal authority and background, the technical and economic bases, and other aspects of the proposed regulation as well as a summary of comments on a draft technical document circulated in June 1980 and a request for comments on specific issues. The abbreviations, acronyms, and other terms used in the preamble are defined in Appendix A. (See Supplementary Information below for complete table of contents).

The proposed regulation is supported by EPA's technical conclusions detailed in the *Development Document for Effluent Limitations Guidelines, and Standards for the Metal Finishing Point Source Category.* The Agency's economic analysis is found in *Economic Analysis of Proposed Effluent Standards and Limitations for the Metal Finishing Industry.*

DATES: Comments on this proposal must be submitted by November 1, 1982.

ADDRESS: Send comments to: Mr. Richard Kinch, Effluent Guidelines Division (WH–552), Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, Attention: Metal Finishing Rules. The record for this rulemaking and all comments on this proposal will be available for inspection and copying at EPA Public Information Reference Unit, Room 2404 (Rear) PM–213 (EPA Library). The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained by writing to Mr. Richard Kinch, Effluent Guidelines Division (WH–553), EPA, 401 M Street, S.W., Washington, D.C. 20460, or by calling (202) 426–2582. Copies of the technical document may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487–6000). Copies of the economic analysis will be available for review in the public record at EPA headquarters and regional libraries. Economic information, including copies of the economic analysis document, may be obtained by writing Ms. Kathleen Ehrensberger, Economics Branch (WH–586), Environmental Protection Agency, 401 M St. S.W., Washington, D.C. 20460, or by calling (202) 382–5397.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority

EPA is proposing the regulation described in this preamble under authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95–217) (the "Act"). This regulation is also proposed in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), as modified, 12 ERC 1833 (D.D.C. 1979).

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a).

- Section 301(b)(1)(A) set a deadline of July 1, 1977, for existing industrial direct dischargers to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT").
- Section 301(b)(2)(A) set a deadline of July 1, 1983, for these dischargers to achieve "effluent limitations requiring the application of the best available technology economically achievable . . . which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT").
- Section 306 required that new industrial direct dischargers comply with new source performance standards ("NSPS"), based on best available demonstrated technology.
- Sections 307 (b) and (c) set pretreatment standards for new and existing dischargers to publicly owned treatment works ("POTW"). While the requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under Section 402, the Act made pretreatment standards enforceable directly against dischargers to POTWs (indirect dischargers).
- Section 402(a)(1) of the 1972 Act does allow requirements for direct dischargers to be set case-by-case. However, Congress intended control requirements to be based for the most part on regulations promulgated by the Administrator of EPA.
- Section 304(b) required regulations that establish effluent limitations

reflecting the ability of BPT and BAT to reduce effluent discharge.

• Sections 304(c) and 306 of the Act required regulations for NSPS.

• Sections 304(g), 307(b), and 307 (c) required regulations for pretreatment standards.

• In addition to these regulations for designated industry categories, Section 307(a) required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants.

• Finally, Section 501(a) authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

The EPA was unable to promulgate many of these regulations by the deadlines contained in the Act, and—as a result—in 1976, EPA was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement"which was approved by the Court. This agreement required EPA to develop a program and meet a schedule for controlling 65 "priority" pollutants and classes of pollutants. In carrying out this program EPA must promulgate BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 21 major industries. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979).

Several of the basic elements of the Settlement Agreement program were incorporated into the Clean Water Act of 1977. This law also makes several important changes in the Federal water pollution control program.

• Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now set July 1, 1984 as the deadline for industries to achieve effluent limitations requiring application of BAT for "toxic" pollutants. "Toxic" pollutants here includes the 65 "priority" pollutants and other classes of pollutants which Congress declared "toxic" under Section 307(a) of the Act.

• Likewise, EPA's programs for new source performance standards and pretreatment standards are now aimed principally at controlling toxic pollutants.

• To strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe certain "best management practices" ("BNPs"). These BMPs are to prevent the release of toxic and hazardous pollutants from: (1) Plant site runoff, (2) spillage or leaks, (3) sludge or waste disposal, and (4) drainage from raw material storage if any of those events are associated with, or ancillary to, the manufacturing or treatment process.

In keeping with its emphasis on toxic pollutants, the Clean Water Act of 1977 also revises the control program for non-toxic pollutants.

• For "conventional" pollutants identified under Section 304(a)(4) (including biochemical oxygen demand, suspended solids, fecal coliform and pH), the new Section 301(b)(2)(E) requires "effluent limitations requiring the application of the best conventional pollutant control technology" ("BCT")—instead of BAT—to be achieved by July 1, 1984. The factors considered in assessing BCT for an industry are the relationship between the cost of attaining a reduction in effluents and the effluent reduction benefits attained, and a comparison of the cost and level of reduction of such pollutants by publically owned treatment works and industrial sources. For non-toxic, nonconventional pollutants, Sections 301(b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or by July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of tis proposed regulation is to establish BPT, BAT, NSPS, PSES, and PSNS for the Metal Finishing Point Source Category, and, to amend the electroplating PSES for job shops and independent printed circuit board manufacturers.

B. Prior EPA Regulations

On March 28, 1974, EPA promulgated BPT limitations for the electroplating industry but suspended them on December 3, 1976. Interim final Electroplating pretreatment standards for the electroplating industry were issued on July 12, 1977, and suspended on May 14, 1979. On September 7, 1979, EPA promulgated PSES for the electroplating industry. Amended PSES were promulgated on January 28, 1981 (40 FR 9462).

As of now, only the PSES for the electroplating industry are in effect. A September 2, 1981 correction (40 FR 43972) to the final amendments requires compliance with these standards by January 28, 1984 for nonintegrated facilities. A non-integrated facility is one which discharges process wastewater only from electroplating operations through a treatment system (or proposed treatment system). Many of the General Pretreatment amendments of January 28, 1981 complement the implementation of categorical standards. Most of these amendments became effective on January 31, 1982 (47 FR 4518, February 1, 1982).

Indirect discharging integrated facilities are currently covered by the electroplating PSES. They must comply with its provisions no later than three years after the effective date of the combined waste stream formula contained in S403.6(e) of the General Pretreatment Regulations. The United States Court of Appeals for the Third Circuit recently ruled that this formula was effective as of March 30, 1981. *NRDC v. EPA*, No. 81–2068 (3d Cir. 1982).

C. Overview of the Industry

Thirteen thousand facilities in the Electroplating and Metal Finishing Categories would be subject to the limitations on discharge of toxic metals, organics, and cyanide contained in these regulations. They can be divided into the sectors indicated on Table I. These facilities are either "captives" (those which own the material they process); or "job shops" (those which treat metal as service and do not own the material they process). Captives are further divided by two definitions: "integrated" plants are those which, prior to discharge, combine electroplating waste streams with significent process waste streams from other operations; "non-integrated" facilities are those which have significant wastewater discharges only from operations addressed by the electroplating category. Many captive (50%) are "integrated" facilities. Whereas captives often have a complex range of operations, job shops usually perform fewer operations. In theory job shops can be divided like captives; in actuality, however, approximately 97% of all job shops in this industry are "non-integrated". Finally, the entire industry can be divided into "direct" and "indirect" dischargers. "Directs" discharge wastewaters to waters of the United States and are subject to NPDES permits incorporating BPT, BAT, BCT, or NSPS limitations. "Indirects" discharge to POTWs and are subject to PSES or PSNS limitations.

As discussed above, the Electroplating Category is currently covered by PSES promulgated on September 7, 1979, and amended on January 28, 1981. The effect of today's amendments would be to create a new category—Metal Finishing—and to shift *most* electroplaters to it, replacing their current PSES with new limits which apply uniformly to discharges from their electroplating and other metal finishing operations. This meets industries' requests for equivalent limits for process lines often found together and reduces the need to rely on the Combined Waste Stream Formula for integrated metal

finishing facilities. All direct dischargers and new sources would also be covered by the metal finishing regulations.

Indirect discharging job shop electroplaters and independent printed circuit board manufacturers, however, would be left under the existing PSES for Electroplating, pursuant to a 1980 Settlement Agreement with the National Association of Metal Finishers (NAMF), and the Institute for Interconnecting and Packaging Electronic Circuits (IIPEC). In addition to creating the Metal Finishing Category this package proposes to amend the current Electroplating PSES to reflect this change in applicability, and to set a limit on Total Toxic Organics (TTO). The TTO limit can be met by "housekeeping" control of solvent disposal; as discussed below it requires no significant capital expenditures. Compliance is required by January 28, 1948; this will be possible because the control technique is in-house and operational, requiring no significant capital installation or investment for treatment of wastewater.

TABLE I.—BREAKDOWN OF THE ELECTROPLATING /METAL FINISHING INDUSTRY

[Number of plants per sector 13,470]

Job shops and IPCBM * (3470)	Captive facilities (10,000)	
	Nonintegrated	Integrated
Indirect dischargers (10,561):		
3061	3,750	3,750
Job & IPCBM	Nonintegrated	Integrated
Indirect	Captive	Captive
Direct Dischargers (2,909):		
409	2,500	
Job & IPCMB	Captive	
Directs	Directs	

*Independent Printed Circuit Board Manufacturers.

The processes covered by the Metal Finishing Category are listed in Appendix C. The industries in this category perform one or more combinations of the 45 manufacturing unit operations listed there, including at least one of the following: electroplating, electroless plating, anodizing, coating, chemical etching and milling, or printed circuit board manufacture. While process operations vary, control of wastewater pollutants is similar throughout the category.

EPA is excluding some operations similar to metal finishing from this regulation. These include: (1) Electroplating and electrorefining conducted as a part of nonferrous metal smelting and refining (40 CFR 421); (2) metal surface preparation and conversion coating conducted as a part of coil coating (40 CFR 465); (3) metal surface preparation and immersion plating or electroless plating conducted as a part of porcelain enameling (40 CFR 466); (4) Electrodeposition of active electrode materials, electroimpregnation, and electroforming conducted as a part of battery manufacturing (40 CFR 461); (5) Metallic platemaking and gravure cylinder preparation conducted within printing and publishing facilities; and (6) facilities which do not perform at least one of the following: electroplating, electroless plating, anodizing, coating, chemical etching and milling, or printed circuit board manufacture.

The most important pollutants of concern found in metal finishing industry wastewaters are: (1) Toxic metals (cadmium, copper, chromium, nickel, lead, and zinc); (2) cyanide; (3) toxic organics (lumped together as total toxic organics); and, (4) conventional pollutants (TSS and oil and grease). These and other chemical constituents degrade water quality, endanger aquatic life and human health, and in addition corrode equipment, generate hazardous gas, and cause treatment plant malfunctions and problems in disposing of sludges containing toxic metals.

These plants manufacture a variety of products that are constructed primarily of metals. The operations, which involve materials that begin as raw stock (rods, bars, sheet, castings, forgings, etc.), can include the most sophisticated surface finishing technologies. These facilities include both "captives" (which own the goods they process) and "job shops" (which process others' goods, as a service). They vary greatly in size, age, number of employees, and number and type of operations performed. They range from very small job shops with less than 10 employees to large facilities employing thousands of production workers. Because of differences in size and processes, production facilities are custom tailored to the individual plant. Some complex products may require the use of nearly all 45 unit operations, while a simple product may require only one.

Many different raw materials are used by these plants. Basis materials (or "workpieces") are almost exclusively metals, from common copper and steel to extremely expensive high-grade alloys and precious metals. The solutions used in unit operations can contain acids, bases, cyanide, metals, complexing agents, organic additives, oils, and detergents. All these materials may enter waste streams during production.

Water use within the metal finishing industry is discussed fully in Section V of the development document (see summary above). Plating and cleaning operations are typically the biggest water users. While most metal finishing operations use water, some may use none at all. Water use depends heavily on the type—and the flow rate—of the rinsing used. Product quality requirements often dictate the amount of rinsing needed for specific parts. Parts involving extensive surface preparation will generally require larger amounts of water in rinsing.

III. Scope of This Rulemaking and Summary of Methodology

This proposed regulation establishes BPT, BAT, NSPS PSES, and PSNS for the Metal Finishing Point Source Category and amends PSES for the Electroplating Point Source Category. The BAT goal is to achieve, by July 1, 1984, the best available technology economically achievable that will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants. This regulation, as proposed, does not alter the existing metal and cyanide standards for job shop electroplaters and printed circuit board manufacturers discharging to POTW's.

EPA first studied the metal finishing industry to determine whether differences in raw materials, final products, manufacturing processes, equipment, age and size of plants, water use, wastewater constituents, or other factors required separate effluent limitations and standards for different industry subcategories. This study involved a detailed analysis of wastewater discharge and treated effluent characteristics, including, (a) the sources and volume of water, the processes, and the sources of pollutants and wastewater in the plant and (b) the constituents of wastewaters, including toxic pollutants. This analysis enabled the Agency to determine the presence and concentrations of toxic pollutants in the major wastewater discharges.

EPA also identified several distinct control and treatment technologies (both in-plant and end-of-process), including those with potential use in the metal finishing industry. The Agency analyzed both historical and newly generated data on the performance of these technologies, including their non-water quality environmental impacts on air quality, solid waste generation, water scarcity, and energy requirements.

We used unit cost curves to estimate the cost of each control and treatment technology. These cost curves were developed by applying standard engineering analysis to metal finishing wastewater characteristics. We then derived the unit process costs by applying model plant characteristics (production and flow) to the unit cost

curve of each treatment process. These unit process costs were added together to yield the total cost at each treatment level.

By considering these factors, EPA was able to characterize the various control and treatment technologies used as the bases for effluent limitations, new source and pretreatment standards. However, the proposed regulations do not require any particular technology. Rather, they require plants to achieve effluent limitations (mg/1) which reflect the proper operation of these technologies or equivalent technologies. Some facilities are already using technologies other than these relied on by the Agency, such as dragout control, recycle, and recovery, to achieve these values.

IV. Data Gathering Efforts

To develop the proposed regulation, EPA began with a review of previous work on the metal finishing industry. The major source of information on this is the *Draft Development Document for Effluent Limitations and Standards for the Metal Finishing Point Source Category* (June 1980). Several studies completed before this development document was published also contributed technical information to the metal finishing data base for the following categories:

- Machinery and Mechanical Products Manufacturing.
- Electroplating.
- Electroless Plating and Printed Circuit Board Manufacturing (Segments of the Electroplating Category).
- Mechanical and Electrical Products.

We also gathered data on the metal finishing industry from literature surveys, inquiries to professional contacts, seminars and meetings, and the survey and evaluation of manufacturing facilities.

We contacted all Federal EPA regions, several State environmental agencies, and numerous suppliers and manufacturers for the metal finishing industry to collect information on: (1) Permits and monitoring data, (2) the use and properties of materials, (3) process chemical constituents, (4) waste treatment equipment, (5) waste transport, (6) and various process modifications to minimize pollutant generation.

Under the authority of Section 308 of the Clean Water Act, the Agency sent three different data collection portfolios (DCPs) to various industries within the Metal Finishing Point Source Category. The first DCP obtained data from 339 of 1,422 plants originally contacted from the machinery and mechanical products industry. The data included general plant data and data on raw materials consumed, specific processes used, composition of effluent streams, and wastewater treatment. The second DCP obtained data from 365 of 900 plants originally contacted in the mechanical and electrical products industries. This data covered general plant characteristics, unit operations performed, plating type operations, wastewater treatment facilities, and waste transport. We sent the third DCP to 1,883 companies involved in electroplating. Approximately 970 plants sent back economic analysis data and information on general plant characteristics, production history, manufacturing processes, process and waste treatment, wastewater characteristics, and treatment costs.

EPA and its contractors also visited 198 manufacturing facilities to collect pertinent technical information on manufacturing processes, treatment techniques, and collection of wastewater samples.

V. Sampling and Analytical Program

EPA focused its sampling and analysis on the toxic pollutants designated in the Clean Water Act. However, we also sampled and analyzed conventional and nonconventional pollutants. We have explained our analysis methods for toxic organic pollutants in the preamble to the proposed regulation for the Leather Tanning Point Source Category, 40 CFR 425, 44 FR 38749, July 2, 1979. Before proceeding to analyze metal finishing wastes, we had to isolate specific toxic pollutants for analysis. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants; analyses for all of them would overwhelm private and government laboratory resources. To make the task more manageable, therefore, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemakings. The criteria for choosing these pollutants included the frequency of their occurrence in water, their chemical stability and structure, the amount of the chemical produced, and the availability of chemical standards for measurement.

In addition to the 129 pollutants, EPA checked for the presence, frequency, and concentration of xylenes, alkyl epoxides, gold, fluoride, phosphorus, oil and grease, TSS, pH, aluminum, barium, iridium, magnesium, molybdenum, osmium, palladium, platinum, rhodium, ruthenium, sodium, tin, titanium, vanadium, yttrium, and total phenols.

To be sampled, a plant had to be representative of (a) the manufacturing processes, (b) the prevalent mix of production among plants, and (c) the current treatment technology in the industry. EPA sampled 198 facilities to identify pollutants in plant wastewaters. Before visiting a plant, EPA reviewed all available data on manufacturing processes and waste treatment. We selected representative points to sample the raw wastewater entering the treatment systems and to sample the final treated effluents. Finally, we prepared, reviewed, and approved a detailed sampling plan showing the selected sample points and the overall sampling procedure.

Based on this sampling plan, we then took composite samples (24-hour composites) at each sample point for 2 or 3 consecutive days. The samples were divided into two analysis groups. Within each group the samples were subjected to various analyses, depending on the stability of the pollutants to be analyzed. The various levels of analysis were conducted at: (1) local laboratories, (2) Chicago EPA laboratory, (3) contracted gas chromatography/mass spectrometry (GC/MS) laboratories and, (4) the sampling contractor's central laboratory. The sampling and analysis methods are outlined in the Development Document.

The acquisition, preservation, and analysis of the water samples followed the relevant methods set forth in 40 CFR 136. The Agency has not promulgated analytical methods for many organic toxic pollutants under Section 304(h) of the Act, a number of these methods have been proposed for 40 CFR 136 (44 FR 69464, December 3, 1979; 44 FR 75028, December 18, 1979).

VI. Industry Subcategorization

In developing this regulation, the Agency considered whether different effluent limitations and standards are appropriate for different segments of the metal finishing industry. The Act requires EPA consider a number of factors to determine if subcategorization is needed. These factors include raw materials, final products, manufacturing processes, geographical location, plant size and age, wastewater characteristics, non-water-quality environmental impacts, treatment costs, energy costs, and solid waste generation.

The metal finishing industry comprises 45 unit operations. These processes generate wastewater that falls into five waste groups, each requiring different treatment to reduce the discharge of pollutants. The five groups are metals, cyanide, hexavalent chromium, oils, and solvents, with

significant toxic organics pollutants potentially present in the last two.

These wastes occur in a wide variety of combinations, and while the treatment may differ for each type of waste, the combined treatment system has components, i.e., precipitation and clarification, that are used for all waste types (except solvents, which are contract hauled or reclaimed). After isolated treatment of hexavalent chromium, cyanide, and oil and grease, pollutants in these waste streams are further reduced through the precipitation-clarification system for metal-bearing wastes. Because of the interconnecting nature of the combined waste treatment system, setting concentration limits on the effluent from the combined system appropriately characterizes the concentration limited capabilities of the technology.

For these reasons, the Agency has determined that the Metal Finishing Point Source Category need not be subcategorized for regulation. A set of concentration based limitations can be applied to all metal finishing process effluents. However, under today's proposal the current PSES for job shops and independent printed circuit board manufacturers would not be amended to equal the metal finishing limitations. This is pursuant to the 1980 Settlement agreement in which the National Association of Metal Finishers promised to withdraw its legal challenge to those PSES if EPA did not make them more stringent than the limits proposed on July 3, 1980 and promulgated on Janurary 28, 1981.

The Agency considered, but decided against production based standards. With the wide range of operations, product quality requirements, existing process configurations, and difficulties in measuring production, no consistent production normalizing relationship could be found. Concentration based limits, however, can be consistently attained throughout the industry.

VII. Available Wastewater Control and Treatment Technology

A. Status of In-Place Technology

Installed control and treatment technologies in the metal finishing industry generally consist of some form of alkaline precipitation and clarification to remove metals. When cyanide or hexavalent chromium wastes are present, these wastewaters are generally segregated and treated upstream.

B. Control Treatment Options

We examined the following control treatment options:

Option 1: Precipitation and clarification. Stream segregation for cyanide, hexavalent chromium and concentrated oily wastes followed by cyanide destruction, chromium reduction and emulsion breaking and skimming as necessary. Solvent waste segregation and removal by hauling.

Option 2: Option 1 plus filtration.

Option 3: Option 1 plus in-plant control for cadmium.

VIII. General Criteria for Effluent Limitations

A. BPT Effluent limitations

The factors considered in defining best practicable control technology currently available (BPT) include: (1) the total cost of applying the technology relative to the effluent reductions that result, (2) the age of equipment and facilities involved, (3) the processes used, (4) engineering aspects of the control technology, (5) process changes, (6) non-water-quality environmental impacts (including energy requirements), (7) and other factors, as the Administrator considers appropriate. In general, the BPT level represents the average of the best existing preformances of plants within the industry of various ages, sizes, processes, or other common characteristics. When existing performance is uniformly inadequate, BPT may be transferred in from a different subcategory or category, BPT focuses on end-of-process treatment rather than process changes or internal controls, except when these technologies are common industry practice.

The cost/benefit inquiry for BPT is a limited balancing, committed to EPA's discreation, which does not require the agency to quantify benefits in monetary terms. See e.g., *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir. 1975). In balancing costs against the benefits of effluent reduction EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required level of pollution control. The Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C Cir. 1978).

B. BAT Effluent limitations

The factors considered in defining best available technology economically achievable (BAT) include the age of the equipment and facilities involved, the processes used, engineering aspects of the central technology process changes, non-water-quality environmental impacts (including energy requirements), and the costs of applying such technology (Section 304(b)(2)(B)). At a minimum, the BAT level represents the best economically achievable performance of plants of various ages, sizes, processes, or other shared characteristics. As with BPT, uniformly inadequate performance within a category or subcategory may require transfer of BAT from a different subcategory or category. Unlike BPT, however, BAT may include process changes or internal controls, even when these technologies are not common industry practice.

The statutory assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaeuser* v. *Costle, supra*). In developing the proposed BAT, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the required pollution control levels.

Despite this expanded consideration of costs, the primary factor for determining BAT is the effluent reduction capability of the control technology. The Clean Water Act of 1977, establishes the achievement of BAT as the principal national means of controlling toxic water pollution from direct discharging plants.

C. BCT Effluent Limitations

The 1977 amendments added Section 301 (b)(2)(E) to the Act, establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Section 304(B)(4) designated the following as conventional pollutant: BOD, TSS, fecal coliform, and pH. The Administrator designated oil and grease "conventional" on July 30, 1979, 44 FR 44501.

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT

limitations be assessed in light of a two part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979, (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first text, and to apply the second cost test. (EPA had argued that a second cost test was not required).

EPA will soon propose its revised and corrected BCT methodology. The BCT proposal will include proposed BCT limitations for the metal finishing category. Comments on the proposed BCT limitations for metal finishing may be submitted throughout the comment periods either of the BCT proposal, or of this metal finishing proposal.

D. New Source Performance Standards

The basis for new source performance standards (NSPS) under Section 306 of the Act is the best available demonstrated technology. New plants have the opportunity to design the best and most efficient metal finishing processes and wastewater treatment technologies. Therefore, Congress directed EPA to consider the best demonstrated process changes, inplant controls, and end-of-process treatment technologies that reduce pollution to the maximum extent feasible.

E. Pretreatment Standards for Existing Sources

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES), which industry must achieve within three years of promulgation. PSES are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTWs.

The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. The General Pretreatment Regulations which serve as the framework for the proposed pretreatment standards are in 40 CFR Part 403, 46 FR 9404 (January 28, 1981).

EPA has generally determined that there is pass through of pollutants if the percent of pullutants removed by a well-operated POTW achieving secondary treatment is less than the percent removal by the BAT model treatment system. A study of 40 well-operated POTWs with biological treatment and meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70%. POTWs with only primary treatment have even lower rates of removal. In contrast, BAT level treatment by metal finishing industrial facilities can achieve removals of approximately 97% or more. Thus it is evident that metals from this industry do pass through POTWs. As for toxic organics, data from the same POTWs illustrates a wide range of removal, from 0 to greater than 99%. Overall POTW's have removal rates of toxic organics which are less effective than the metal finishing TTO technology basis of no dumping of toxic organic wastes. The POTW's effluent discharge of specific toxic pollutants ranged from 0 to 4.3 milligrams/liter. Many of the pullutants present in metal finishing wastes, at sufficiently high concentrations, can inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW use of sludge management alternatives, including the beneficial use of sludges on agricultural lands.

Section 307 of the Clean Water Act provides that POTW's may grant credit to indirect dischargers, based on the degree of removal actually achieved at the POTW. EPA has General Pretreatment Regulations regulating POTW's authority to grant such credits. The recent study of 40 well-operated POTW's suggests that national removal credits could be established for such plants at the following levels:

Pollutant	National removal rate (percent)
Cadmium	38
Chromium	65
Copper	58
Lead	48
Nickel	19
Silver	66
Zinc	65
Total Regulated Metals (Cr+Cu+Ni+Zn)	62
Cyanide	52

A separate **Federal Register** notice will explain EPA's latest data and conclusions on the removal credit issue. If the national removal credits are adopted by a POTW, PSES for Metal Finishing can be modified as follows:

METAL FINISHING PSES PLUS NATIONAL REMOVAL CREDITS

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Milligrams per liter (mg/1)	
Cadmium (T)	2.08	0.44
Chromium (T)	8.20	2.29
Copper (T)	8.86	2.60
Lead (T)	1.29	0.44
Nickel (T)	4.33	1.56
Silver (T)	1.29	0.38
Zinc (T)	7.54	2.29
Cyanide (T)	2.71	0.58
TTO	0.58	

F. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time that it promulgates NSPS. These standards are intended to prevent the discharge of pollutants which pass through, interfere with or are otherwise incompatible with a POTW. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate the best available demonstrated technologies—including process changes, in-plant controls, and end-of-process treatment technologies—and to select plant sites that ensure the treatment system will be adequately installed. Therefore, the Agency sets PSNS after considering the same criteria considered for NSPS. PSNS will have effluent reduction benefits similar to NSPS.

IX. Selection of Treatment Options and Effluent Limitations

The treatment option selected for each effluent limitation and pretreatment standard is based on the criteria specified in the Clean Water Act. The technologies are discussed in more detail in the Development Document for this rulemaking.

For BPT, EPA is proposing results achievable by technology based on precipitation and clarification for all metal finishing effluents. In addition, for cyanide or hexavalent chromium the technology basis incorporate techniques to destroy cyanide and reduce hexavalent chromium to its trivalent state. These effluent limitations reflect the average of the best existing control technologies widely used in the industry. The technology is consistent with that used as a basis for PSES for the electroplating industry (January 28, 1981, FR 9462) and the March 28, 1974,

suspended, BPT limitations. The limitations are more stringent than found in currently effective electroplating pretreatment regulations, because EPA is now using an expanded data base. The pollutants proposed for regulation under BPT limitations are silver, cadmium, copper, chromium, nickel, lead, zinc, total cyanide, TSS, oil and grease.

Total toxic organics (TTO) is also proposed for limitation. Compliance with TTO basically involves not dumping concentrated toxic organic wastes, i.e., solvent degreasers and paint strippers. These wastes can profitably be recovered and some waste haulers, which pay for waste solvents, have been identified, and are cited in the public record. Approximately 73% of the facilities which utilize solvent degreasers already properly dispose of this waste. Monitoring for toxic organics could be expensive. Accordingly the Agency is proposing an alternative to self-monitoring. Facilities can identify the toxic organics used and certify that the resultant wastes are being properly disposed, i.e., recovered or contract hauled.

For BAT, EPA is proposing limitations equivalent to BPT. The Agency seriously considered proposing limitations based on BPT level technology plus, filtration, but rejected it because of its high cost compared with the limited additional removal that would result. We did not select in-plant cadmium control because that technology is more appropriate in the design and construction of new facilities. The pollutants proposed for regulation under BAT limitations are the same as those proposed for regulations under BPT limitations. The compliance date for BAT is no later than July 1, 1984, the maximum time allowed by the Act.

For NSPS, EPA is proposing limitations based on BPT/BAT technology plus in-plant control of cadmium. This additional control takes advantage of a new plant's ability to achieve effluent reductions beyond BAT levels. The pollutants regulated under NSPS are the same as those regulated under BPT limitations.

For PSES in the Metal Finishing Category, EPA is proposing technology equivalent to BAT and BPT. The pollutants regulated under this PSES are the same as the toxic pollutants regulated under BPT (BAT) limitations. As previously stated, these toxic pollutants can pass through or interfere with the POTW's operations. In addition, the removal of these pollutants from the waste stream by the POTW could affect sludge disposal alternatives. The compliance date for the metal finishing PSES is proposed as March 30, 1984, the same as the compliance date for the pretreatment standards for integrated electroplaters. Because Metal Finishing's PSES is based on a reassessment of the same technology basis used for Electroplating PSES, captive non-integrated facilities should be capable of complying with Metal Finishing at the same time all integrated facilities comply with the Electroplating PSES, i.e., three years from the promulgation of the Combined Wastestream Formula. Agency analysis indicates that facilities can install the necessary equipment in 14 to 20 months, which will be allowed by the specified compliance date.

Indirect discharging job shop and independent printed circuit board manufacturers would continue to be regulated under the existing PSES for Electroplating, pursuant to a 1980 Settlement Agreement with the National Association of Metal Finishers and the Institute for Interconnecting and Packaging Electronic Circuits. However, the proposed amendment to the current electroplating PSES would set a limit on total toxic organics based upon in-house management of organics, not additional end-of-pipe treatment. Compliance date for this TTO limit is January 28, 1984.

For PSNS, EPA is proposing technology equivalent to NSPS. The pollutants regulated under PSNS are the same as the toxics regulated under NSPS.

X. Pollutants and Subcategories Not Regulated

Paragraph 8 of the Settlement Agreement contains provisions authorizing EPA to exclude toxic pollutants and industry categories and subcategories from regulation under certain circumstances.

A. Exclusion of Pollutants

Paragraph 8(a)(iii) of the Settlement Agreement authorizes the Administrator to exclude from regulation toxic pollutants:

- Not detectable by Section 304(h) analytical methods or other state-of-the-art methods; or
- Present in amounts too small to be effectively reduced by available technologies; or
- Present only in trace amounts and neither causing nor likely to cause toxic effects; or
- Detected in the effluent from only a small number of sources within a subcategory and uniquely related to those sources; or
- That will be effectively controlled by technologies on which other effluent limitations and standards are based.

Appendix B to this notice lists the toxic pollutants excluded from regulation on this basis.

B. Exclusion of Subcategories

In selecting effluent limitations for the Metal Finishing category as a whole, EPA has not established subcategories and, therefore, has not excluded any subcategories.

XI. Costs, Effluent Reduction Benefits, and Economic Impact

A. Estimated Costs and Economic Impacts

In order to estimate the economic impacts of today's proposal, EPA reviewed its incremental effect on each of the sectors of the industry, (described above in the "Overview of the Industry," and Table I). This analysis is set forth in *Economic Impact Analysis of Proposed Effluent Limitations and Standards for the Metal Finishing Industry*, and its results are summarized below, beginning with those sectors which will incur no significant incremental costs, and followed by the sector which will incur costs and for which the impacts of those costs were analyzed. Our conclusion is that this proposal, if promulgated, would lead to a total initial capital investment (in 1982 dollars) of $308 million, with an annual cost, including interest and depreciation, of $92 million. No significant adverse economic impacts are projected.

The first two sectors which EPA determined would not be subject to further costs are direct-discharging captive shops and direct-discharging job and independent printed circuit board shops. These are already covered by NPDES permits which set BPT limits based on case-by-case best engineering judgement. A 1981 survey of randomly selected permits indicates that all, or nearly all, existing permits specify limits equal to, or more stringent than, those proposed today. As a result, this proposal should have no negative economic affects on direct discharging plants subject to these guidelines.

The third sector that EPA determined would not be subject to significant costs is that composed of indirect discharging job shops and independent printed circuit board manufacturers. Pursuant to a March 1980 Settlement Agreement in which the relevant trade associations agreed to withdraw their petitions for judical review, EPA is not proposing concentration limits more stringent than those specified in the existing applicable pretreatment standards. The Agency is, however, proposing to supplement those standards with a limit on Total Toxic Organics. That provision can be met by

"house-keeping" control of solvents, without significant expense. Thus today's proposal should have no adverse economic effects on indirect discharging job shops or independent printed circuit board manufacturers.

A fourth sector, non-integrated captive indirect dischargers, will also incur no significant additional costs due to today's proposal. This is because the necessary capital investments are already required by the currently effective electroplating regulations. The standards proposed today are more stringent than those in the currently effective electroplating regulations. However, they can be met through use of the same pollution control equipment relied on to meet the current electroplating pretreatment standards. Thus, those plants should incur no significant capital expenditures or increased operating costs.

The final sector, integrated captive shops that are indirect dischargers, would incur costs because of today's proposal. This is because EPA anticipates that they would comply with these standards with combined treatment systems that would be more costly than those required solely to treat electroplating wastewaters. After estimating the costs of this compliance, EPA analyzed the economic impacts projected from those costs. Integrated shops perform metal finishing operations in addition to electroplating processes. Thus they are affected by the existing electroplating standards as well as by today's proposal. To determine the impact of today's proposal, EPA's primary analysis treated the electroplating pretreatment standards as a baseline and found that the further costs required to meet today's proposal would have no significant adverse economic effects.

EPA's estimates of the effects of these regulations are based on a sample of approximately 1,100 plants. The results have been extrapolated to the full population of 3,750 plants in this sector. The analysis assumes that compliance costs are passed on as price increases and postulates an average price increase for each model plant. If a plant's compliance costs, relative to sales, are high, the analysis projects metal finishing process line divestitures or possible plant closures.

In determining the baseline costs to this segment of the industry required to comply with the electroplating pretreatment standards, EPA has revised its earlier estimates, based on updated surveys of treatment in place, improved estimates of the population of affected captive shops, and deletion of the costs attributed to the electroplating flow of integrated captive indirect dischargers. The revised estimate (in 1982 dollars) indicates that this sector's costs for compliance with the electroplating pretreatment standards are $516 million in capital costs and $155 million in annual costs, including interest and depreciation. EPA now estimates that the economic impacts of that regulation would be 24 plant closures and six electroplating divestitures which could result in 896 job losses and 84 job transfers.

In estimating the economic impact of today's proposed metal finishing regulation, EPA assessed the costs of treating the additional flows covered by today's proposal at the model plants used in the electroplating analysis. These costs were then extrapolated to the relevant metal finishing universe. Additional impacts would be those due to today's proposed metal finishing regulation. These costs came to an investment cost of approximately $308 million, with an annual cost of approximately $92 million, including interest and depreciation. The annual costs are approximately 0.15 percent of the $60 billion annual value of shipments from integrated indirect captive plants. EPA's analysis projects that this would lead to no plant closures or process line divestitures, and that no employment disruption would result.

Finally, EPA assessed the combined impact of today's proposal and the electroplating pretreatment regulations on the captive integrated indirect discharging sector of the industry. This analysis, like those for electroplating and metal finishing alone, was conservative because it assumed that each plant would build a full conventional treatment system, ignoring the potential savings of available alternative treatments such as one-or two-stage drag out rinses, or from more lenient standards based on removal credits received from local POTWs. The analysis does provide an outer bound for possible impacts, given that deferred compliance dates for integrated facilities have made it possible for plants to make both investments at once. This final analysis indicated a combined investment cost for *both* regulations of $824 million, with an annual cost of $247 million, including interest and depreciation. Thirty plants (out of 3,750) may divest their electroplating lines or close, and 980 jobs (out of 450,000) could be lost or displaced. These impacts are the same as those due to the electroplating pretreatment standards alone. No additional closures, divestitures, or unemployment are expected from the more stringent standards proposed today.

In sum, EPA has concluded that the industry can bear the costs of compliance with today's proposal with minimal effects. Finally, the standards for new sources are the same as those for existing sources, except that cadmium must be controlled more stringently. Because cadmium plating occurs at less than 20% of the facilities and economical in-plant controls can be designed into new facilities, there are expected to be no competitive disadvantage for new sources seeking to enter the industry.

B. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. The primary purpose of the Executive Order is to ensure that regulatory agencies carefully evaluate the need for taking the regulatory action. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major regulation because its annualized cost of $92 million is less than $100 million and it meets none of the other criteria specified in paragraph (b) of the E.O.

EPA has developed and analyzed detailed alternatives in the technical and economic development documents, and in an environmental consequence analysis. The technical development document presents and analyzes the alternative technologies on which effluent limitations and standards could be based. The economic development document discusses the economic consequences of the effluent limitations and standards proposed in this regulation. The environmental analysis assessed the national loadings levels, and modelled the water quality effect of these effluent limitation and pretreatment standards. These analyses confirmed the appropriateness of the decisions that the Agency made on the basis of the criteria in the Clean Water Act.

C. Regulatory Flexibility Analysis

Pub. L. 96–354 requires EPA to prepare an Initial Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. This analysis may be done in conjunction with or as a part of any other analysis conducted by the Agency. The economic impact analysis described above indicates that there will not be a significant impact on any segment of the regulated population, large or small. Therefore, a formal regulatory flexibility analysis is not required.

D. SBA Loans

The Agency is continuing to encourage small platers—including circuit board manufacturers—to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Guaranteed Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Guarantee Program. All the SBA loan programs are only open to businesses that have: (a) net assets less than $6 million, and (b) an average annual after-tax income of less than $2 million, and (c) fewer than 250 employees.

The Section 503 Program, as amended in July 1980, allows long-term loans to small- and medium-sized businesses. These loans are made by SBA-approved local development companies. For the first time, these companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Guarantee Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Guarantee and Section 503 Programs contact your district or local SBA Office. The coordinator at EPA headquarters is Ms. Frances Desselle who may be reached at (202) 382–5373. For further information and specifics on the Guaranteed Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235–2902.

XII. Non-Water-Quality Environmental Impacts

The elimination or reduction of one form of pollution may aggravate other environmental problems. Sections 304(b) and 306 of the Act require EPA to consider the non-water-quality environmental impacts (including energy requirements) of certain regulations. To comply, EPA considered the effect of this regulation on air, noise, radiation, and solid waste generation. While balancing pollution problems against each other and against energy use is difficult, EPA believes that the proposed regulation best serves overall national goals.

The following are the non-water-quality environmental impacts (including energy requirements) associated with the proposed regulation.

A. Air Pollution

Compliance with the proposed BPT, BAT, NSPS, PSES and PSNS will not create any substantial air pollution problems. Alkaline chlorination for cyanide destruction and chromium reduction using sulfur dioxide may produce some emissions to the atmosphere. Precipitation and clarification, the major portion of the technology basis, should not result in any air pollution problems. In addition, control of total toxic organics, at the source, will result in a decrease in the volatilization of solvents from streams and POTWs.

B. Noise

None of the wastewater treatment processes cause significant objectionable noise.

C. Radiation

None of the treatment processes pose any potential radiation hazards.

D. Solid Waste

EPA has considered the effect these proposed regulations would have on the accumulation of hazardous waste, as defined under Section 3001 of the Resource Conservation and Recovery Act (RCRA). EPA estimates that the proposed BPT and BAT limitations will not contribute to additional solid wastes. However, proposed PSES will increase the solid wastes by approximately 165,000 metric tons per year. This sludge will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

EPA's Office of Solid Waste has analyzed the solid waste management and disposal costs required by the industry's compliance with RCRA requirements and has published some results in 45 CFR 33066 (May 19, 1980). In addition, RCRA costs have been included in the costs and economic impact analysis during the development of this proposed regulation.

E. Energy Requirements

EPA estimates that achieving the proposed BPT and BAT effluent limitations will not increase electrical energy consumption.

The Agency estimates that proposed PSES will increase electrical energy consumption by approximately 142 million kilowatt-hours per year. For a typical existing indirect discharger, this will increase energy consumption less than one percent of the total energy consumed for production.

The energy requirements for NSPS and PSNS are estimated to be similar to the energy requirement for BAT. However, this can only be quantified in kwh/year after projections are made for new plant construction.

XIII. Best Management Practices (BMPs)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMPs"). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category, and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant.

Although EPA is not proposing them at this time, future BMPs could require dikes, curbs, or other measures to contain leaks and spills, and could require the treatment of toxic pollutants in these wastes.

XIV. Upset and Bypass Provisions

A recurring issue is whether industry limitations and standards should include provisions that authorize noncompliance during "upset" or "bypasses." An upset, sometimes called an "excursion," is unintentional noncompliance beyond the reasonable control of the permittee. EPA believes that upset provisions are necessary, because upsets will inevitably occur, even if the control equipment is properly operated. Because technology-based limitations can require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on the questions of whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F. 2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra* and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir. April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F. 2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F. 2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F. 2d 973 (4th Cir. 1976).

Unlike an upset—which is an unintentional episode—a bypass is an intentional noncompliance to circumvent waste treatment facilities during an emergency.

EPA has both upset and bypass provisions in NPDES permits, and the NPDES portions of the Consolidated Permit regulations include upset and bypass permit provisions. See 40 CFR Part 122.60, 44 FR 32854, 32862–3 (June 7, 1979). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-

based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Since permittees in the metal finishing industry are entitled to the upset and bypass provisions in NPDES permits, this proposed regulation does not repeat these provisions.

XV. Variances and Modifications

When the final regulation for a point source category is promulgated, subsequent Federal and State NPDES permits to direct dischargers must enforce the effluent standards. Also, the pretreatment limitations apply directly to indirect dischargers.

The only exception to the BPT effluent limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co.* v. *Train, supra; Weyerhaeuser Co.* v. *Costle, supra.* This variance recognizes characteristics of a particular discharger in the category regulated that are fundamentally different from the characteristics considered in this rulemaking. Although this variance clause was set forth in EPA's 1973–1976 industry regulations, it now is not necessary to include in this proposed regulation. See 40 CFR Part 125.30.

Dischargers subject to the BAT limitations are also eligible for EPA's "fundamentally different factors" variance. BAT limitations *for nonconventional pollutants* may be modified under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations and standards. See 43 FR 40859 (Sept. 13, 1978).

Indirect dischargers subject to PSES are eligible for the "fundamentally different factors" variance and for credits for toxic pollutants removed by POTW. See 40 CFR 403.7; 403.13; 46 FR 9404 (January 28, 1981). Indirect dischargers subject to PSNS are only eligible for the credits provided for in 40 CFR 403.7. New sources subject to NSPS are not eligible for EPA's "fundamentally different factors" variance or any statutory or regulatory modifications. See *E. I. duPont de Nemours* v. *Train, supra.*

XVI. Relation to NPDES Permits

The BPT, BAT and NSPS in this regulation will be applied to individual metal finishing plants through NPDES permits issued by EPA or approved State agencies under Section 402 of the Act. The preceding section of this preamble discussed the binding effect of this regulation on NPDES permits, except when variances and modifications are expressly authorized. This section adds more detail on the relation between this regulation and NPDES permits.

One subject that has received different judicial rulings is the scope of NPDES permit proceedings when effluent limitations and standards do not exist. Under current EPA regulations, States and EPA regions that issued NPDES permits before regulations are promulgated must do so on a case-by-case basis. This regulation provides a technical and legal base for new permits.

Another issue is how the regulation affects the authority of those that issue NPDES permits. EPA has developed the limitations and standards in this regulation to cover the typical facility for this point source category. In specific cases, the NPDES permitting authority may have to establish permit limits on toxic pollutants that are not covered by this regulation. This regulation does not restrict the power of any permit-issuing authority to comply with law or any EPA regulation, guideline, or policy. For example, if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis, when such action conforms with the purposes of the Act. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permit-issuing authority *must* apply those limitations.

A final topic of concern is the operation of EPA's NPDES enforcement program, which was an important consideration in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, EPA can initiate enforcement proceedings at its discretion (Sierra Club v. Train, 557 F. 2d 485, 5th Cir., 1977). EPA has exercised and intends to exercise that discretion in a manner that recognizes and promotes good-faith compliance and conserves enforcement resources for those who fail to make these good-faith efforts.

XVII. Summary of Public Participation

In June 1980, EPA circulated a draft technical document to a number of interested parties including the National Association of Metal Finishers, the Natural Resources Defense Council (NRDC), the Environmental Defense Fund, and Citizens for a Better Environment Romicon, 3M, OXY Metal Industries, Ford Motor Company, General Motors, Whirlpool, Olin, General Electric, and many other metal finishers and electroplaters.

This document did not include recommendations for effluent limitations, pretreatment standards, or new source performance standards. Rather, it presented the technical basis for the proposed regulation. EPA's responses to these comments and additional written comments are summarized below:

(1) Comment. A firm that uses multistage precipitation preceding the sedimentation may have a better—but more costly—Option 1 system than a firm that does not use this.

Response: The selection or modification of a treatment system is the choice of the discharger. While multistage precipitation may achieve better effluent at a higher cost, the limitations can and are being met using single-stage precipitation. Consideration of additional costs for modified systems that may achieve better effluent quality is inappropriate. However, if specific site conditions—not considered in developing this regulation—make achieving the limits infeasible, the applicant may apply for a "fundamentally different factors" variance.

(2) Comment. Does the Option 2 system produce significantly better quality effluent than the Option 1 system?

Response: The difference between Options 1 and 2 is the use of filtration. Generally, adding filtration to precipitation—clarification increases the reduction in average effluent concentration of pollutants by approximately 29 percent. On the other hand, filtration does not remove very much relative to raw waste. Option 1 removes 97.6% of the raw waste, while Option 2 removes 98.3%. This very small additional removal was a significant factor in the Agency's decision to propose limits based on Option 1.

(3) Comment. Must the Option 1 treatment system for common metals use continuous process equipment?

Response: The discharger may select a batch or continuous treatment system. Generally, batch systems are more economical at low flow rates. In costing treatment systems for economic impact analysis, we chose the lower cost system.

(4) Comment. One commenter was concerned about analytical methods for determining oil and grease. The nonpolar materials, which do not readily biodegrade, cause visible sheens to surface water, affect color and taste,

and impair performance of biological treatment plants through sludge settling properties and equipment fouling. The polar materials are readily biodegradable and have proved desirable feed materials to POTW. If the POTW can provide the biological uptake, logically, the industrial standard should be applicable only to the polar fraction of oil and grease.

Response: For indirect dischargers, this nonpolar/polar distinction is not a relevant issue. Oil and grease is not regulated for pretreatment, since, at the levels generally discharged by this industry, it is considered compatible with treatment by POTWs. For direct dischargers this proposed regulation does limit oil and grease. Direct dischargers do not have the benefit of further biological treatment by a POTW, therefore both the polar and nonpolar components of oil and grease are regulated. Because both components must be controlled, separate regulation of both components would only burden industry with additional monitoring requirements.

(5) Comment. According to the draft development document, a large percentage (40 percent or more) of the hot dip galvanizers have zero discharge—an obviously wrong conclusion. However, if the data in the tables refer to the discharge from only the part of the operation that includes the actual coating and quenching (i.e., excluding cleaning and prefluxing), the numbers are realistic.

Response: The Agency has modified the development document to clarify that the "Determination of Zero Discharge Operations" table for hot dip coating does not include cleaning and prefluxing before coating.

(6) Comment. The discussion of Zero Discharge would be clearer if it was entitled, "Percentage Recycle of Process Water Used." When the metal finisher thinks of zero discharge, he thinks of zero discharge to air, water, and land.

Response: "Zero discharge" refers to pollutant discharge to navigable waters. We have modified sections of the development document to clarify this point. The Agency understands that zero discharge to waters of the United States does not imply zero discharge of pollutants to the total environment.

(7) Comment. Raw waste characteristics were selected as the basis for categorization, yet they were neglected in the data analysis. The data presented in the draft development document show that the raw waste load affects the effluent concentration for copper, chromium, and zinc. A technology-based standard must include a discussion of efficiencies, treatment process, mass loading, and flow patterns on flow-proportioned effluent concentration data.

Response: The effect of raw waste concentration on effluent levels is not clear in cases involving chromium, copper, and zinc effluent data. In all three cases, numerous points with raw waste loads greater than 10 mg/1 had effluent values that were less than the respective means. EPA sampled several zinc coating plants with properly operated treatment facilities and found that 35 data points complied with the zinc daily maximum, while long-term self-monitoring data for such plants showed a 99.7% compliance (1,211 of 1,222 days of monitoring.) Similarly, for copper, EPA's sampling data showed 46 points of 48 in compliance while long-term data showed a 99.1% compliance (2,642 of 2,665 days of monitoring.) The chromium numbers were 37 of 37 and 99.7% long-term compliance (3,561 out of 3,570 monitoring days). The most important criterion to be used in assessing a technology-based standard is the ability of the technology to consistently achieve the calculated performance levels. Analysis of the available data indicates that except for plants whose treatment operations demonstrated poor control of pH and effluent TSS, all plants can meet the indicated performance levels.

(8) Comment. The total toxic organics parameter (TTO) is meaningless and unusable, because:

- Individual toxic organic pollutants can require different unit processes for removal; and
- It does not correlate with toxic effects on a water body. (1 mg/l of dioxin and 1 mg/l of benzene both have the same TTO value, but they differ considerably in degree of danger); and
- It does not simplify the analysis; all individual contributors must be checked. While an additive figure may simplify recordkeeping, this is not worth sacrificing meaningful data.

Response: We believe that plants should not dump waste solvent degreasers such as trichloroethylene; 1,1,1, trichloroethane; tetrachloroethylene; methylene chloride; benzene; and toluene into effluent wastewaters. Analyses of raw waste streams in the metal finishing industry showed concentrations of 34 different toxic organics at levels greater than 1 mg/1, as well as measurable concentrations of other toxic organics. Because of the disparate and infrequent presence in waste streams of many of the 34 toxic organics, EPA decided that statistically supportable individual concentration limits were inappropriate. Consequently, we investigated the total toxic organic limitation approach. The Agency found that:

- Toxic organics in metal finishing wastewaters can be controlled by plant procedures and by the treatment system for metals removal—additional unit treatment processes for specific organics are unnecessary; and
- Statistically verifiable limitations for TTO could be derived from the available 70 samples of influent and effluent data obtained at plants with precipitation clarification treatment.

Althought the TTO limitation does not simplify the analysis, we do propose procedures to minimize the monitoring requirements. The Agency has noted that toxic organics in metal finishing effluents occur not by reaction but because the plant uses them in process operations. For metal finishing plants, a toxic organic must be monitored only if it is in the solvent degreasers, the oil formulations, or other process solutions and the facility does not certify these toxics are not being dumped into the wastewater. This criterion may totally eliminate the need for monitoring toxic organics at many facilities.

(9) Comment. Does any analytical methodology exist for determining total toxic organics, or is the value derived by analyzing for all toxic organics and then summing the concentrations? The total organics concept is not really developed nor is its use as an "indicator" parameter supported.

Response: The value for TTO is determined by analyzing for all appropriate toxic organics and summing the concentrations. It is not used as an indicator but, rather, as a direct measurement of the pollutants of concern.

(10) Comment. The draft development document does not adequately consider the solid waste aspects of pretreatment—especially the cost of sludge disposal and treatment. Many firms are finding that they must go out of State or long distances (frequently greater than 300 miles) to dispose of their solid wastes generated by the pretreatment requirements in effect in many localities. A more complete description of the requirements of the RCRA regulations and their applicability to the metal finishing industry is recommended.

Response: The Agency is aware that sludge disposal problems arise directly from treating wastewater for metals, and we dealt with this in depth after the June 1980 draft report was issued. The draft report did include costs for sludge disposal. We further evaluated the RCRA aspects of metal hydroxide sludges and calculated the incremental

cost of compliance with RCRA. This cost is included in the economic impact analysis.

The Agency agrees that landfills for sludge disposal may not be readily available in all regions of the country. An EPA study entitled "Hazardous Waste Generation and Commercial Hazardous Waste Management Capacity—An Assessment" describes the availability of hazardous waste storage in the various regions of the country. We anticipate that, over time, market forces will cause a more convenient distribution of hazardous waste sites. Copies of this EPA study may be obtained by requesting publication number SW–894 from Mr. Curtis Haymore, Office of Management, Information and Analysis (WH–562) U.S. EPA; 401 M. St., S.W., Washington, D.C. 20460.

(11) Comment. The development document relies entirely on one-day samples, although the proposal is to control a plant's limits for 30 days.

Response: The Agency recognized a need for long-term data and requested 1 year of self-monitoring data from over 100 facilities. These data were not available for the contractor's draft report but have now been incorporated in the proposed development document.

We calculated limitations for 30-day averages using variability factors derived from long-term self-monitoring data. These data sets contained up to 359 days of sampling for a single plant.

(12a) Comment. The daily maximum limit for cadmium was taken at the 50th percentile. These data do not represent cadmium users. Trace amounts of cadmium are expected even though the manufacturer does not use cadmium. These data should be reexamined and the limit reset at the 90th percentile.

Response: The Agency agrees that the cadmium values in the draft report do not accurately reflect the effluent streams of significant cadmium platers. To correct this deficiency, the Agency requested facilities plating cadmium to supply long-term self-monitoring data. On the basis of this new data, we adjusted the daily maximum for cadmium from 0.04 mg/l in the contractor's report to 1.29 mg/l in this proposed regulation.

(12b) Comment. According to the metal hydroxide solubility curves, lead is not effectively removed by hydroxide precipitation. The only way to meet effluent limits is to prevent it from entering the system, rely on dilution effects, or use recovery. The percentage of lead in the effluent will be a function of both the types of process solutions and the materials handled. The lead data should be examined and the limit reset at the 90 percentile.

Response: Along with our reevaluation of cadmium data (Comment 12a), we similarly reevaluted the effluent lead concentrations. On the basis of industry supplied self-monitoring data, we adjusted the effluent concentrations from a daily maximum of 0.15 mg/l (in the contractor's report) to 0.67 mg/l.

(13) Comment. Sodium borohydride and sodium bicarbonate have been shown to be effective in removing cadmium and lead from wastewaters. Final metal concentrations that are lower than concentrations achievable by conventional hydroxide precipitation have been found.

Response: Although the limitations are based on results from plants using hydroxide precipitation, the choice of treatment technology is left to the discharger. Although the technologies examined in the development document are extensive, they are not meant to represent all feasible technologies.

XVIII. Solicitation of Comments

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address specific deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

EPA particularly solicits additional comments and information on the following issues:

(1) To regulate the broad array of toxic organics, TTO has been selected as the control parameter. However, self-monitoring for TTO is expensive. To minimize the costs, EPA is allowing an alternative to self-monitoring. Plants can identify toxic organics used and certify proper disposal. If monitoring is conducted, it may be limited to only those toxic organics used by the facility. Is this a proper approach to control toxic organics?

(2) Most metal finishing facilities currently do not dump waste toxic organics, i.e., solvent degreasers, into wastewater. With the profitability of reclaim and the availability of compliance by certification, the Agency does not consider the cost of TTO control to be significant. Does any evidence indicate that the cost of this control is significant?

(3) EPA requests data on the performance capability of the new source technology basis for controlling the discharge of cadmium.

(4) The maximum permissible average for thirty consecutive days is based on the 99 percentile for the average of thirty values. A thirty day maximum is consistent with most Effluent Guidelines and Standards, and provides a measure of the long-term treatment performance. However, the Electroplating pretreatment standards are based on four day averages. Should EPA retain the thirty day maximums? Why or why not?

(5) EPA requests comments on whether it should rescind the applicability of the Electroplating PSES (40 CFR Part 413) to captive electroplaters upon the compliance date of the Metal Finishing PSES (40 CFR Part 433).

(6) The compliance date for Electroplating PSES is March 30, 1984 for integrated facilities, and January 28, 1984 for non-integrated facilities. Both Metal Finishing and Electroplating are primarily based on the same technology; precipitation and clarification, with cyanide destruction and hexavalent chromium reduction. Thus today's Metal Finishing Standards should not require extensive modification of treatment equipment installed to meet the Electroplating PSES. Do facilities have sufficient time to comply with Metal Finishing PSES by March 30, 1984?

The regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

List of Subjects

40 CFR Part 413

Electroplating, Metals, Water pollution control, Waste treatment and disposal.

40 CFR Part 433

Metals, Water pollution control.

(Sec. 301, 304, 306, 307 and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95–217)

Dated: August 11, 1982.

John W. Hernandez, Jr.,
Acting Administrator

XIX. Appendixes

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology, under Section 304(b)(4) of the Act.

BMPS—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.

Captive—A facility which owns more than 50% (area basis) of the materials undergoing metal finishing.

Clean Water Act (also "the Act")—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Public Law 95-217).

Development Document—*Development Document for Effluent Limitations, Guidelines, and Standards for the Metal Finishing Point Source Category*, EPA 440-1-80-091-A, June 1980.

Direct discharger—A facility that discharges or may discharge pollutants into waters of the United States.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly owned treatment works.

Job Shop—A facility which owns not more than 50% (area basis) of the materials undergoing metal finishing.

Integrated facility—One that performs electroplating operations (including electroplating, electroless plating, chemical etching and milling, anodizing, coating, and printed circuit board manufacturing) as only one of several operations necessary for manufacture of a product at a single physical location, and has significant quantities of process wastewater from non-electroplating operations. In addition, to quality as "integrated," a facility must combine one or more plant electroplating process wastewater line before or at the point of treatment (or proposed treatment) with one or more plant sewers carrying process wastewater from nonelectroplating manufacturing operations.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards promulgated under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges promulgated under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of direct discharges promulgated under, Sections 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (PL 94-580) of 1976, Amendments to Solid Waste Disposal Act.

TTO—Total Toxic Organics is the summation of all values greater than 10 micrograms per liter for each of the toxic organics.

Appendix B—Pollutants Excluded From Regulation

(1)Toxic Pollutants
Antimony
Arsenic
Asbestos
Beryllium
Mercury
Selenium
Thallium
(2) Conventional Pollutants
BOD
Fecal Coliform

Appendix C—Unit Operations in the Metal Finishing Industry

1. Electroplating
2. Electroless Plating
3. Anodizing
4. Conversion Coating
5. Etching (Chemical Milling)
6. Cleaning
7. Machining
8. Grinding
9. Polishing
10. Tumbling
11. Burnishing
12. Impact Deformation
13. Pressure Deformation
14. Shearing
15. Heat Treating
16. Thermal Cutting
17. Welding
18. Brazing
19. Soldering
20. Flame Spraying
21. Sand Blasting
22. Other Abrasive Jet Machining
23. Electric Discharge Machining
24. Electrochemical Machining
25. Electron Beam Machining
26. Laser Beam Machining
27. Plasma Arc Machining
28. Ultrasonic Machining
29. Sintering
30. Laminating
31. Hot Dip Coating
32. Sputtering
33. Vapor Plating
34. Thermal Infusion
35. Salt Bath Descaling
36. Solvent Degreasing
37. Paint Stripping
38. Painting
39. Electrostatic Painting
40. Electropainting
41. Vacuum Metalizing
42. Assembly
43. Calibration
44. Testing
45. Mechanical Plating

PART 413—ELECTROPLATING POINT SOURCE CATEGORY

For the reasons stated above, EPA proposes to amend Part 413 of 40 CFR, Chapter I as follows:

1. Section 413.01 is amended by revising paragraph (a), as follows:

§ 413.01 Applicability.

(a) This part shall apply to electroplating operations in which metal is electroplated on any basis material and to related metal finishing operations as set forth in the various subparts, whether such operations are conducted in conjunction with electroplating, independently or part of some other operation. The compliance deadline for metals and cyanide at integrated facilities shall be March 30, 1984. The compliance date for metals and cyanide at non-integrated facilities is January 28, 1984. Compliance with TTO for both integrated and non-integrated facilities shall be January 28, 1984.

* * * * *

2. Section 413.02 is amended by adding new paragraph (i), (j), and (k), as follows:

§ 413.02 General definitions.

* * * * *

(i) The term "TTO" shall mean total toxic organics, which is the summation of all values greater than 0.01 milligrams per liter for the following toxic organics:

Acenaphthene
Acrolein
Acrylonitrile
Benzene
Benzidine
Carbon tetrachloride (tetrachloromethane)
Chlorobenzene
1,2,4-trichlorobenzene
Hexachlorobenzene
1,2,-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
Chloroethane
Bis (2-chloroethyl) ether
2-chloroethyl vinyl ether (mixed)
2-chloronaphthalene
2,4,6-trichlorophenol
Parachlorometa cresol
Chloroform (trichloromethane)
2-chlorophenol
1,2-dichlorobenzene
N-nitrosodi-n-propylamine
Pentachlorophenol
Phenol
Bis (2-ethylhexyl) phthalate
Butyl benzyl phthalate
Di-n-butyl phthalate
Di-n-octyl phthalate
Diethyl phthalate
Dimethyl phthalate
1,2-benzanthracene (benzo(a)anthracene)
Benzo(a)pyrene (3,4-benzopyrene)
3,4-Benzofluoranthene (benzo(b)fluoranthene)
11,12-benzofluoranthene (benzo(k)fluoranthene)
Chrysene

Acenaphthylene
Anthracene
1,12-benzoperylene
(benzo(ghi)perylene)
Fluorene
Phenanthrene
1,2,5,6-dibenzanthracene
(dibenzo(a,h)anthracene)
Indeno(1,2,3-cd) pyrene
(2,3-o-phenylene pyrene)
Pyrene
Tetrachloroethylene
Toluene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzidine
1,1-dichloroethylene
1,2-trans-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane
(1,3-dichloropropene)
2,4-dimethylphenol
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Ethylbenzene
Fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
Bis (2-chloroisopropyl) ether
Bis (2-chloroethoxy) methane
Methylene chloride
(dichloromethane)
Methyl chloride
(chloromethane)
Methyl bromide (bromomethane)
Bromoform (tribromomethane)
Dichlorobromomethane
Chlorodibromomethane
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
Naphthalene
Nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
Trichloroethylene
Vinyl chloride (chloroethylene)
Aldrin
Dieldrin
Chlordane (technical mixture and
metabolites)
4,4-DDT
4,4-DDE (p,p-DDX)
4,4-DDD (p,p-TDE)
Alpha-endosulfan
Beta-endosulfan
Endosulfan sulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide
(BHC-hexachlorocyclohexane)
Alpha-BHC
Beta-BHC
Gamma-BHC
Delta-BHC
(PCB-polychlorinated biphenyls)
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
PCB-1221 (Arochlor 1221)
PCB-1232 (Arochlor 1232)
PCB-1248 (Arochlor 1248)
PCB-1260 (Arochlor 1260)
PCB-1016 (Arochlor 1016)
Toxaphene
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

(j) The term "job shop" shall mean a facility which owns not more than 50% (area basis) of the materials undergoing metal finishing.

(k) The term "independent" printed circuit board manufacturer shall mean a facility which manufactures printed circuit boards principally for sale to other companies.

3. Part 413 is further amended by adding § 413.03 as follows:

§ 413.03 Monitoring requirements.

In lieu of monitoring for TTO, the control authority may allow industrial users to make the following certification as a "comment" to the periodic reports required by § 403.12(e): "I certify that, since filing the last periodic report, toxic organic compounds have not entered the wastewater in quantities that will exceed the discharge limits for TTO." In requesting this alternative procedure the industrial user shall specify the toxic organic compounds used; the purposes for which they are used, e.g., solvent degreasing, and paint stripping; and the procedures used (i.e., contract hauling of waste solvents) to prevent excessive wastewater discharge of toxic organics. If monitoring is necessary to measure compliance with the TTO standard, it may be limited to the specific compounds likely to be present.

4. Section 413.14 is amended by adding paragraph (f), as follows:

§ 413.14 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d) and (e) the following limitation shall apply:

SUBPART A—COMMON METALS FACILITIES PSES (MILLIGRAMS PER LITER)

Pollutant or pollutant property	Maximum for any 1 day
TTO	0.58

5. Section 413.24 is amended by adding paragraph (f), as follows:

§ 413.24 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d) and (e) the following limitation shall apply:

SUBPART B—PRECIOUS METAL FACILITIES PSES (MILLIGRAMS PER LITER)

Pollutant or pollutant property	Maximum for any 1 day
TTO	0.58

6. Section 413.44 is amended by adding paragraph (f), as follows:

§ 413.44 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d), and (e) the following limitation shall apply:

SUBPART D—ANODIZING FACILITIES PSES (MILLIGRAMS PER LITER)

Pollutant of pollutant property	Maximum for any 1 day
TTO	0.58

7. Section 413.54 is amended by adding paragraph (f), as follows:

§ 413.54 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d), and (e) the following limitation shall apply:

SUBPART E—COATING FACILITIES PSES (MILLIGRAMS PER LITER)

Pollutant of pollutant property	Maximum for any 1 day
TTO	0.58

8. Section 413.64 is amended by adding paragraph (f), as follows:

§ 413.64 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d), and (e) the following limitation shall apply:

SUBPART F—CHEMICAL ETCHING AND MILLING FACILITIES PSES (MILLIGRAMS PER LITER)

Pollutant of pollutant property	Maximum for any 1 day
TTO	0.58

9. Section 413.74 is amended by adding paragraph (f), as follows:

§ 413.74 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d), and (e) the following limitation shall apply:

SUBPART G—ELECTROLESS PLATING FACILITIES PSES (MILLIGRAMS PER LITER)

Pollutant of pollutant property	Maximum for any 1 day
TTO	0.58

10. Section 413.84 is amended by adding paragraph (f), as follows:

§ 413.84 Pretreatment standards for existing sources.

* * * * *

(f) In addition to paragraph (a), (b), (c), (d) and (e) the following limitation shall apply:

SUBPART H—PRINTED CIRCUIT BOARD FACILITIES PSES (MILLIGRAMS PER LITER 1)

Pollutant or pollutant property	Maximum for any 1 day
TTO	0.58

EPA proposes to add Part 433 to Title 40 of the Code of Federal Regulations to read as follows:

PART 433—METAL FINISHING POINT SOURCE CATEGORY

Subpart A—Metal Finishing Subcategory

Sec.

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1971, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

Subpart A—Metal Finishing Subcategory

§ 433.10 Applicability; description of the metal finishing point source category.

(a) The provisions of this subpart apply to discharge from the following metal finishing operations: Electroplating, Electroless Plating, Anodizing, Conversion Coating, Etching (Chemical Milling), Cleaning, Machining, Grinding, Polishing, Tumbling, Burnishing, Impact Deformation, Pressure Deformation, Shearing, Heat Treating, Thermal Cutting, Welding, Brazing, Soldering, Flame Spraying, Sand Blasting, Other Abrasive Jet Machining, Electric Discharge Machining, Electrochemical Machining, Electron Beam Machining, Laser Beam Machining, Plasma Arc Machining, Ultrasonic Machining, Sintering, Laminating, Hot Dip Coating, Sputtering, Vapor Plating, Thermal Infusion, Salt Bath Descaling, Solvent Degreasing, Paint Stripping, Painting, Electrostatic Painting Electropainting, Vacuum Metalizing, Assembly, Calibration, Testing, and Mechanical Plating.

(b) Operations similar to metal finishing which are specifically excepted from coverage of this Part include: (1) Electrowinning and electrorefining conducted as a part of nonferrous metal smelting and refining (40 CFR 421); (2) Metal surface preparation and conversion coating conducted as a part of coil coating (40 CFR 465); (3) Metal surface preparation and immersion plating or electroless plating conducted as a part of procelain enameling (40 CFR Part 466); (4) electrodeposition of active electrode materials, electroimpregnation, and electroforming conducted as a part of battery manufacturing (40 CFR Part 461); (5) Metallic platemaking and gravure cylinder preparation conducted within printing and publishing facilities; (6) facilities which do not perform at least one of the following: electroplating, electroless plating, anodizing, coating, chemical etching and milling, or printed circuit board manufacture; and (7) existing source job shops and independent printed circuit board manufactures which introduce pollutants into a publically owned treatment works.

(c) The compliance date for BAT shall be no later than July 1, 1984. For PSES the compliance date shall be March 30, 1984. Compliance with the TTO provision of PSES is required by January 28, 1984.

§ 433.11 Specialized definitions.

The definitions set forth in 40 CFR 401 and the chemical analysis methods set forth in 40 CFR 136 are both incorporated here by reference. In addition, the following definitions apply to this part:

(a) The term "T," as in Cyanide, T, shall mean total.

(b) The term "captive" shall mean a facility which owns more than 50% (area basis) of the materials undergoing metal finishing.

(c) The term "job shop" shall mean a facility which owns not more than 50% (area basis) of the materials undergoing metal finishing.

(d) The term "integrated facility" shall mean one that (1) performs electroplating operations (including electroplating, electroless plating, chemical etching and milling, anodizing, coating, and printed circuit board manufacturing) as only one of several operations necessary for manufacture of a product at a single physical location and (2) has significant quantities of process wastewater from non-electroplating manufacturing operations. In addition, to qualify as "integrated" a facility must combine one or more plant electroplating process wastewater lines before or at the point of treatment (or proposed treatment) with one or more plant sewers carrying process wastewater from non-electroplating manufacturing operations.

(e) The term "TTO" shall mean total toxic organics, which is the summation of all values greater than 10 micrograms per liter for the following toxic organics:

Acenaphthene
Acrolein
Acrylonitrile
Benzene
Benzidine
Carbon tetrachloride (tetrachloromethane)
Chlorobenzene
1,2,4-trichlorobenzene
Hexachlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
Hexachloroethane
1,1-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
Chloroethane
Bis (2-chlorethyl) ether
2-chloroethyl vinyl ether (mixed)
N-nitrosodi-n-propylamine
Pentachlorophenol
Phenol
Bis (2-ethylhexyl) phthalate
Butyl benzyl phthalate
Di-n-butyl phthalate
Di-n-octyl phthalate
Diethyl phthalate
Dimethyl phthalate
1,2-benzanthracene (benzo(a)anthracene)
Benzo(a)pyrene (3,4-benzopyrene)
3,4-Benzofluoranthene (benzo(b)fluoranthene)
11,12-benzofluoranthene (benzo(k)fluoranthene)
Chrysene

Acenaphthylene
Anthracene
1,12-benzoperylene (benzo(ghi)perylene)
Fluorene
2-chloronaphthalene
2,4,6-trichlorophenol
Parachlorometa cresol
Chloroform (trichloromethane)
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3-dichlorobenzidine
1,1-dichloroethylene
1,2-trans-dichloroethylene
2,4-dichlorophenol
1,2-dichloropropane(1,3-dichloropropene)
2,4-dimethylphenol
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
Ethylbenzene
Fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
Bis (2-chloroisopropyl) ether
Bis (2-chloroethoxy) methane
Methylene chloride (dichloromethane)
Methyl chloride (chloromethane)
Methyl bromide (bromomethane)
Bromoform (tribromomethane)
Dichlorobromomethane
Chlorodibromomethane
Hexachlorobutadiene
Hexachlorocyclopentadiene
Isophorone
Naphthalene
Nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
Phenanthrene
1,2,5,6-dibenzanthracene (dibenzo(a,h) anthracene
Indeno (1,2,3-cd) pyrene (2,3-o-phenylene pyrene)
Pyrene
Tetrachloroethylene
Toluene
Trichloroethylene
Vinyl chloride (chloroethylene)
Aldrin
Dieldrin
Chlordane (technical mixture and metabolites)
4,4-DDT
4,4-DDE (p,p-DDX)
4,4-DDD (p,p-TDE)
Alpha-endosulfan
Beta-endosulfan
Endosulfan sulfate
Endrin
Endrin aldehyde
Heptachlor
Heptachlor epoxide (BHC-hexachlorocyclohexane)
Alpha-BHC
Beta-BHC
Gamma-BHC
Delta-BHC (PCB-polychlorinated biphenyls)
PCB-1242 (Arochlor 1242)
PCB-1254 (Arochlor 1254)
PCB-1221 (Arochlor 1221)
PCB-1232 (Arochlor 1232)
PCB-1248 (Arochlor 1248)
PCB-1260 (Arochlor 1260)
PCB-1016 (Arochlor 1016)
Toxaphene
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

§ 433.12 Monitoring requirements.

(a) In lieu of monitoring for TTO, the permit authority may allow direct dischargers to include the following certification as a "comment" on the discharge monitoring report required by § 122.62(i): "I certify that, since filing the last discharge monitoring report, toxic organic compounds have not entered the wastewater in quantities that will exceed the discharge limits for TTO." In requesting this alternative procedure the discharger shall specify the toxic organic compound used and the procedures used (i.e., contract hauling of waste solvents) to prevent excessive wastewater discharge of toxic organics. If monitoring is necessary to measure compliance with the TTO standard, it may be limited to the specific compounds likely to be present.

(b) In lieu of monitoring for TTO, the control authority may allow industrial users to make the following certification as a "comment" to the periodic reports required by § 403.12(e): "I certify that, since filing the last periodic report, toxic organic compounds have not entered the wastewater in quantities that will exceed the discharge limits for TTO." In requesting this alternative procedure the industrial user shall specify the toxic organic compounds used; the purposes for which they are used, e.g., solvent degreasing, and paint stripping; and the procedures used (i.e., contract hauling of waste solvents) to prevent excessive wastewater discharge of toxic organics. If monitoring is necessary to measure compliance with the TTO standard, it may be limited to the specific compounds likely to be present.

(c) Self-monitoring for cyanide must be conducted after cyanide treatment and before dilution with other streams. Alternatively, samples may be taken of the final effluent, if the plant limitations are adjusted based on the dilution ratio of the cyanide waste stream flow to the effluent flow.

§ 433.13 Effluent limitations representing the degree of effluent reduction attainable by applying the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by applying the best practicable control technology currently available (BPT):

BPT EFFLUENT LIMITATIONS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Cadmium (T)	1.29	0.27
Chromium (T)	2.87	0.80
Copper (T)	3.72	1.09
Lead (T)	0.67	0.23
Nickel (T)	3.51	1.26
Silver (T)	0.44	0.13
Zinc (T)	2.64	0.80
Cyanide (T)	1.30	0.28
TTO	0.58	
Oil and grease	42	17
TSS	61	23
pH	(1)	

[1] Within 6.0 to 9.0.

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§ 433.14 Effluent limitations representing the degree of effluent reduction attainable by applying the best available technology economically achievable (BAT).

(a) Except as provided in 40 CFR 125.30–32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by applying the best available technology economically achievable (BAT):

BAT EFFLUENT LIMITATIONS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Cadmium (T)	1.29	0.27
Chromium (T)	2.87	0.80
Copper (T)	3.72	1.09
Lead (T)	0.67	0.23
Nickel (T)	3.51	1.26
Silver (T)	0.44	0.13
Zinc (T)	2.64	0.80
Cyanide (T)	1.30	0.28
TTO	0.58	

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§ 433.15 Pretreatment standards for existing sources (PSES).

(a) Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources (PSES):

PSES FOR ALL PLANTS EXCEPT JOB SHOPS AND PRINTED CIRCUIT BOARD MANUFACTURERS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Cadmium (T)	1.29	0.27
Chromium (T)	2.87	0.80
Copper (T)	3.72	1.09
Lead (T)	0.67	0.23
Nickel (T)	3.51	1.26
Silver (T)	0.44	0.13
Zinc (T)	2.64	0.80
Cyanide (T)	1.30	0.28
TTO	0.58	

(b) No user introducing wastewater pollutants into a publicly owned treatment works under the provisions of this subpart shall augment the use of process wastewater as a partial or total substitute for adequate treatment to achieve compliance with this standard.

§ 433.16 New source performance standards (NSPS).

(a) Any new source subject to this subpart must achieve the following performance standards:

NSPS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Cadmium (T)	0.064	0.018
Chromium (T)	2.87	0.80
Copper (T)	3.72	1.09
Lead (T)	0.67	0.23
Nickel (T)	3.51	1.26
Silver (T)	0.44	0.13
Zinc (T)	2.64	0.80
Cyanide (T)	1.30	0.28
TTO	0.58	
Oil and grease	42	17
TSS	61	23
pH	(1)	

[1] Within 6.0 to 9.00.

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§433.17 Pretreatment standards for new sources (PSNS).

(a) Except as provided in 40 CFR 403.7, any new source subject to this subpart that introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS):

PSNS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Cadmium (T)	0.064	0.018
Chromium (T)	2.87	0.80
Copper (T)	3.72	1.09
Lead (T)	0.67	0.23
Nickel (T)	3.51	1.26
Silver (T)	0.44	0.13
Zinc (T)	2.64	0.80
Cyanide (T)	1.30	0.28
TTO	0.58	

(b) No user subject to the provisions of this subpart shall augment the use of process wastewater or otherwise dilute the wastewater as a partial or total substitute for adequate treatment to achieve compliance with this limitation.

§ 433.18 [Reserved]

[FR Doc. 82-23723 Filed 8-30-82; 8:45 am]
BILLING CODE 6560-50-M

federal register

Tuesday
August 31, 1982

Part III

Department of Health and Human Services

Food and Drug Administration

Antacid Drug Products for Over-the-Counter Human Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 5 and 331

[Docket No. 79N-0433]

Delegations of Authority and Organization; Antacid Drug Products for Over-the-Counter Human Use; Amendment of a Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revising the administration procedures by which persons might request and be granted a modification of the in vitro test for over-the-counter (OTC) antacid drug products. This document also contains a redelegation of authority to FDA's National Center for Drugs and Biologics (NCDB) to grant or deny petitions for a test modification. This action is taken to make these procedures conform to the agency's current administrative regulations and to clarify the procedures for submitting such a request.

EFFECTIVE DATE: September 30, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 27, 1980 (45 FR 35349), FDA proposed to amend the OTC antacid monograph (21 CFR Part 331) to update and to clarify administrative procedures by which persons might request and be granted a modification of the in vitro testing procedures for OTC antacid drug products. Interested persons were invited to file written comments regarding this proposal by July 28, 1980. No comments were received in response to the proposal. Therefore, the final regulation is being issued in the form in which it was proposed. Also, as mentioned in the proposal, FDA is making a conforming amendment to the delegation of authority regulation.

Administrative Procedures for Requests for Modification of the In Vitro Test for OTC Antacid Drug Products

As stated in the May 27, 1980 proposal, the agency has determined that any request for, and the data in support of, proposed modifications of the in vitro testing procedures for OTC antacid drug products should be submitted to the Dockets Management Branch (HFA-305) in the form of a citizen petition under the procedures established in the agency's general administrative practices and procedures regulations (§ 10.30 (21 CFR 10.30)). Consistent with the procedures under § 10.30, the agency will notify the petitioner in writing whether the petition is granted or denied. This new procedure is in keeping with the public nature of the OTC drug review. Similarly, any decisions regarding such a petition will be placed on public display in the Dockets Management Branch. Section 331.29 of the monograph for OTC antacid drug products is being amended to clarify this procedure.

In the May 27, 1980 proposal, the agency also stated its intention to redelegate the authority to grant or deny petitions seeking modification of the in vitro testing procedures in 21 CFR Part 331 from the Commissioner of Food and Drugs to the Director and Deputy Director of the Division of OTC Drug Evaluation in the Bureau of Drugs. (In a subsequent notice published in the **Federal Register** of June 22, 1982 (47 FR 26913), FDA announced the merger of the Bureaus of Drugs and Biologics into the National Center for Drugs and Biologics (NCDB). Under this merger, the former Bureau of Drugs is now a part of NCDB). Section 5.31 (21 CFR 5.31) is revised to include the proposed redelegation as well as a redelegation to the Director NCDB, the Director, Deputy Director, and Associate Director for Drug Monographs, Office of Drugs, NCDB. Further redelegation of the authority delegated is not authorized.

The agency has examined the economic consequences of this rulemaking and has determined that it does not require a Regulatory Impact Analysis as specified in Executive Order 12291. This final rule does not impose any new burden on any person, because it merely updates and clarifies the administrative procedures by which persons might request a modification of the in vitro testing procedures for OTC antacid drug products. Therefore, the agency concludes that the final rule is not a "major" rule as defined in section 1(b) of Executive Order 12291. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

List of Subjects

21 CFR Part 5

Authority delegations (Government agencies), Organization and functions (Government agencies).

21 CFR Part 331

OTC drugs, Antacids.

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041-1042 as amended, 1050-1053 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), Parts 5 and 331 are amended as follows:

1. Part 5 is amended by redesignating the existing text as paragraph (a) (1) and (2) and adding new paragraph (b); as revised, § 5.31 reads as follows:

§ 5.31 Petitions under Part 10.

(a) The following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter for a stay of an effective date in § 201.59 of this chapter for compliance with certain labeling requirements for human prescription drugs and to amend any effective date established under § 201.59.

(1) The Director of the National Center for Drugs and Biologics (NCDB).

(2) For drugs assigned to their respective office, the Director and Deputy Director of the Office of New Drug Evaluation and the Director and Deputy Director of the Office of Biologics, NCDB.

(b) The Director, NCDB, the Director, Deputy Director, the Associate Director for Drug Monographs, and the Director and Deputy Director of the Division of OTC Drug Evaluation of the Office of Drugs, NCDB are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter requesting in vitro test modifications under § 331.29 of this chapter.

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

2. Part 331 is amended by revising § 331.29 to read as follows:

§ 331.29 Test modifications.

The formulation or mode of administration of certain products may require modification of this in vitro test. Any proposed modification and the data to support it shall be submitted as a petition under the rules established in § 10.30 of this chapter. All information submitted will be subject to the

disclosure rules in Part 20 of this chapter.

(Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704))

Effective date: This regulation is effective September 30, 1982.

Dated: August 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-23777 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 331

[Docket No. 78N-0433]

Antacid Drug Products for Over-the-Counter Human Use; Labeling

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the labeling provisions for over-the-counter (OTC) antacid drug products to permit the use of the term "upset stomach." The Food and Drug Administration (FDA) is taking this action because it has concluded that consumers use the term "upset stomach" to describe symptoms associated with gastric hyperacidity. In addition, FDA is amending the monograph for OTC antacid drug products to include a "Statement of Identity" paragraph. The agency is taking this action after considering public comments on the proposed rule. This final rule is part of FDA's ongoing review of OTC drug products.

EFFECTIVE DATE: The effective date of the regulation is September 30, 1982. OTC antacid drug products complying with the labeling proposed in the September 21, 1979 proposal may continue to be introduced into interstate commerce until August 31, 1983.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, National Center for Drugs and Biologics (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1979 (44 FR 54731), FDA proposed to amend the antacid monograph (21 CFR Part 331) to permit OTC antacid drug products to be labeled for the relief of upset stomach associated with heartburn, sour stomach, and acid indigestion. The agency also proposed to amend § 331.30 (21 CFR 331.30) to include a "Statement of Identity" paragraph to conform with the format of other recently proposed OTC drug monographs.

Interested persons were invited to file written comments regarding this proposal on or before November 20, 1979. In response to the proposed rule, comments were received from three manufacturers and one trade association.

This final rule contains the agency's decision to amend the labeling requirements for OTC antacid drug products to permit antacid drug products to be labeled for relief of upset stomach associated with heartburn, sour stomach, and acid indigestion, and to amend § 331.30 to include a "Statement of Identity" paragraph.

A. The Agency's Conclusions on the Comments

1. Several comments agreed with the agency's proposal to permit OTC antacids to be labeled "for the relief of upset stomach associated with heartburn, sour stomach, and/or acid indigestion." One comment added that the proposed amendment would make the approved indications more comprehensible to consumers.

2. A comment contended that OTC monographs issued under the OTC drug review process are interpretive, as opposed to substantive, regulations. The comment referred to previous comments regarding this issue, dated March 4, 1972, on the Proposed Procedural Regulations Governing the OTC Review, and comments dated June 4, 1973, on the Proposed Antacid Monograph.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464), and in paragraph 3 of the preamble to the tentative final order for antacid products, published in the **Federal Register** of November 12, 1973 (38 FR 31260), and FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F. 2d 688, 696–98 (2d Cir. 1975); *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F. 2d 887 (2d Cir. 1981).

3. One comment argued that labeling terminology which is truthful, accurate, nonmisleading, and intelligible to the consumer may not legally be prohibited by the promulgation of OTC drug monographs purporting to contain exclusive lists from which OTC labeling pertaining to indications for use must be drawn. The comment also incorporated by reference similar comments submitted on November 22, 1978, on the Proposed Establishment of a Monograph for OTC Sunscreen Drug Products.

Since the inception of the OTC drug review, the agency has maintained that a monograph describing the conditions under which an OTC drug will be generally recognized as safe and effective and not misbranded must include both specific active ingredients and specific labeling. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency has never contended, however, that any list of terms developed during the course of the review literally exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or, as in the case of the present document, through petitions to amend monographs under 21 CFR 330.10(a)(12).

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. To assist the agency in resolving this issue, FDA plans to conduct an open public forum on September 29, 1982 where all interested parties can present their views. The forum will be a legislative type administrative hearing under 21 CFR Part 15 that will be held in response to a request for a hearing on the tentative final monograph for nighttime sleep-aids (published in the **Federal Register** of June 13, 1978; 43 FR 25544). Details of the hearing were announced in a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002). In proposed, tentative final, and final monographs (including amendments to final monographs) that are issued in the meantime, the agency will continue to state its longstanding policy.

4. A comment stated that proposed § 331.30(b) (1) and (2) could be interpreted to require literal repetition of the terms "heartburn," "acid indigestion," and/or "sour stomach" when used in connection with the term

"upset stomach," even if those terms are also used alone. As an example, the comment suggested alternative labeling such as "For the relief of heartburn, acid indigestion, sour stomach, and upset stomach associated with these symptoms." Another comment noted that many OTC antacids are marketed in rolls, where label space is already at a minimum. The comment requested that the proposed rule be revised in order to abbreviate the indications statement, and proposed the following labeling: "For relief of (optional, any or all of the following) heartburn, sour stomach, acid indigestion, and/or associated upset stomach."

The agency agrees that the indications statement as proposed in § 331.30(b) could be repetitious and thus require more label space than is necessary to convey the intended information. Accordingly, proposed § 331.30(b) is revised as follows:

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the following: "For the relief of" (optional, any or all of the following:) "heartburn," "sour stomach," and/or "acid indigestion" (which may be followed by the optional statement:) "and upset stomach associated with" (optional, as appropriate) "this symptom" or "these symptoms."

5. A comment stated that the data used by FDA in making the determination that the upset stomach indication could be allowed also demonstrate that consumers do use words other than those specifically defined by the OTC Antacid Panel to describe symptoms that can be relieved by antacids. The comment argued that these data provide a basis upon which FDA could reasonably adopt the position that words of similar meaning to the consumer can be used in addition to those words specifically defined by the OTC panels as indications for OTC drug products. Accordingly, the comment requested that the following additional indications for OTC antacids be accepted by FDA and be incorporated into the monograph on the basis that they are similar and not meaningfully different to the consumer than those labeling indications currently allowed:

a. "Stomach pain associated with (acid indigestion, heartburn, and/or sour stomach)";

b. "Stomach ache associated with (acid indigestion, heartburn, and/or sour stomach)";

c. "Stomach distress associated with (acid indigestion, heartburn, and/or sour stomach)";

d. "Gastric upset associated with (acid indigestion, heartburn, and/or sour stomach)";

e. "Queasy stomach associated with (acid indigestion, heartburn, and/or sour stomach)";

f. "Nausea associated with (acid indigestion, heartburn, and/or sour stomach)."

The agency notes that the comment submitted no additional data to support its position. As indicated in the Warner-Lambert Co. and the Miles Laboratories, Inc., petitions (discussed in the preamble to the September 21, 1979 proposal), and as accepted by the agency, the term "upset stomach" is a general term used by consumers to describe clusters of symptoms. Frequently, specific symptoms of hyperacidity such as acid indigestion, heartburn, or sour stomach are included among the symptoms by which consumers describe their "upset stomach." By proposing this phrase in antacid labeling, the agency intended the "associated with" language to inform the consumer that the antacid is effective for "upset stomach" insofar as specific symptoms of hyperacidity such as acid indigestion, heartburn, or sour stomach are part of that cluster of symptoms. FDA is not convinced that antacid drug products are effective in relieving all the specific symptoms of what a consumer might describe generally as an upset stomach. On this basis, the agency considers that three of the terms the comment proposes for inclusion in the monograph (stomach pain, stomach ache, and nausea) are specific terms that relate to distinct and definable conditions, separate from the cluster of symptoms that a consumer may associate with the relief of hyperacidity (acid indigestion, heartburn, and/or sour stomach). In addition, the terms "stomach pain" and "stomach ache" imply that the drug provides an analgesic effect, i.e., relieves pain, and antacids do not have this pharmacologic action. The agency believes that two of the terms ("stomach distress" and "gastric upset") may denote to some people a cluster of symptoms associated with allowable antacid indications, but it does not believe that these terms are used frequently enough by a sufficient number of consumers to be accurate and meaningful to consumers generally. In fact, none of the subjects in the studies described in either the Warner-Lambert Co. or the Miles Laboratories, Inc., petitions even specifically mentioned either term. In addition, the agency placed the terms "nausea" and "stomach distress" in Category II and antacid claims. (See the **Federal Register** notice of September 5, 1978 (43 FR 39427).) The final term ("queasy stomach") proposed by the comment denotes a group of symptoms somewhat similar to upset stomach, but it is a term also closely associated with the term "nausea." The agency notes that, in the Warner-Lambert Co. petition, the term "queasy stomach" was included with terms used to describe nausea and, in this context, may be closely associated with a specific definable condition. The agency believes that the terms "queasy stomach" and "nausea" may be more appropriately addressed in the rulemaking for OTC antiemetic drug products. Moreover, on page 54732 of the September 21, 1979 proposal the agency referred the review of ingredients for the relief of gastrointestinal distress from causes other than gastric hyperacidity to the Advisory Review Panel on OTC Miscellaneous Internal Drug Products. For the reasons explained above, the agency has determined that none of the six terms requested by the comment may be included in the antacid monograph.

6. A comment stated that the Miles Laboratories, Inc., and the Warner-Lambert Co. data, which the agency used to establish that consumers use one or more of the three approved antacid claims ("heartburn," "sour stomach," or "acid indigestion") to describe their "upset stomach," also clearly indicate that consumers use the term "nausea" to describe their "upset stomach." The comment argued that, based on the evidence reviewed by FDA and the fact that the agency has accepted the use of the "upset stomach associated with * * *" claims for antacid drug products, FDA must act consistently and recognize the claim for "upset stomach associated with nausea (and queasiness)" in related rulemaking proceedings, particularly in the antiemetic drug products final monograph.

The comment has not requested any specific action regarding the antacid final monograph (21 CFR Part 331). The agency is reviewing and will address the comment's request for an "upset stomach associated with nausea (and queasiness)" claim in the Antiemetic Drug Products Final Order (21 CFR Part 336), which will be published in a future issue of the **Federal Register.**

7. A comment stated that manufacturers should be permitted to submit data to the Miscellaneous Internal Panel in support of those claims which may be included in the upset stomach syndrome, but which do not

clearly fall within the purview of the antacid or antiemetic drug monographs.

Manufacturers have had an opportunity to submit such data to the Miscellaneous Internal Panel. In the September 21, 1979 proposal (44 FR 54731) to amend the antacid monograph to permit the "upset stomach" claim, the agency noted that terms such as "heartburn" may also be used by consumers to describe gastrointestinal distress resulting from other causes, such as overindulgence in food and drink. As the agency stated in the proposal (44 FR 54731), the review of ingredients for the relief of gastrointestinal distress from causes other than gastric hyperacidity was referred to the Miscellaneous Internal Panel. That Panel's review included the data in the Miles Laboratories, Inc., petition and other data. Accordingly, the agency will defer its decision regarding the use of the "upset stomach" claim for categories of OTC drug products under review by the Miscellaneous Internal Panel until that Panel's conclusions are published in the **Federal Register.**

8. A comment stated that "the manner in which FDA is proceeding on the upset stomach claims * * * is confusing and * * * the agency (should) clarify its position in the final order on this proposal." The comment went on to argue that FDA "must address the pending reviews of the other components of the upset stomach claim for antiemetic drug products and other digestive relief products scheduled for review by the Miscellaneous Internal Drug Products Panel." The comment cited case law and a **Federal Register** notice concerning the use of descriptive phrases in antacid labeling in support of its position that the other "upset stomach associated with * * *" claims must be addressed under this final order.

The agency has explained in previous responses to comments how the upset stomach claim will be dealt with in the relevant rulemaking proceedings. The comment raises issues about claims that are not proposed for use under the antacid monograph. Although unnecessary, a response to the arguments made in the comment follows.

The **Federal Register** notice cited by the comment did not permit manufacturers to include new indications for use in antacid labeling. Instead, it allowed the use of descriptive phrases or adjectives, such as "sparkling," which had no bearing on the therapeutic action or effect of the antacid. The document is thus irrelevant to a rule permitting an additional therapeutic labeling claim.

The comment also contended that "as a matter of law, FDA's decision to permit the immediate use of the indication 'upset stomach associated with heartburn, sour stomach, acid indigestion,' can only mean that FDA views the action to be nonsubstantial." The comment cited the case of *American College of Neuropsychopharmacology* v. *FDA* (No. 75–1187, D.D.C., 1975) as support for this position. That case is not applicable to the "upset stomach" proposed rule. The case held that FDA could not publish certain procedural regulations as a final rule without first proposing them. Here, the agency has proceeded by way of a proposal to amend the OTC antacid monograph. That FDA allowed the use of the upset stomach indication prior to amendment of the final monograph was the product of the agency's policy of allowing Category I labeling recommended in a panel report or tentative final monograph to be used prior to promulgation of a final monograph, subject to the possibility that FDA may change the labeling as a result of new data or comments filed in response to the proposal or tentative final monograph. This policy is justified by FDA's belief that such labeling changes are beneficial to the consumer and does not signify a judgement that such actions are "nonsubstantial."

As justification for its position that "the use of the term 'upset stomach' associated with other subsets of the * * * syndrome must be specifically permitted in the (antiemetic) final order, pending appropriate review," the comment relied on *Rhodia, Inc., Hess & Clark Division* v. *FDA*, 608 F. 2d 1376 (D. C. Cir. 1979). The cited case states that, once FDA channels its discretion in a certain manner, it must follow a consistent course or articulate reasons for departing from it. FDA agrees with that principle and is applying it here by considering whether to permit the term "upset stomach" associated with other components of the upset stomach syndrome in the antiemetic and miscellaneous internal drug rulemaking proceedings. In the antacid proceeding, antacids have not been shown to relieve components of the upset stomach syndrome other than those for which labeling has been specified in the antacid monograph.

B. The Agency's Final Conclusions on OTC Labeling of Antacid Drug Products

Based on the available evidence and the comments received by the agency during the comment period, the agency is amending the OTC antacid monograph to permit antacids to be labeled "for the relief of" (optional, any or all of the following:) "heartburn," "sour stomach," and/or "acid indigestion" (which may be followed by the optional statement:) "and upset stomach associated with" (optional, as appropriate) "this symptom," or "these symptoms."

In the September 21, 1979 proposal the agency stated that manufacturers of OTC antacid drug products may adopt the proposed labeling as of the date of publication of the proposal, subject to the possibility that the FDA may change its position or alter the wording of the claim as a result of comments filed in response to the proposal. As noted above, the agency has changed the wording of § 331.30(b). Because FDA allowed the proposed claim to be used, the agency advises that such labeling may continue to be used after the date of publication of this final rule. The agency concludes that manufacturers can, within a 12-month period ending on August 31, 1983, use up existing labeling that complies with the September 21, 1979 proposal. After August 31, 1983, any OTC antacid drug product initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

The agency received no comments in regard to the proposal to amend § 331.30 to include a "Statement of Identity" paragraph that conforms with the format of other recently proposed OTC drug monographs. Therefore, § 331.30 is amended to incorporate the proposed paragraph.

The agency has examined the economic consequences of this rulemaking and has determined that it does not require a Regulatory Impact Analysis as specified in Executive Order 12291. The final rule allows manufacturers the option to expand the labeling previously identifed in the OTC antacid drug products final monograph (21 CFR Part 331). If manufacturers choose not to exercise the option, this rule would have no effect. If manufacturers choose to exercise the option and expand the labeling of OTC antacid drug products, this rule would not precipitate any immediate effects; i.e., stocks of existing labeling could be used until manufacturers determine an appropriate time for relabeling. In addition, according to the September 21, 1979 proposal, the agency stated that manufacturers of OTC antacid drug products could adopt the proposed labeling subject to the possibility that FDA may change its position or alter the wording of the proposed labeling in the final rule. For manufacturers who did not adopt the proposed labeling, this

rule has no effect. For manufacturers who adopted the proposed labeling, FDA advises that these manufacturers may continue to use existing labeling for a period of 12 months after the date of publication of this final rule. Therefore the agency concludes that the final rule is not a "major" rule as defined in section 1(b) of Executive Order 12291. The requirement for a regulatory flexibility analysis under the Regulatory Flexibility Act does not apply to this final rule because the proposed rule was issued prior to January 1, 1981, and is therefore exempt.

List of Subjects in Part 331

OTC drugs, Antacids.

PART 331—ANTACID DRUG PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701m 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21U.S.C. 321(p), 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), Part 331 of Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations is amended in § 331.30 by revising paragraph (a); redesignating existing paragraphs (b), (c), (d), and (e) as (c), (d), (e), and (f), respectively; and adding new paragraph (b) to read as follows:

§ 331.30 Labeling of antacid products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as an "antacid."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to the following: "For the relief of" (optional, any or all of the following:) "heartburn," "sour stomach," and/or "acid indigestion" (which may be followed by the optional statement:) "and upset stomach associated with" (optional, as appropriate) "this symptom" or "these symptoms."

* * * * *

Effective date: This regulation is effective September 30, 1982.

(Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended) (5 U.S.C. 553, 554, 702, 703, 704))

Dated: August 9, 1982.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

[FR Doc. 82-23776 Filed 8-30-82; 8:45 am]

BILLING CODE 4160-01-M

federal register

Tuesday
August 31, 1982

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Procedures for Regulatory Program and Small Operator Assistance Program Financial Assistance

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 725 and 735

Procedures for Regulatory Program and Small Operator Assistance Program Financial Assistance

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining is amending 30 CFR Parts 725 and 735 which set forth the procedures for the submission, review, approval or disapproval, monitoring and reporting of financial assistance to the States for grants to implement the initial regulatory program, the permanent regulatory program and the Small Operator Assistance Program (SOAP). OSM is finalizing these revisions today in order to comply fully with directives of the Office of Management and Budget (OMB), to improve financial accountability of the expenditure of tax dollars, and to make modifications to improve the efficiency of the program based on experience over the past four years.

EFFECTIVE DATE: September 30, 1982.

FOR FURTHER INFORMATION CONTACT: Gene E. Krueger, Chief, Branch of Grants Management Program Operations and Inspection, Office of Surface Mining, Room 214, South Interior Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–5843.

SUPPLEMENTARY INFORMATION:

1. Public Participation

On September 21, 1981, (46 FR 46744–46748) the Secretary proposed rules to amend 30 CFR 725 and 735 to revise existing regulations to be consistent with procedures specified in the OMB Circular No. A–102 on "Uniform administrative requirements for grants-in-aid to States and local governments" and OMB's recommended practices. The proposed amendments to Parts 725 and 735 also reflect experience OSM has gained while administering grant programs during the past four years.

The grants assist States with development, administration and enforcement of State regulatory programs to implement the Surface Mining Control and Reclamation Act of 1977. These grants also support SOAP and cooperative agreements for State regulation of coal mining activities on Federal lands.

State comments were solicited on various changes to grant procedures at informal meetings held by OSM around the country during 1980 and 1981. Revisions suggested by the States were considered in drafting the proposed procedures.

Public comments were invited for 30 days ending October 21, 1981, and a public hearing was held in Washington, D.C. on October 13, 1981.

No testimony was offered at the public hearing. Five written comments were received and have been considered in preparing this final rule. Copies of all comments received are on file in: Administrative Record (SPA–07), Office of Surface Mining, U.S. Department of the Interior, Room 5315, 1100 L Street NW., Washington, D.C. 20005.

2. Background

On December 13, 1977, OSM published in the **Federal Register** (42 FR 62704–62710) its policies and procedures for providing financial assistance to States for enforcing the initial regulatory program, developing State program submissions, administering and enforcing State regulatory programs (including SOAP), and administering cooperative agreements for State regulation of surface coal mining and reclamation operations on Federal lands. Minor changes were made to these regulations on January 14, 1980 (45 FR 2804), and May 23, 1980 (45 FR 34879).

OSM has revised the previous grant application and reporting requirements and made several minor changes clarifying portions of the regulations. The previous regulations did not fully comply with OMB Circular No. A–102, "Uniform administrative requirements for grants-in-aid to State and local governments."

3. Scope of Rule

The final rules revise the regulations to be consistent with the procedures specified in OMB's circular and with practices recommended by OMB. Also, in administering the grant programs over the past four years, OSM determined the need to revise certain regulations to clarify requirements or to improve OSM's ability to insure that grant funds are utilized for the authorized purposes. The final rules are substantially the same as proposed. Changes made are noted below in the discussion.

Section 725.4 Responsibility.

Sections 725.4(b) and 735.4(b) of the previous regulations delegated responsibility to the Regional Director for the review and approval of grant applications. As revised, these Sections provide that the "Director or his authorized designee" will be responsible for the review and approval of grants. Removal of the explicit reference to the "Regional Director" in these two Sections and elsewhere throughout Parts 725 and 735 is necessary as a result of OSM's reorganization which calls for the elimination of Regional Director positions. However, for as long as any of the regional offices remain in existence, the Regional Director shall be the "authorized designee" of the Director to receive, review and approve grants.

Section 725.10 Information Collection.

The Office of Management and Budget (OMB) approval of information collection and retention requirements in 30 CFR 725.15, 725.23(a) and 725.25 was identified in "notes" at the introduction to 30 CFR Part 725. OSM will delete these "notes" and codify the OMB approvals under new sections 10 in each of those Parts that contain information collection requirements. The information required by 30 CFR Part 725 will be used by OSM's Headquarters and State offices in administering, evaluating and auditing State reimbursement grants during the Initial Regulatory Program to ensure that the requirements of OMB Circular A–102 and the Surface Mining Control and Reclamation Act are met. The information required by 30 CFR Part 725 is mandatory.

Section 725.14 Grant periods.

In the first sentence of this Section and in corresponding § 735.17 the word "normally" has been inserted between the words "shall" and "approve." At the end of the second sentence the words "amendments to the existing grant" have been added. These revisions are in recognition of the occasional need to extend the grant period beyond one year. While OSM does not anticipate that deviation from the one year grant period will be necessary in many cases, situations may occur where an extension is warranted. For example, a State that has encountered unavoidable delays in preparing its application package for a continuation grant may need an extension of the existing grant period in order to avoid an interruption in its funding.

Section 725.15 Grant application procedures.

Sections 725.15(a) and corresponding § 735.18(a) have been revised by redefining the grant application submission deadline for the second and successive grants as "sixty days prior to the beginning of the intended grant

period, or as soon thereafter as possible".

The previous language defined the application deadline as September 1 of each year. Based on experience, flexibility in application procedures is needed to permit the grant period to be defined by the expiration of the current grant rather than by a fixed point in time.

In § 725.15(b) and in corresponding § 735.18(b), the reference to the "short form application for non-construction programs" has been replaced with a reference to "application forms and procedures specified by OSM in accordance with Office of Management and Budget (OMB) Circular No. A–102, "Uniform administrative requirements for grants-in-aid to State and local governments." The short form application does not fully comply with OMB requirements. Meetings were held by OSM to present the proposed application procedures to all States that would be affected. States were invited to comment on the proposals and revisions suggested by them were given consideration in drafting the material submitted to OMB for approval. Specific written guidance will be provided to States on the completion and use of the application forms. In addition, OSM will meet with interested States to explain further the forms.

The new forms will be applicable to the first grant application submitted by a State after the effective date of this rule.

OSM's revised grant application forms and procedures are a modification of those prescribed by OMB Circular No. A–102. The new application package (Standard Form 424, Application coversheet; OSM–50 A and B, Project Approval Information; OSM–47 or 48, Budget Information; OSM–51, Program Narrative Statement; and OSM–51 A, B, or C, Quantitative Program Management Information) supersedes that previously used to submit budget data and justify proposed expenditures. The primary difference is the requirement that applicants tie an agency's estimated costs for personnel, travel, equipment and other object classes to program functions (e.g. permitting, inspection and enforcement, and SOAP). OSM made the rule changes to comply with OMB requirements, to enable OSM to implement properly its management responsibilities, and to allocate grant funds more judiciously.

In the introductory paragraph of § 725.15(c) and of corresponding §§ 735.18(c), and 735.18(d) the words "Part III of the standard application" have been deleted, for they refer to the short form application. As explained in the paragraph above, use of the short form will be discontinued.

Section 725.15(c)(7) and corresponding § 735.18(d)(2) have been amended by inserting $500 instead of $1000. The previous regulation required the grant applicant to supply a breakdown of equipment with a unit acquisition cost of over $1000 proposed to be purchased with grant funds. The change from $1000 to $500 was needed to comply fully with the requirements of OSM policy approved by OMB concerning the definition of nonexpendable personal property.

Section 725.15(d) provides for a discretionary waiver of the information requirements of paragraphs (c)(2), (c)(3) and (c)(4) of § 725.15 in applications for second or third reimbursement grants. The final rule amends the previous regulations by inserting "(c)(1)" after the word "paragraphs" and before "(c)(2)." This insertion corrects an inadvertent omission in the drafting of the original rule. Also, in the revised rule "following grants" replaces "second and third grants." Several States have applied for their fourth reimbursement grant as court suits or other factors have delayed implementation of their permanent programs for periods longer than OSM anticipated when promulgating the original rule.

Section 725.17 Grant amendments.

The introductory sentences of § 725.17(b) and of corresponding § 735.20(b) were amended by deletion of the words "by certified mail, return receipt requested." OSM determined that notification by States of proposed changes which require a grant amendment need not be sent by certified mail. The final revision is intended to eliminate an unnecessary expenditure of State funds.

Section 725.17(d) and corresponding § 735.20(d) are reworded slightly to clarify the exact date an amendment becomes effective and the period of time for which it applies. OSM determined that the previous regulation was ambiguous.

Section 725.19 Audit.

Section 725.19 is modified to require an agency to arrange for an independent audit no less frequently than once every two years. The previous regulation called for the U.S. Department of the Interior's Office of Audit and Investigation to arrange for audits as appropriate. The revision is needed to comply with the requirements of OMB's Circular No. A–102, Attachment P.

Section 725.21 Allowable Costs.

Section 725.21 and corresponding § 735.24 have been changed to require that reimbursement costs be determined in accordance with Office of Management and Budget Circular No. A–87. OMB Circular A–87 replaces Federal Management Circular 74–4.

Section 725.23 Reports.

Section 725.23 and corresponding § 735.26 are modified by requiring grant recipients to report semi-annually rather than annually. In addition, language is added to require grantees to meet OSM reporting requirements as well as those specified in OMB Circular No. A–102. In the revised regulation it is stated that the Financial Status Report, Form SF 269, will continue to be used for non-construction activities. The outlay Report and Request for Reimbursement for Construction Programs, Form SF 271, will be used to report construction activities. To close out a grant a grantee may submit the Report of Government Property, Form OSM–60, to account for property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to OMB Circular No. A–102.

Meetings to present the proposals were held with all States that would be affected. Comments on the proposals were invited and revisions suggested by the States given consideration in drafting the new procedures. OSM's revised reporting requirements have been approved by OMB. The revised procedures call for the use of the Financial Status Report, Form SF–269, requiring grant recipients to provide a functional breakdown of expenditures. Accompanying the Financial Status Report, Form SF 269 will be a Performance Report, Form OSM–51, comparing the planned goals for the various budget functions with actual achievements. Attached to the Performance Report, Form OSM–51, will be the Quantitative Program Management Information, Forms OSM–51A and OSM–51B supporting expenditures reported for the Interim Regulatory and Administration and Enforcement grants. The Quantitative Program Management Information, Form OSM–51C, will be used to support expenditures reported for the Small Operator Assistance Program Administration and Operational grants. The final rules revise the previous regulations to be consistent with the procedures specified in OMB's circular and with practices recommended by OMB. In administering the grant

programs over the past four years, OSM has determined that the current revisions are necessary to insure that grant funds are utilized for the authorized purposes. A standardization in the performance report will enable OSM to compare data from the various State agencies for systematic reporting to Congress.

Specific written guidance will be provided to the States on the completion and use of the reporting forms. In addition, OSM will meet with interested States to explain further the forms. The new forms will be applicable to the first grant application submitted by a State after the effective date of this rule.

Section 735.1 Scope.

The revision at § 735.1 consists of the addition of a new Paragraph (d) to clarify that the grant application and reporting procedures set forth at Part 735 apply to grants that fund the Small Operator Assistance Program (SOAP) described under Part 795. This revision is a cross-reference to § 795.11(b) which prescribes that States that elect to administer the SOAP may submit a grant application for funding of the program under the procedures of Part 735.

Section 735.4 Responsibility.

See discussion above under § 725.4(b).

Section 735.10 Information collection.

The Office of Mangement and Budget (OMB) approval of information collection and retention requirements in existing 30 CFR 735.13 (a) and (b), 735.16 (e), 735.18, 735.26 and 735.27 was identified in "notes" at the introduction to 30 CFR Part 735. OSM will delete those "notes" and codify the OMB approvals under new sections 10 in each of those Parts that contain information collection requirements.

The information required by 30 CFR Part 735 will be used by OSM's Headquarters and State Offices in administering, evaluating and auditing its State reimbursement grants for Program Development, Administration and Enforcement and SOAP to ensure that the requirements of OMB Circular No. A–102 and the Surface Mining Control and Reclamation Act are met. The information required by 30 CFR Part 735 is mandatory.

Section 735.13 Submission of estimated annual budgets and allocations of funds.

Paragraphs (a) and (b) of § 735.13 are revised in order to required that an agency intending to apply for any type of a grant submit a projection of its program budget 18 months prior to the Federal fiscal year for which the grant will be requested. The previous regulation did not prescribe a deadline by which the budget projection must be submitted when an agency is intending to apply for a program development grant or a SOAP grant. The revision is needed in order to enable OSM to obtain comprehensive information on it budget needs for presentation to Congress.

Section 735.13(c)(2) addresses the allocation of funds in cases where insufficient monies have been appropriated to cover grant needs. The words "requested and approved" are inserted in two places to clarify that the formula for allocating available funds gives consideration only to those agencies' requested budgets that have been approved by OSM.

Section 735.13(c)(4) is amended by substituting the word "primarily" for "only" before the identification of the agencies to which OSM shall reallocate any funds not requested by agencies as of June 1. In most cases, funds will be reallocated to those agencies which have received less than the allowable percentage of their eligible costs; however, is some cases reallocation of funds to an agency in some other category may be appropriate such as to an agency that had not previously applied for a grant. This revision will provide OSM with the necessary discretion.

Section 735.13(c)(5) is modified by deleting the words "on July 1" following the phrase "Agencies which are allocated additional funds." The date is dropped because reallocation of funds may take place before as well as after July 1. Likewise, (c)(4) is modified to delete reference to a specific date.

Section 735.16 Special provision for States with cooperative agreements.

Sections 735.16(e)(2) (i) and (ii) have been amended by deleting the references to "Part II" and "Part III" which refer to sections of current application forms that are no longer used. The language substituted for the deleted phrases provides a more general reference to the application format OSM will utilize. See discussion above under § 725.15.

Section 735.17 Grant periods.

See discussion above under § 725.14. For Small Operator Assistance Program (SOAP) Operational grants, the grant period often will exceed one year. This is because the grants support contracts to laboratories and the work performed may extend over more than one year.

Section 735.18 Grant application procedures.

Section 735.18(a). See discussion above under § 725.15(a).

Section 735.18(b). See discussion above under § 725.15(b).

Section 735.18(c). See discussion above under § 725.15(c).

Section 735.18(d). See discussion above under § 725.15(c).

In § 735.18(e) the words "within thirty days" are deleted following the phrase "The agency may resubmit the application." OSM made this revision in order to remove an unnecessary restriction on an agency's application for grant funds.

Section 735.20 Grant amendments.

Section 735.20(b). See discussion above under § 725.17(b).

Section 735.20(d). See discussion above under § 725.17(d).

Section 735.22 Audit.

This section is modified to comply with the audit requirements of Attachment P to OMB Circular No. A–102.

Section 735.24 Allowable Costs.

See discussion above under § 725.21.

Section 735.26 Reports.

See discussion above under § 725.23.

4. Analysis of Comments

The proposed rule was published in the **Federal Register** on September 21, 1981 (46 FR 46744–46748). Five sets of comments were received during the public comment period. Two commenters supported the proposed rule and had no further comments or objections. A third commenter requested further explanation and rationale for the proposed change. One commenter questioned the feasibility for implementation of several of the new requirements. Another commenter opposed the proposed revisions.

The State of Wyoming commented that it is inappropriate for OSM to reference proposed reporting procedures and grant applications in the regulations when these documents have not yet been approved by OMB. OSM had sent a copy of proposed grant application and reporting requirements to each State to be affected. Additionally, proposed procedures were presented at meetings held by OSM. State comment on the proposals was invited. Both verbal and written comments were considered when the application and reporting instructions were redrafted and

presented to OMB. Approval of the forms has been received from OMB.

Wyoming also contended that the proposed regulations are inconsistent with the Administration's directive for regulatory relief from excessive, burdensome and counter-productive regulations. It further stated that the record gave no justification for the expanded audit and reporting requirements. These rules are written to support the Administration's policy of establishing cost-effective financial assistance programs. OSM does not consider a semi-annual report requirement to be excessively burdensome or costly for the States. Often grants given the States are for amounts in excess of $1,000,000. The reporting and audit requirements are necessary to effectively manage a program of this magnitude. OSM must be able to compare State data and assess the relationship between financial assistance and program performance when reporting to Congress. The audit requirements are in accord with Attachment "P" to OMB Circular No. A–102 by which all grantor agencies and grantees must abide.

The State of Wyoming asked whether OSM will allow the State to charge audit costs to the Federal share. It also wanted to know if projected audit costs need to be included in the grant submittals. The States may include audit costs in grant requests.

Reimbursement will be made at the applicable cost sharing percentage. A State's next grant application should indicate that an audit will take place and will cover the costs incurred since the last audit. After such an audit is made, subsequent audits should be conducted every two years.

Several commentors expressed concern over the semi-annual reporting procedure and the requirement to assign costs to specific program functions. Particular concern was expressed over the staff time and cost to implement such a system. It was also questioned whether or not OSM's staffing capabilities, following the recent reorganization, were sufficient to process and use the required information.

In part, OSM's rule changes were made in order to be consistent with procedures specified in OMB's financial assistance circular and with practices recommended by OMB. OSM recognizes that resources required to implement the new procedures will vary from State to State depending on existing practices and organizational flexibility. A lesser burden will be imposed on agencies that already record expenditures under a grant by functional categories. OSM will work with grant recipients to resolve problems on a case by case basis. It is our expectation that these reporting requirements will lead to a resolution of potential problems, such as resource shortages, during the grant period. OSM's staffing levels under the reorganization are sufficient to enable OSM to work with the States to address specific problems as they occur. With fewer personnel it is important for OSM to be able to identify possible problems before they become major items requiring additional staff time to resolve.

OSM needs semi-annual reports to furnish the Department, OMB and Congress required information on the status and accomplishments of a State's program. Information contained in these reports also will be used as a part of OSM's justification to Congress for funds to continue these programs.

Program progress reports need not be lengthy documents. They should provide basic information on progress toward accomplishment of program goals, and the identification of problem areas and/or need for grant revisions.

The State of Montana contends that splitting the budget into program functions is difficult in western States where there is a considerable amount of overlap of these functions. This overlap is due to the small size of the various programs. In States with staffs having overlapping responsibilities, the State may apportion time between the functional categories based on a ratio that it believes accurately reflects the amount of time spent on the different functions. This removes the need for overly detailed time and cost accounting records while satisfying the requirements of OMB Circular A–87 to account for expenditures.

Wyoming and Montana both expressed concern over the requirement in §735.13 to submit a projected program budget. The concerns regarded the degree of accuracy such a projection represents and the extent to which a State would be held accountable for submission of a grant request at the projected level. OSM uses information contained in budget estimates primarily as a tool to assist it in preparing requests to the Department and Congress for funds. The 18 month time period corresponds with the time frame OSM must use to formulate the budget request. OSM has never held a State strictly to the amount projected but must have a reasonable estimate. Figures are updated as new information is received and the applicable Federal fiscal year approaches.

Montana contends that OSM should set firm time limits on itself to respond to grant applications since it imposes application deadlines on the States in §§725.15 and 735.18. OSM will make every effort to process grants within 30 days of receipt of a complete grant application. If the grant cannot be processed within that period of time, the State will be advised of the reasons and the anticipated action date. OSM agrees that similar time frame procedures should be used by OSM and the States. An application is requested from the State at least 60 days prior to the beginning of the intended grant period to reduce the possibility of any lapse in funding. Sections 725.15(a) and 735.18(a) have been changed to request the submission by the State at least 60 days prior to the beginning of the grant period, or as soon thereafter as possible. This is similar to the standard applied to OSM in its processing of the grant application.

Montana also suggested that time frames be included for providing the State with a notification of letter of credit receipt after the grant is awarded. OSM acknowledges Montana's legitimate concern over the timely receipt of a notification of a letter of credit increase. OSM is currently implementing new systems to expedite this notification. It should be pointed out that the provision of prompt notification is beyond OSM's direct control since this action orginates at the Bureau of Mines (BOM) Denver Finance Center. If an undue delay occurs on a particular grant action, OSM will work with the State to ensure that notification is provided.

The Department of the Interior has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291.

The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under Public Law 96–354.

The interim program rules, Part 725, are categorically excluded from the National Environmental Policy Act (NEPA) process according to section 8.4A(1) of Appendix 8 to the Department of the Interior Manual 516 DM 6 and are deemed not to be a major Federal action within the meaning of Section 102(2)(C) of NEPA according to Section 501(a) of SMCRA.

Part 735 of this rulemaking qualifies as a categorical exclusion under Appendix 1, Chapter 2, Part 516, of the Departmental Manual; thus, no environmental assessment has been

conducted under the National Environmental Policy Act.

Primary authors of this document are Gene Krueger, Mary Tisdale and Jane Robinson, Division of State Program Assistance, Office of Surface Mining.

List of Subjects in 30 CFR Parts 725 and 735

Coal mining, Grant programs natural resources, Law enforcement, Surface mining, Underground mining.

Dated: April 22, 1982.

Daniel N. Miller, Jr.,

Assistant Secretary, Energy and Minerals.

For the reasons set out in the preamble, Parts 725 and 735, of Title 30, Code of Federal Regulations is amended as follows:

PARTS 725 AND 735 [AMENDED]

1. Throughout Parts 725 and 735 all references to "Regional Director" are revised to read "Director or his authorized designee."

PART 725—REIMBURSEMENT TO STATES

2. In Part 725, the "Note" following the "Source note" is removed.

3. Paragraph (b) of § 725.4 is revised to read as follows:

§ 725.4 Responsiblity.

* * * * *

(b) The Director or his authorized designee shall receive, review and approve grant applications under this Part.

4. A new § 725.10 is added to read as follows:

§ 725.10 Information collection.

The information collection requirements contained in 30 CFR 725.15, 725.23(a) and 725.24 have fewer than 10 respondents per year, they are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and do not require clearance by OMB.

5. Section 725.14 is revised to read as follows:

§ 725.14 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. OSM shall fund a program that extends over more than one year by consecutive annual grants or amendments to the existing grant.

6. In § 725.15 Paragraphs (a), (b), the introductory text to (c), paragraphs (c)(7) and (d) are revised to read as follows:

§ 725.15 Grant application procedures.

(a) The agency may submit its application (three copies) for a grant to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures applicable to non-construction and/or construction programs specified by OSM in accordance with Office of Management and Budget Circular No. A–102, "Uniform administrative requirements for grants-in-aid to State and local governments" (42 FR 45828). No preapplication is required. Each application must include the following:

(1) Part I, Application Form coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM–50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM–50A, Project Approval Information—Section A and Form OSM–50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM–47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM–48, Budget Information—Construction with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM–51, providing the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM–51 is supplemented by completion of column 5A of Forms OSM–51A and OSM–51B which reports the quantitative program management information of the Interim Regulatory grants.

(ii) Form OSM–51 is supplemented by completion of Column 5A of Form OSM–51C which reports the quantitative program management information of the Small Operator Program Administration and Operational grants.

(5) Part V, The standard assurance for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A–102, Attachment M.

(c) The agency shall include sufficient information to enable the Director or his authorized designee to determine the agency's base program and increases over the base program eligible for reimbursement grants. The agency shall include the following information, plus any other relevant data: * * *

* * * * *

(7) The number and types of major equipment (equipment with a unit acquisition cost of $500 or more and having a life of more than two years) which the agency plans to purchase with grant funds.

(d) The Director or his authorized designee may waive the resubmission of information required by paragraphs (c)(1), (c)(2), (c)(3) and (c)(4) of this Section in applications for the following grants.

* * * * *

7. In § 725.17 the introduction to paragraphs (b) and (d) are revised to read as follows:

§ 725.17 Grant amendments.

* * * * *

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which require a grant amendment, such as—

* * * * *

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment then the amendment applies to the entire grant period.

8. Section 725.19 is revised to read as follows:

§ 725.19 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A–102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

§ 725.21 [Amended]

9. Section 725.21(a) is revised to read as follows:

(a) The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A–87.

* * * * *

10. Section 725.23 is revised to read as follows:

§ 725.23 Reports.

(a) The agency shall, for each grant made under this Part, submit semiannually to the Director or his authorized designee a Financial Status Report, SF 269, for non-construction grant activities in accordance with Office of Management and Budget Circular No. A–102, Attachment H and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM–51, comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A–102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, SF 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports also describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM–51A and OSM–51B or OSM–51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A–102 the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and Budget Circular No. A–102. This may be accomplished by the submission of the Report of Government Property, Form OSM–60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

PART 735—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

11. In Part 735, the "Note" following the "Source note" is removed.

12. In § 735.1 paragraph (d) is added to read as follows:

§ 735.1 Scope.

* * * * *

(d) Fund the Small Operator Assistance Program established under Section 507(c) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201) and described in Part 795 of this Chapter.

13. Section 735.4 paragraph (b) is revised to read as follows:

§ 735.4 Responsibility.

* * * * *

(b) The Director or his authorized designee shall receive, review and approve grant applications under this Part.

14. A new § 735.10 is added to read as follows:

§ 735.10 Information collection.

(a) The information collection and retention requirements in 30 CFR 735.13 (a) and (b), 735.16(e), 735.18, 735.26 and 735.27 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned clearance numbers for §§ 735.13 (a) and (b); SF 424, 1029–0016; OSM 50–A, 1029–0079; OSM 50–B, 1029–0078; OSM–47, 1029–0064; OSM–48, 1029–0070; OSM–51, 1029–0072; OSM–51A, 1029–0074; OSM–51B, 1029–0075; OSM–51C, 1029–0069; for Sections 735.16(e) and 735.18; SF 269, 1029–0017; OSM–51, 1029–0072; SF 271, 1029–0073; OSM–51A, 1029–0074; OSM–51B, 1029–0075; OSM–51C, 1029–0069; OSM–60, 1029–0076; OSM–62, 1029–0077; and OSM–63, 1029–0068; for Section 735.26; and Section 735.27 which was included in the above clearance numbers.

(b) The information required by 30 CFR Part 735 will be used by OSM's Headquarters and State offices in administering, evaluating and auditing its State reimbursement grants for program development and administration and enforcement to insure that the requirements of OMB Circular A–102 and the Surface Mining Control and Reclamation Act are met. The information required by 30 CFR Part 735 is mandatory.

15. In § 735.13 paragraphs (a), (b), (c)(2), (c)(4) and (c)((5) are revised to read as follows:

§ 735.13 Submission of estimated annual budgets and allocation of funds.

(a) Budget summaries for Federal budget. For each fiscal year, the agency shall submit to the Director or his authorized designee 18 months prior to the Federal fiscal year for which the grant will be requested, a projection of its program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other), including the costs of administering State-Federal cooperative agreements pursuant to § 211.75 of this title, and any aircraft which the agency proposes to acquire. The Director will use these budget summaries in preparing the Federal budget estimates which he is required to submit.

(b) Updated budget summary. For each fiscal year, the agency shall submit to the Director or his authorized designee a current program budget (personnel and fringe benefits, travel, equipment and supplies, contractual, indirect charges, and other) three months prior to the beginning of the Federal fiscal year for which a grant will be requested.

(c) * * *

(2) If the funds available for grants are insufficient to cover the total grant needs, including cooperative agreement grants, the Director shall allocate the funds available according to the proportion of each requested and approved agency's budget to the total of all agencies' requested and approved budgets.

* * * * *

(4) The Director shall reallocate any funds which are not requested by agencies as of June 1 of that year. Such funds shall be allocated primarily to those agencies which have received less than the allowable percentage of their eligible costs.

(5) Agencies which are allocated such additional funds may submit new or revised grant applications for the additional amounts on or before August 15, of that year.

16. In § 735.16 paragraphs (d), (e)(2)(i) and (e)(2)(ii) are revised to read as follows:

§ 735.16 Special provisions for States with cooperative agreements.

* * * * *

(d) Grant periods. The Director or his authorized designee shall normally approve a grant for a period of one year or less. Consecutive grants shall be awarded to fund approved programs.

(e) * * *

(2) * * *

(i) A separate budget summary for the costs of the cooperative agreement in the format specified by OSM; and

(ii) A separate narrative, in the format specified by OSM, describing the specific activities required by the cooperative agreement for the period for which the grant is requested.

* * * * *

17. Section 735.17 is revised to read as follows:

§ 735.17 Grant periods.

The Director or his authorized designee shall normally approve a grant for a period of one year or less. Consecutive grants shall be awarded to fund approved programs.

18. In § 735.18 revise paragraphs (a), (b), the introductory text of paragraph (c), paragraphs (d) and (e) to read as follows:

§ 735.18 Grant application procedures.

(a) The agency shall submit its application (three copies) to the Director or his authorized designee at least sixty days prior to the beginning of the intended grant period, or as soon thereafter as possible.

(b) The agency shall use the application forms and procedures specified by OSM in accordance with Office of Management and Budget Circular No. A–102. No pre-application is required. Each application must include the following:

(1) Part I, Application Form Coversheet, SF 424.

(2) Part II, Project Approval Information.

(i) For non-construction grants use Form OSM–50A, Project Approval Information—Section A.

(ii) For construction grants use Form OSM–50A, Project Approval Information—Section A, and Form OSM–50B, Project Approval Information—Section B.

(3) Part III, Budget Information.

(i) For non-construction grants use Form OSM–47, Budget Information Report, with a narrative explanation of computations.

(ii) For construction grants use Form OSM–48, Budget Information—Construction, with a narrative explanation of computations.

(4) Part IV, Program Narrative Statement, Form OSM–51, providing the narrative for the goals to be achieved for both construction and non-construction grants.

(i) Form OSM–51 is supplemented by completion of Column 5A of Forms OSM–51A and OSM–51B which reports the quantitative Program Management information of the Administration and Enforcement grants.

(ii) Form OSM–51 is supplemented by completion of Column 5A of Form OSM–51C which reports the quantitative Program Management information of the Small Operator Assistance Program Administration and Operational grant.

(5) Part V, The standard assurances for non-construction activities or construction activities as specified in Office of Management and Budget Circular No. A–102, Attachment M.

(c) For program development grant applications, agencies shall include: * * *

* * * * *

(d) For administration and enforcement grants and cooperative agreement grants, agencies shall include:

(1) A description of the specific operations in the approved program which will be implemented during the period for which the grant is requested.

(2) A description and justification of any major equipment (equipment with a unit acquisition cost of $500 or more and having a life of more than two years) which the agency proposes to acquire with the grant.

(e) The Director or his authorized designee shall notify the agency within thirty days after the receipt of a complete application, or as soon thereafter as possible, whether it is or is not approved. If the application is not approved, the Director or his authorized designee shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application. The Director or his authorized designee shall process the revised application as an original application.

19. In § 735.20 the introduction to paragraph (b) and paragraph (d) are revised to read as follows:

§ 735.20 Grant amendments.

* * * * *

(b) The agency shall promptly notify the Director or his authorized designee in writing of events or proposed changes which may require a grant amendment, such as—

* * * * *

(d) The date the Director or his authorized designee signs the grant amendment establishes the effective date of the action. If no time period is specified in the grant amendment, then the amendment applies to the entire grant period.

20. Section 735.22 is revised to read as follows:

§ 735.22 Audit.

The agency shall arrange for an independent audit no less frequently than once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A–102, Attachment P. The audits will be performed in accordance with the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions" and the "Guidelines for Financial and Compliance Audits of Federally Assisted Programs" published by the Comptroller General of the United States and guidance provided by the cognizant Federal audit agency.

21. Section 735.24 is revised to read as follows:

§ 735.24 Allowable costs.

The Director or his authorized designee shall determine costs which may be reimbursed according to Office of Management and Budget Circular No. A–87.

22. Section 735.26 is revised to read as follows:

§ 735.26 Reports.

(a) The agency shall, for each grant made under this Part, submit semiannually to the Director or his authorized designee a Financial Status Report, Form 269 for non-construction grant activities in accordance with Office of Management and Budget Circular No. A–102, Attachment H and OSM requirements. This report shall be accompanied by a Performance Report, Form OSM–51 comparing actual accomplishments to the goals established for the period, prepared according to Attachment I of OMB Circular No. A–102 and OSM requirements. The agency shall also submit semiannually a separate Outlay Report and Request for Reimbursement for Construction Programs, Form 271, and accompanying narrative performance report comparing actual accomplishments with planned goals on grant funded construction activities.

(b) The Director or his authorized designee shall require through the grant agreement that semiannual reports describe the relationship of financial information to performance and productivity data, including unit cost information. This quantitative information will be reported on Forms OSM–51A and OSM–51B or OSM–51C, Quantitative Program Management Information, as applicable.

(c) The Director or his authorized designee shall require that when a grant is closed out in accordance with Attachment L to Office of Management and Budget Circular No. A–102, the following actions are taken:

(1) The grantee shall account for any property acquired with grant funds or received from the Government in accordance with the provisions of Attachment N to Office of Management and Budget Circular No. A–102. This may be accomplished by the submission of the Report of Government Property, Form OSM–60.

(2) The grantee shall submit a final financial report and thus release OSM from obligations under each grant or cooperative agreement that is being closed out.

(Secs. 201, 501, and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201))

[FR Doc. 82–23892 Filed 8–30–82; 8:45 am]

BILLING CODE 4310–03–M

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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). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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