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Friday
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Agricultural Stabilization and Conservation Service

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture to the Under Secretary for International Affairs and Commodity Programs and from the Under Secretary to the Administrator, Office of International Cooperation and Development and provides authority for the Office of international Cooperation and Development to disseminate information useful to the private sector in expanding foreign markets and investment opportunities.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Lee, Chief, Private Sector Relations, Office of International Cooperation and Development, U.S. Department of Agriculture, Washington, D.C., 20250, (202) 475–4191.

SUPPLEMENTARY INFORMATION: The delegations of authority of the Department are amended to authorize the Under Secretary for International Affairs and Commodity Programs and, subsequently, the Administrator, Office of International Cooperation and Development, to establish an information center to assist the private sector to expand foreign markets and identify investment opportunities.

This rule relates to internal agency management. Therefore, pursuant to statutory provisions codified at 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect thereto are impractical and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 2 reads as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, unless otherwise noted.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development and Assistant Secretaries

2. Section 2.21 is amended by adding a new paragraph (a)(8) as follows:

§ 2.21 Delegations of authority to the Under Secretary for International Affairs and Commodity Programs.

* * * * *

(a) * * *

(8) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

* * * * *

Subpart H—Delegations of Authority by the Under Secretary for International Affairs and Commodity Programs

3. Section 2.64 is amended by adding a new paragraph (a)(8) as follows:

§ 2.64 Administrator, Office of International Cooperation and Development.

(a) * * *

(8) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

* * * * *

Dated: August 13, 1984.

For Subpart C:

John R. Block,

Secretary of Agriculture.

For Subpart H:

Daniel S. Amstutz,

Under Secretary for International Affairs and Commodity Programs.

[FR Doc. 84-22573 Filed 8-23-84; 8:45 am]
BILLING CODE 3410-DP-M

Agricultural Stabilization and Conservation Service

7 CFR Part 725

Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts as a final rule, with a technical amendment, the proposed rule published in the **Federal Register** on May 1, 1984 (49 FR 18672). The final rule places restrictions on the lease and transfer of acreage allotment and marketing quotas for the 1985 and 1986 crops of flue-cured tobacco; eliminates lease and transfer of acreage allotments and marketing quotas beginning with the 1987 crop of flue-cured tobacco; makes certain provisions relating to forfeiture of acreage allotments and marketing quotas less restrictive; and adds new provisions which will require the sale or forfeiture of acreage allotments amd marketing quotas if, during at least two years of any three year period, flue-cured tobacco is not planted or considered planted on the farm for which such allotments and quotas are established. The technical amendment provides for

considered planted credit for the purpose of establishing future farm acreage allotments when a flue-cured tobacco acreage allotment and marketing quota has been reduced as the result of overmarketing or a violation of marketing quota regulations.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Jack S. Forlines, Agricultural Program Specialist, Tobacco and Peanuts Division, USDA-ASCS, P.O. Box 2415, Washington, D.C. 20013, (202) 382–0200.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "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 geographic regions; (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 to which this rule applies are: Commodity Loan and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) 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.

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

A proposed rule was published in the **Federal Register** on May 1, 1984 (49 FR 18672) in order to implement certain amendments made by the Dairy and Tobacco Adjustment Act of 1983 to the Agricultural Adjustment Act of 1938 (hereinafter referred to as the "1938 Act"). The proposed rule contained provisions with respect to restrictions on the lease and transfer of acreage allotments and marketing quotas for the 1985 and 1986 crops of flue-cured tobacco and the elimination of lease and transfer of acreage allotments and marketing quotas beginning with the 1987 crop of flue-cured tobacco. It also proposed making certain provisions relating to forfeiture of acreage allotments and marketing quotas less restrictive and adding new provisions requiring the sale or forfeiture of tobacco acreage allotments and marketing quotas if, during at least two years of any three year period, flue-cured tobacco is not planted or considered planted on the farm for which such allotments and quotas are established.

Other minor provisions included in the rule are: (a) A definition of a family farm corporation; (b) clarification of the continuing nature of the forfeiture provisions; (c) elimination of considered planted credit for conservation programs and conservation practices with respect to flue-cured tobacco; (d) removal of the requirement that yields established for new farms cannot exceed the community average yield; and (e) the requirement that an ASCS employee witness the signatures of the lessor and lessee with respect to the lease and transfer of flue-cured tobacco acreage allotment and marketing quota.

The Department received 291 comments from 245 persons relating to the proposed rule which was published in the **Federal Register** on May 1, 1984 (49 FR 18672). The 245 persons consisted of 1 State ASC committee, 1 grower association, 1 State farm organization, 3 farm partnerships and 239 individuals.

Of the 291 comments received, 272 comments opposed implementation of all or part of the proposed rule. However, the Dairy and Tobacco Adjustment Act of 1983 amended Sections 316 and 317 of the 1938 Act to specifically provide: (a) For elimination of lease and transfer of flue-cured tobacco acreage allotments and marketing quotas beginning with the 1987 crop; (b) that the consideration for leased flue-cured tobacco acreage allotment and marketing quota will not be paid before the marketing of tobacco produced under the lease; (c) that sellers of flue-cured tobacco acreage allotment and marketing quota shall afford buyers of such allotment and quota the option of making payments for the allotment and quota in no more than five annual installments; (d) that flue-cured tobacco be planted on the farm in at least 2 of the 3 preceding years, beginning with the 1986 crop; and (e) for the exclusion of the following persons from the application of requirements with respect to the forfeiture of flue-cured tobacco acreage allotments and marketing quotas by persons which are not significantly involved in the management or use of land for agricultural purposes: (1) Any individual; (2) any partnership; (3) any family farm corporation; (4) any trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; and (5) any educational institution that uses a flue-cured tobacco allotment and quota for instructional or demonstrational purposes.

A total of 257 comments were received on items (a) through (e). However, since these provisions are specifically mandated by amendments to the 1938 Act, they must be implemented accordingly.

A total of 22 comments opposed the proposed rule in its entirety and 12 comments generally supported the rule. No specific reasons for opposition to the proposed rule were given by these commentors.

In addition, since no specific comments were received on provisions relating to the: (a) Definition of a family farm corporation, (b) continuing nature of forfeiture requirements, (c) elimination of considered planted credit for conservation programs and conservation practices installed in lieu of actual tobacco production, and (d) witnessing of signatures for release and transfer purposes, the Department has concluded that these provisions should be adopted as a final rule.

A minor technical change that was not included as a part of the proposed rule has been added to the final rule. Section 725.51(e–1) has been amended to provide for considered planted credit for the purpose of establishing future farm acreage allotments when a farm acreage allotment is reduced as the result of overmarketing or a violation of marketing quota regulations. Currently, tobacco marketed in excess of the farm's effective farm marketing quota is considered to be an overmarketing and the succeeding year's allotment and quota are adjusted to represent the acreage equivalent of the overmarketing. However, considered planted acreage credit is not given for the adjusted acreage. This amendment to the final rule will allow farms to receive planted and considered planted credit for acreage which is reduced as a result of the overmarketing of a prior crop or acreage which is reduced because of a marketing quota violation.

Accordingly, the proposed rule which was published in the **Federal Register** on May 1, 1984 (49 FR 18672) is adopted as the final rule as et forth below.

List of Subjects in 7 CFR Part 725

Acreage allotment, Marketing quota, Penalties, Reporting and recordkeeping requirements, Tobacco.

Final Rule

PART 725—[AMENDED]

Accordingly, 7 CFR Part 725 is amended as follows:

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

Authority: Sec. 301, 313, 314, 314A, 316, 316A, 317, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 96 Stat. 215, 75 Stat. 469, as amended, 96 Stat. 205, 79 Stat. 66, as amended, 52 Stat. 63, as amended, 65–66, as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended, 7 U.S.C. 1301, 1313, 1314, 1314–1, 1314b, 1314b–1, 1314c, 1363, 1372–75, 1377, 1378; sec. 401, 63 Stat. 1054, as amended, 7 U.S.C. 1421.

2. Section 725.5l is amended by revising paragraph (e–1) introductory text, (1), and (2)(iii)–(v), adding new paragraph (l–1), and revising the introductory sentence in paragraph (jj–1) to read as follows:

§ 725.51 Definitions.

* * * * *

(e–l) *Considered planted credit.* Credit which is assigned in the current year for an old farm as follows:

(l) The considered planted credit is the farm acreage allotment if, beginning in the 1984 crop year, flue-cured tobacco is marketed from the farm in the current year.

(2) * * *

(iii) In eminent domain pool,

(iv) Reduced for overmarketing, and

(v) Reduced for violation of marketing quota regulations.

* * * * *

(l–1) *Family farm corporation.* A corporation for which:

(1) Not less than 50 percent of the stock is owned by:

(i) An individual or;

(ii) An individual in combination with:

(A) The spouse of such individual; or

(B) The parent, aunt, uncle, child, grandchild, or cousin of such individual; or

(C) A spouse of any individual specified in paragraph (l–1)(1)(ii)(B) of this section and;

(2) One or more of the individuals specified in paragraph (l–1)(1) of this section participates in the direct management of the day to day farming operations of the corporation.

* * * * *

(jj–1) *Shared in risk of production.* Involvement in the production of flue-cured tobacco by a person who, for any crop year before 1987, meets all of the conditions as set forth in either paragraph (jj–1)(1) or (2) of this section, or, for the 1987 or any subsequent crop year, meets the conditions as set forth in paragraph (jj–1)(l) of this section:

* * * * *

§ 725.59 [Amended]

3. In § 725.59, paragraph (b) is amended by removing the words ", not to exceed the community average yield,".

§ 725.66 [Amended]

4. In § 725.66, paragraph (b) is amended by removing the second sentence.

5. Section 725.69 is amended by: Removing the introductory paragraph; redesignating existing paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d), respectively; adding a new paragraph (a); removing the reference to "(b)(1)" in newly redesignated paragraph (c)(1) and inserting the reference "(c)(l)" in its place; and revising newly redesignated paragraph (d)(3) to read as follows:

§ 725.69 Determination of acreage allotments for new farms.

(a) The acreage allotment established for all new farms in any crop year shall not exceed the national acreage reserved for new farms. Within such reserve, the acreage allotment for a new farm shall be that acreage which the county committee, with approval of the State committee, determines is fair and reasonable for the farm, taking into consideration the past tobacco experience of the farm operator; the land, labor, and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco: *Provided,* That the acreage allotment so determined shall not exceed the smaller of one acre or 50 percent of the average of the acreage allotments established for not less than two nor more than five old farms which are similar with respect to land, labor and equipment available for the production of tobacco; crop rotation practices; and the soil and other physical factors affecting the production of tobacco.

* * * * *

(d) * * *

(3) *Farm includes land formerly having a tobacco acreage allotment.* A new farm tobacco acreage allotment may not be established for a farm if, during the current year or the four preceding years, the farm was constituted as any part of a farm for which an acreage allotment had been established and for which the current or a former owner:

(i) Sold all of the tobacco acreage allotment, or

(ii) Did not, as provided in Part 719 of this chapter, retain any of the tobacco acreage allotment for such land through use of the designation by landowner method of division when the allotment for such land was determined as a result of a farm reconstitution.

* * * * *

6. In § 725.72, paragraphs (d)(5) (i) and (iv) are amended by removing from the last sentence of each paragraph the references "(c) and (d)"; paragraph (o) is amended by removing the reference "(1)" preceding the first paragraph and by removing paragraph (2) in its entirety; paragraphs (a), (d)(3)(vi), (f), (g), and (l)(1) introductory text are revised; current paragraph (r) is redesignated as paragraph(s) and new paragraphs (d)(4)(iv), (d)(6)(iv), (e)(2)(iii), (r), and (t) are added to read as follows:

§ 725.72 Transfer of tobacco marketing quotas by lease or by sale.

(a) *General.* Effective for 1982 through 1986 crop years with respect to a lease, and for the 1983 and subsequent crop years with respect to a sale, a flue-cured tobacco marketing quota, including a quota which has been pooled in accordance with the provisions of Part 719 of this chapter, may be transferred between farms within a county by sale or by lease. For the 1983 through 1986 crop years, a flue-cured tobacco marketing quota also may be transferred by lease to a farm in an adjoining county within the same State when the State committee authorizes the county committee to approve the transfer of such quota after June 15 if the lessor has suffered a loss of flue-cured tobacco as a result of a flood, hail, wind, tornado, or other natural disaster. Only the lessor and lessee (or any attorney, trustee, bank, or other agent or representative, who regularly represents either the lessor or lessee in business transactions unrelated to the production or marketing of tobacco) may be parties to, or involved in the arrangements for, a transfer of flue-cured tobacco marketing quota by lease.

* * * * *

(d) * * *

(3) * * *

(vi) *Certification.* Unless, for any transfer which is to be effective for either the 1985 or 1986 crop year, the farm owner has filed the certification provided in paragraph (g) of this section.

* * * * *

(4) * * *

(iv) *Certification.* Unless, for any transfer which is to be effective for either the 1985 or 1986 crop year, the

lessee has filed the certification provided in paragraph (g) of this section.

* * * * *

(6) * * *

(iv) *Installment payment option.* Unless the buyer of the flue-cured tobacco acreage allotment and marketing quota has been afforded an option to pay for such allotment and quota in two to five equal annual installments payable each fall beginning with the fall of the crop year in which the transfer becomes effective and such buyer certifies on a form prescribed by the Deputy Administrator that such option has been made available to the buyer.

(e) * * *

(2) * * *

(iii) *Witness.* An authorized witness shall be a member of a State or county committee or an ASCS employee. Each person whose signature is required by either paragraph (e)(2) (i) or (ii) of this section must sign in the presence of an authorized witness, except that when any such person whose signature is required is ill, infirm, resides in a distant area, or is in a similar hardship situation, the requirement of a witness may be waived provided the county executive director mails Form ASCS–375 to such person for the required signature.

* * * * *

(f) *Period of lease.* A transfer by lease may be for a multiple-year period: *Provided,* That such lease shall not be for any of the 1987 and subsequent crop years and shall be limited to the current crop year if the transfer agreement is filed after June 15 of any year in accordance with paragraph (l) of this section.

(g) *Compliance statement of lease.* In order for a transfer of an acreage allotment and marketing quota by lease to be valid for the 1985 or 1986 crop year, none of the consideration for the lease may be paid to the lessor prior to the first marketing of tobacco produced on the lessee farm in the current year, either directly or indirectly in any form, including a loan by the lessee to the lessor, the endorsement of a note by the lessee for the lessor, or any other similar arrangement which represents the anticipated income for the lease: *Provided,* That the consideration for the lease may be paid on or after July 1 of the current year if no tobacco has been or will be harvested from the lessee farm in the current year. Before the county committee may approve the transfer agreement, the parties to the lease shall certify on a form prescribed by the Deputy Administrator that they are in compliance with the provisions of this section.

* * * * *

(l) *Natural disaster.* (1) *State committee authorization.* Notwithstanding any other provision of this section, the State committee may, for the 1983 through 1986 crops, authorize the county committee to approve a transfer of quota by lease which is filed after June 15 if:

* * * * *

(r) *Violation of lease provisions.* If, after a lease agreement is approved, information is brought to the attention of the county committee which indicates that either the lessor or the lessee, or both, knowingly filed a false certification with respect to a transfer of quota by lease, the county committee shall schedule a hearing, notify such person of the time and place of the hearing, and afford such person an opportunity to be present and present evidence at the hearing with respect to the allegation of a false certification. If, as a result of the evidence presented, the county committee determines that such person knowingly made a false certification, the county committee shall notify the person of the determination and afford such person 15 days after mailing of the notice to request a review of the determination by a review committee as provided for by Part 711 of this chapter.

(1) *Lessor.* If it is determined that the lessor knowingly made a false certification, the next flue-cured tobacco acreage allotment and marketing quota established for the lessor's farm shall be reduced by that percentage which the leased quota was of the total flue-cured tobacco farm marketing quota established for the farm in the year of the lease.

(2) *Lessee.* If it is determined that the lessee knowingly made a false certification, the lease agreement for purposes of the flue-cured tobacco marketing quota program with respect to the lessee's farm shall be considered to be null and void as of the date approved by the county committee.

* * * * *

(t) *Sale of quota with installment payment option.* Nowithstanding any other provision of this section:

(1) The owner of a farm who sells any flue-cured tobacco acreage allotment and marketing quota may:

(i) Negotiate with more than one prospective buyer before selling such allotment and quota; or

(ii) Sell such allotment and quota to any eligible buyer whom such owner may select; or

(iii) Sell such allotment and quota for a single payment; or

(iv) Include provisions in the agreement of sale to protect the seller's interest if the buyer fails to make full payment: *Provided,* That such provisions may not include the use of such allotment and quota as collateral for purposes of protecting the seller's interest in the allotment and quota.

(2) Flue-cured tobacco acreage allotment and marketing quota purchased in accordance with paragraph (t)(1) of this section shall not revert to the seller's farm but shall remain with the farm to which assigned at the time of purchase even though the buyer fails to make full payment to the seller for such allotment and quota: *Provided, however,* That this paragraph shall not apply if the buyer is required to forfeit such allotment and quota in accordance with section 725.74(d).

7. In § 725.74, paragraph (b)(2)(iii) is removed; paragraphs (f) through (j) are redesignated as paragraphs (g) through (k), respectively; paragraph (e) is redesignated as paragraph (f) and (f)(3) is revised; new paragraphs (c)(5) and (e) are added; and paragraphs (a)(2) and (3), the introductory paragraph in paragraph (b), and paragraph (b)(1) are revised to read as follows:

§ 725.74 Forfeiture of allotment and quota.

(a) * * *

(2) For purposes of paragraphs (b) and (c) of this section, the county committee shall, in accordance with the provisions of Part 719 of this chapter, apportion the flue-cured tobacco acreage allotment and marketing quota assigned to a farm between:

(i) All land which is owned by any person which is not significantly involved in the management or use of land for agricultural purposes, as described in paragraph (b) of this section; and

(ii) Each common ownership tract of land in the farm other than that described in paragraph (a)(2)(i) of this section.

(3) With respect to the provisions of paragraph (c) of this section, an acreage allotment and marketing quota shall be determined for a tract in accordance with paragraph (a)(2)(ii) of this section only to the extent that records are available to show the contribution which the tract made to the flue-cured tobacco acreage allotment of the parent farm.

* * * * *

(b) *Person not significantly involved in management of use of land for agricultural purposes.* For purposes of

this paragraph, the term "person" means a person as defined in Part 719 of this chapter, including any: Governmental entity; public utility; educational institution; or religious institution, but not including any: Individual; partnership; joint venture; family farm corporation; trust, estate, or similar fiduciary account with respect to which 50 percent or more of the beneficial interest is in one or more individuals; or educational institution that uses a flue-cured tobacco acreage allotment and marketing quota for instructional or demonstrational purposes.

(1) *Required forfeiture.* If at any time the county ASC committee determines that any person which owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established is not significantly involved in the management or use of land for agricultural purposes, such person shall forfeit such allotment and quota which is not sold on or before:

(i) *Farm owned or acquired before January 1, 1983.* December 1, 1984;

(ii) *Farm acquired on or after January 1, 1983.* December 1 of the year after the year in which the farm is acquired; or

(iii) *Owner ceases to be significantly involved.* December 1 of the year after any year for which the county ASC committee determines that such person which was previously determined to be significantly involved in the management or use of land for agricultural purposes is no longer significantly involved in the management or use of land for agricultural purposes.

* * * * *

(c) * * *

(5) *Owner disposes of or changes status of tillable cropland.* July 1 of the year after any year in which the farm owner disposes of an acreage of tillable cropland or changes the status of land in the farm so as to cause such land to lose its tillable cropland status.

* * * * *

(e) *Tobacco not planted or considered planted in 1983 and subsequent years.* Notwithstanding any other provision of this Part, any person which, on or after January 1, 1986, owns a farm for which a flue-cured tobacco acreage allotment and marketing quota are established shall forfeit such allotment and quota after February 15 of any year immediately following the last year of the three-year period immediately preceding the year for which the county committee determines that flue-cured tobacco was not planted or considered planted on such farm during at least two years of such three-year period.

(f) * * *

(3) Make a determination, on the basis of the evidence presented at the hearing by or on behalf of the affected person and by or on behalf of the county committee, as to whether:

(i) Any of the conditions requiring forfeiture as specified in this section exist; and

(ii) The affected person knowingly failed to take steps to prevent forfeiture of a flue-cured tobacco acreage allotment and marketing quota.

* * * * *

8. In § 725.95, paragraph (b) is revised to read as follows:

§ 725.95 Producers penalties; false identifications; failure to account; canceled allotments; overmarketing proportionate shares.

* * * * *

(b) *Penalties for false identification or failure to account.* (1) If any producer falsely identifies or fails to account for the disposition of any tobacco produced on a farm, a penalty at the full rate shall be assessed based on the larger of:

(i) The actual marketings above 110 percent of the effective farm marketing quota; or

(ii) The sum of pounds equal to 25 percent of the effective farm marketing quota plus the pounds determined by mutiplying the farm yield times the acres harvested in excess of the effective farm acreage allotment: *Provided, however,* That if such amount exceeds the amount determined in accordance with paragraph (b)(1)(i) of this section, the penalty assessed may be based on the amount determined in accordance with paragraph (b)(1)(i) of this section if the county committee determines, with concurrence of the State committee, that the penalty assessed on the amount determined in accordance with paragraph (b)(1)(ii) of this section would be unduly harsh in relation to the quantity of tobacco which is falsely identified or which is not accounted for and the tobacco program would not be adversely affected.

* * * * *

§ 725.98 [Amended]

9. In § 725.98, paragraph (a) is amended by removing the reference "(h)" in the last sentence and inserting in its place the reference "(g)".

Signed at Washington, D.C., on August 13, 1984.

C. Hoke Leggett,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 84-21898 Filed 8-23-84; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 478]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 243,255 cartons during the period August 26–September 1, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: August 26, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy currently in effect. The committee met publicly on August 21, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand continues steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register**

(5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of this Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.778 is added as follows:

§ 910.778 Lemon Regulation 478.

The quantity of lemons grown in California and Arizona which may be handled during the period August 26, 1984, through September 1, 1984, is established at 243,255 cartons.

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

Dated: August 22, 1984.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 84-22720 Filed 8-23-84; 8:45 am]

BILLING CODE 3410-02-M

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 103, 104, 105, 108, 109, 110, 112, 113, 115, 120, 122, 124, 132, and 134

Procedures for the Office of Hearings and Appeals for Deciding Cases Other Than Size Appeals

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: SBA is promulgating a single, comprehensive set of procedural rules for processing and deciding all cases within the jurisdiction of the Office of Hearings and Appeals other than appeals from size determinations and product or service classifications. Matters to be adjudicated in accordance with these procedural rules include proceedings concerning small business investment company licensees, section 8(a) program participants, lender participants in SBA loan programs, debarments and suspensions, surety bond program participants, sections 501, 502 and 503 development companies, violations of Title VI of the Civil Rights Act of 1964 and employee grievances. The rules cover pleading requirements, time limits, discovery, evidence and other procedural matters and will supplant procedural rules scattered throughout Title 13 that presently govern various types of cases.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Roger H. Jones, Assistant Administrator, Office of Hearings and Appeals, Small Business Administration, 1441 L Street, NW., Washington, DC 20416, (202) 653–6805.

SUPPLEMENTARY INFORMATION: On August 6, 1982 the Administrator of the Small Business Administration (SBA) implemented a decision by a predecessor to establish an SBA Office of Hearings and Appeals (OHA) for the purpose of consolidating the agency's adjudicative decision-making functions in a forum that would provide maximum efficiency and fairness to participants. On June 27, 1983, the Administrator delegated to OHA authority to process and adjudicate a wide variety of cases ranging from internal SBA matters such as formal employee grievances, to cases required by law to be heard on the record in accordance with the Administrative Procedure Act (APA), the Small Business Act or the Small Business Investment Act of 1958. 48 FR 29646. The matters delegated to OHA had previously been handled by SBA hearing examiners or other SBA decisional authorities, or had been assigned to Administrative Law Judges from other agencies.

On December 16, 1983, OHA published final procedural rules for considering and deciding appeals from size determinations and from product or service classifications. 48 FR 55832. These rules were recodified in the context of major revisions to the size standards effective March 12, 1984. 49 FR 5024. The size rules are contained in Part 121 and differ significantly in some respects from those now being promulgated because of the procedural history and nature of size cases and time constraints peculiar to the procurement process.

The rules now being promulgated constitute a single, comprehensive set of procedures for processing and deciding all cases within the jurisdiction of OHA, other than size cases. These rules cover pleading requirements, time limits, representation of respondents before SBA, discovery, and other procedural aspects of cases to be adjudicated by OHA. They supplant procedural rules scattered throughout Title 13 that presently govern the processing of various specific kinds of cases.

These final rules differ only slightly from those contained in the Notice of Proposed Rulemaking issued May 8, 1984. 49 FR 19530. Only one public comment was received in response to that notice. The comment expressed approval of the rules as proposed but argued, based on an erroneous reading of the proposed rules, that the Administrator, rather than the program official, should review OHA decisions concerning small business investment companies (SBICs). It should be noted that § 134.32(b), references the substantive rules in Part 110 governing SBICs, and thereby provides for review by the Administrator of an OHA decision in an SBIC proceeding.

The agency itself has undertaken three amendments to the rules as proposed. In accordance with amendments to SBA's Standard Operating Procedure 37–71, the reviewing official, rather than OHA, will issue a final decision on a MAC appeal, after reviewing the decision made by the Performance Review Board. OHA will no longer be involved in the MAC review process. In addition, changes have been made in §§ 134.14(b) and 134.15 concerning the service and form requirements for pleadings. Under the proposed rules all pleadings were required to be affirmed. However, under the final rule, the affirmation set forth in § 134.15 will be required only for petitions, orders to show cause (other than those signed by the Administrator), answers, interrogatories and answers to interrogatories. Furthermore, whereas the proposed rules required that copies of pleadings not personally delivered to other parties to the proceeding be mailed registered or certified, return receipt requested, § 134.14(b) of the final rules merely requires that a copy be mailed, first class postage prepaid, unless the judge orders otherwise. (However, requests for subpoenas will still require the affirmation, and the subpoena must either be personally served or sent by certified mail.)

Both the proposed and final rules recognize the adjudicative nature of the decisionmaking process undertaken by OHA, and specific provisions have been incorporated into the rules to ensure the reliability, comprehensiveness, and integrity of the record upon which decisions will be made. In order to ensure that the record is reliable and complete, the OHA judge to whom a case is assigned has been granted broad judicial powers including the power to administer oaths, to order discovery and issue subpoenas, and to conduct oral hearings or telephone conferences when warranted because of a genuine dispute

regarding a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. In addition, the previously identified written submission must be affirmed, and all pleadings must be either personally delivered or mailed first class to all parties to the proceeding, including those granted intervenor status. This latter requirement will provide all parties the maximum feasible opportunity to participate in the development of the record. The regulations provide for the integrity of the record by requiring that the decision be based only on information contained in the record, such as the petition, all other pleadings and motions, the judge's orders and decisions, and any evidence admitted during the course of the proceeding. The regulations also prohibit *ex parte* communications between the judge and any person, party, or employee of SBA who performs any investigatory or prosecutorial function in connection with the proceeding, concerning any fact or question of law or SBA precedent at issue in the proceeding, except on notice and opportunity for all parties to participate.

Procedural rules presently applicable to the various types of cases assigned to OHA and scattered throughout Title 13 are being deleted or amended to conform to the procedural rules in Part 134. In some instances, application of the new rules will represent a substantial departure from previous practice. However, § 134.1, which articulates the policy to be followed in implementing the rules, emphasizes that not all types of cases handled by OHA will require use of the full panoply of formalities available under the proposed rules. Section 134.1 distinguishes among three general categories of cases to be adjudicated under the rules: Cases required by law to be heard on the record; non-APA cases involving constituents or institutions cooperating with or regulated by SBA, and internal SBA matters. Whereas the full range of formalities will usually apply in APA cases, lesser degree of formality will normally apply to non-APA external cases. A presumption in favor of informality will exist in cases involving internal SBA matters. Variations in the degree of formality provided are anticipated to occur most frequently regarding provision for oral hearings and discovery. The general policy set forth in § 134.1 is intended to provide guidance to the judge and to all parties while maintaining that measure of flexibility necessary to accommodating differences that will inevitably arise with respect to cases within the three identified categories.

The following discussion identifies and explains key provisions in the rules of practice and procedure in Part 134. Sections 134.3 and 134.32, respectively, set forth the types of cases to which the procedures established in Part 134 are intended to apply and the nature of the decision to be rendered by the judge in each type of case. The decision of the judge will be final in arbitrations arising under labor agreements, in proceedings pertaining to collection of debts owed to the agency, and in formal employee grievances unless the deciding official seeks review by the Deputy Administrator. The judge will render an initial decision, which will be subject to review by the proper SBA reviewing official, in proceedings concerning SBIC licensees, terminations of participants in the section 8(a) program, violations of Title VI of the Civil Rights Act of 1964 and similar violations, debarments of applicants or agents appearing before SBA, post-employment restrictions, bank or nonbank lenders involved in SBA loan programs, terminations of surety bond program participants, sections 501, 502, and 503 development companies, and allowances of costs and fees under the Equal Access to Justice Act. In contract debarment and suspension proceedings, the judge will issue a recommended decision to the proper SBA reviewing official who will review it prior to issuing a final decision in the case.

Section 134.11 states that a proceeding may be commenced by either an order to show cause or a notice filed by SBA or a petition filed by a party other than SBA. It also specifies the content of such filings and the applicable time limits, and permits a respondent to file a motion for a more definite statement upon showing that he or she cannot frame an answer based on the allegations contained in the petition, order to show cause or notice. Section 134.12 contains the rules for filing answers to petitions, orders to show cause or notices; § 134.13 provides for the filing of amended and supplemental pleadings; and § 134.21 contains general rules applicable to motions. Certain specified written submissions filed during the course of a proceeding must be affirmed by an authorized person in accordance with § 134.15, and an original and one copy of all pleadings must be filed with OHA within the time limits specified, pursuant to § 134.14(a). Pursuant to § 134.14 (b) and (c), copies of all submissions must be either personally delivered or mailed first class to all other parties to the proceeding, and may be excised of any confidential information. In most instances, the time period imposed for filing a responsive submission will commence with the mailing or personal delivery of the filing to which it applies, pursuant to § 134.14(b) and the applicable sections authorizing the filing, most of which compute time based on the date of mailing. However, the time period applicable to a submission concerning an order or decision issued by the judge and served on the parties by OHA will normally commence on the date of issuance. The timeliness of the filing in either situation will be determined by the date of the filing is received by OHA, pursuant to § 134.14(a).

Proceedings subject to the requirements of the APA will be conducted by an Administrative Law Judge in OHA, as required by § 134.18(a). All other proceedings covered by Part 134 may be conducted by an OHA Administrative Judge. Part 134 confers a broad range of judicial powers upon the judge, many of which are enumerated in § 134.18(b). They include authority to grant discovery and to provide for oral hearings, where appropriate, as well as authority to rule upon motions for intervention pursuant to § 134.17, motions for interlocutory appeals pursuant to § 134.23, and settlement agreements made pursuant to § 134.37. In order to assure a complete record, the judge will also have the authority, where appropriate, to issue subpoenas requiring the appearance of witnesses or the production of documents. These subpoenas may be enforced in the District Court or by the imposition of sanctions available to the judge under § 134.27. In exercising these powers, the judge will be governed by the implementation policy set forth in § 134.1. Although Part 134 establishes comprehensive procedures for the conduct of cases to be decided by OHA, some flexibility will be necessary, and § 134.4. permits the judge, upon his or her own initiative or upon motion of a party, to waive any rule contained in Part 134 in the exercise of discretion, for good cause shown, except those rules in § 134.11(a) specifying the time limits for filing a petition to commence a proceeding.

Section 134.28 contains evidentiary rules relating to objections, stipulations, exhibits, and offers of proof and provides that the Federal Rules of Evidence will be used as a general guide in all proceedings. As §§ 134.29 and 134.33 indicate, evidence considered in rendering a decision will be limited to that admitted during the course of the proceeding, and, once closed, the record

will not be reopened unless the judge grants a motion, made within 30 days of issuance of the judge's decision, for the purpose of considering new and previously unavailable material evidence of decisional significance.

Sections 134.29 and 134.31 require that the decision issued by the judge be predicated only on the record, which will include all pleadings, judge's orders and decisions, evidence admitted during the proceeding, and the record of any oral hearing or telephone conference conducted during the proceeding. Where the decision is based on official notice of a material fact not appearing in the record, any party will have the opportunity, upon a timely request, to show the contrary. In aid of a decision, the judge may request proposed findings of fact and conclusions of law, and, in the event of noncompliance with such an order, the defaulting party will be barred from objecting to the findings and conclusions adopted by the judge. Sections 134.18 (d) and (e) and 134.38 contemplate an independent and impartial decision in each case by assuring that the judge will be free from interference by the agency or a party in rendering a decision, by prohibiting *ex parte* contacts on factual or legal issues, and by providing for recusal of a judge based on personal bais or disqualification. Section 134.34 establishes the rules for review of initial decisions, and § 134.35 governs final agency decisions where the judge has issued a recommended decision in the proceeding.

Because the rules in Part 134 are intended to produce a reliable and complete record in all cases, it is essential that the parties have access to all submissions made during the course of the proceeding. Nevertheless, SBA is mindful that public access or even limited party access to certain confidential or proprietary information may be detrimental to the party submitting it. Thus § 134.14(c) permits excision of such information prior to delivery or mailing of copies to other parties, if the information is adequately identified and described with sufficient particularity to permit another party to frame an adequate motion seeking its release, with or without a protective order. A protective order may also be sought if such information is introduced during the course of an oral hearing. Section 134.29(a) provides that public access will be granted to all information upon which a decision is based except information subject to a protective order issued pursuant to § 134.18(c) or any proprietary or confidential information properly excised under the standards established by the Freedom of Information or Privacy Act by either a private party of SBA. The public will also be permitted to attend any oral hearings conducted by OHA except formal employee grievances or proceedings that are closed by the judge for good cause shown, pursuant to § 134.19(e).

Parts 103, 104, 105, 108, 109, 110, 112, 113, 115, 120, 122, 124, and 132 of Title 13 presently contain specific procedural regulations pertaining to certain of the above-enumerated types of cases, and amendments to these parts are also being promulgated in order to conform them to the new procedures in Part 134.

SBA hereby certifies that these regulations are procedural in nature and do not constitute major regulations for the purpose of Executive Order 12291. In addition, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these regulations would not have a significant economic impact on a substantial number of small entities.

There are no Reporting or Recordkeeping Requirements subject to OMB approval in this Rule.

List of Subjects in 13 CFR Part 134

Administrative practice and procedure, Organization and function (government agencies).

PART 103—[AMENDED]

Accordingly, pursuant to 15 U.S.C. 634(b)(7), SBA hereby amends Chapter 1 of 13 CFR by adding Part 134, and by removing or revising various sections of Chapter 1 to conform to the text of new Part 134, as follows:

1. These conforming amendments are made to the following sections of Chapter 1 of 13 CFR:

§ 103.13–4 [Amended]

(a) Section 103.13–4 is amended by removing the reference to "Part 104" and substituting "Part 134" in lieu thereof, and is further amended by adding the following at the end thereof: "The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 104—[REMOVED]

(b) Part 104 is removed in its entirety and reserved.

PART 105—[AMENDED]

§ 105.407 [Amended]

(c) Section 105.407 is amended by adding the following at the end of paragraph (a): "SBA administrative proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34." Section 105 is further amended by removing paragraphs (d) through (j) in their entirety.

PART 108—[AMENDED]

§ 108.502–1 [Amended]

(d) Section 108.502–1 is amended in paragraph (k)(2) by inserting the following at the end of the first sentence: "and Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

§ 108.503–8 [Amended]

(e) Section 108.503–8 is amended by removing paragraphs (b) through (i), by deleting the identifier "(a)" and by adding the following at the end of the text of former paragraph (a): "Proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 109—[REMOVED]

(f) Part 109 is removed in its entirety and reserved.

PART 110—[AMENDED]

§ 110.1 [Amended]

(g) Section 110.1 is amended by adding the following at the end of the first full sentence in paragraph (b): "Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The respondent's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134."

§ 110.4 [Amended]

(h) Section 110.4 is amended by removing the reference to "Part 104" and substituting "Part 134" in lieu thereof.

§ 110.6 [Amended]

(i) Section 110.6 is amended by removing the reference to "§§ 109.16(c) and 109.26(a)" and substituting "§ 134.25(c)" in lieu thereof.

PART 112—[AMENDED]

§ 112.11 [Amended]

(j) Section 112.11 is amended by adding the following at the end of paragraph (b): "Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34. The applicant's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134." Section 112.11 is further amended in paragraph (c)(2) by inserting the words "an oral" between "for" and "hearing" and in paragraph (c)(3) by removing the words "action has been approved by the Administrator of SBA pursuant to § 112.13" and substituting the following in lieu thereof: "initial decision has become final pursuant to § 134.32(b)."

§§ 112.12–112.14 [Removed]

§ 112.15 [Redesignated as] § 112.12

(k) Sections 112.12 through 112.14 are removed in their entirety, § 112.15 is redesignated as § 112.12, and the table of contents in Part 112 is amended accordingly.

PART 113—[AMENDED]

§ 113.7 [Amended]

(l) Section 113.7 is amended by adding the following at the end of paragraph (b): "Such proceedings shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Admininstrator shall be the reviewing official for purposes of § 134.34. The applicant's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134." Section 113.7 is further amended in paragraph (c)(2) by inserting the words "an oral" between "for" and "hearing" and in paragraph (c)(3) by removing the words "action has been approved by the Administrator of SBA pursuant to § 113.9" and substituting the following in lieu thereof: "initial decision has become final pursuant to § 134.32(b)."

§§ 113.8 and 113.9 [Removed]

§ 113.10 [Redesignated as] § 113.8

(m) Sections 113.8 and 113.9 are removed in their entirety, § 113.10 is redesignated as § 113.8, and the table of contents in Part 113 is amended accordingly.

PART 115—[AMENDED]

§ 115.13 [Amended]

(n) Section 115.13 is amended by removing the last sentence and substituting the following in lieu thereof: "Any surety that has been penalized may file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

§ 115.14 [Amended]

(o) Section 115.14 is amended in paragraph (a) by removing the words "appeal such action to SBA's Associate Administrator for Investment" and substituting the following in lieu thereof: "file a petition in accordance with § 134.11(a) of this chapter. Proceedings concerning such appeal shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 120—[AMENDED]

§ 120.4 [Amended]

(p) Section 120.4 is amended in paragraph (d) by removing the words "suspension or revocation shall be accomplished in the manner set forth below" and subsequent paragraphs (1) through (7) and substituting the following in lieu thereof: "Proceedings for such purpose shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34." Section 120.4 is further amended by removing paragraph (g).

PART 122—[AMENDED]

§ 122.2 [Amended]

(q) Section 122.2 is amended by removing the third sentence in paragraph (d)(3) and substituting the following in lieu thereof: "Proceedings concerning such allegations shall be conducted in accordance with the provisions of Part 134 of this chapter. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.34."

PART 124—[AMENDED]

§ 124.1–1 [Amended]

(r) Section 124.1–1 is amended by removing the first sentence in paragraph (d)(4) and is amended in paragraph (d)(3) by inserting the word "oral" between "a" and "hearing", and by deleting the last sentence and substituting the following in lieu thereof: "Proceedings concerning program completion shall be conducted in accordance with the provisions of Part 134 of this chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The Associate Administrator of the Office of Minority Small Business and Capital Ownership Development shall be the reviewing official for purposes of § 134.34. The concern's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134."

(s) Section 124.1–1 is further amended by removing paragraph (e)(3) and is amended in paragraph (e)(2) by inserting the word "oral" between "a" and "hearing" and by removing the last sentence and substituting the following in lieu thereof: "Proceedings concerning program termination shall be conducted in accordance with the provisions of Part 134 of this Chapter by an Administrative Law Judge of the Office of Hearings and Appeals, who shall issue an initial decision in the case. The

Associate Administrator of the Office of Minority Small Business and Capital Ownership Development shall be the reviewing official for purposes of § 134.34. The concern's failure to file a timely motion in accordance with §§ 134.19 and 134.21, requesting that the matter be scheduled for an oral hearing, shall constitute waiver of the right to an oral hearing but shall not prevent the submission of written information and argument for the record in accordance with the provisions of Part 134."

§ 124.10 [Amended]

(t) Section 124.10, including §§ 124.10–1 through 124.10–25, is removed in its entirety, and the table of contents in Part 124 is amended accordingly.

PART 132—[AMENDED]

§ 132.302 [Amended]

(u) Section 132.302 is amended in paragraph (c) by inserting the word "not" between "shall" and "be" and by adding the following at the end thereof: "and may be excised from pleadings required to be served on all other parties to the proceeding in accordance with § 134.14(b) of this chapter."

§ 132.401 [Amended]

(v) Section 132.401 is amended by removing the text in its entirety and substituting the following in lieu thereof: "All applications for an award of fees shall be filed in accordance with § 134.11(a) of this chapter. Service of such application shall commence the proceeding which shall thereafter be conducted in accordance with the provisions of Part 134 by the adjudicative officer (*i.e.*, an Administrative Law Judge of the Office of Hearings and Appeals), who shall issue an initial decision in the case. The Administrator shall be the reviewing official for purposes of § 134.34."

§ 132.402 [Amended]

(w) Section 132.402 is amended by removing the second sentence of paragraph (a) and substituting the following in lieu thereof: "This Agency does not have the power to allow exceptions for later filings, and thus the applicant must serve and file the application no later than 30 days after the Agency decision becomes final in accordance with § 134.32 of this chapter." Section 132.402 is further amended in paragraph (b) by removing the words "of one of the types specified in paragraphs (a) (1) through (3) of this section."

§§ 132.403-132.407 and 132.409 [Removed]

§§ 132.408 and 132.410 [Redesignated as] §§ 132.403 and 132.404

§ 132.408 [Amended]

(x) Sections 132.403 through 132.407 and § 132.409 are removed in their entirety, § 132.408 is redesignated as § 132.403, and § 132.410 is redesignated as § 132.404, and the table of contents in Part 134 is amended accordingly. Section 132.408 is further amended by removing the first two sentences therein.

2. The Table of Contents to 13 CFR Chapter 1 is amended by adding the following:

PART 134—OFFICE OF HEARINGS AND APPEALS

3. Chapter 1 is further amended by adding the following part 134:

PART 134—OFFICE OF HEARINGS AND APPEALS

Subpart A—General

Sec.

134.1 Authority and implementation policy.
134.2 Definitions and miscellaneous rules.
134.3 Jurisdiction and function.
134.4 Waiver and interpretation of rules.

Subpart B—Rules of Practice

134.10 Applicability.
134.11 Commencement of proceedings.
134.12 Answer.
134.13 Amendments and supplemental pleadings.
134.14 Filing and service of pleadings.
134.15 Form requirements for pleadings.
134.16 Appearances.
134.17 Intervention.
134.18 Judges.
134.19 Oral hearings.
134.20 Prehearing conferences.
134.21 Motions.
134.22 Summary decision.
134.23 Interlocutory appeals.
134.24 Discovery.
134.25 Subpoenas.
134.26 Motions to compel.
134.27 Sanctions.
134.28 Evidence.
134.29 Record.
134.30 Proposed findings, conclusions, and order.
134.31 Contents of decisions.
134.32 Finality of decisions.
134.33 Requests to reopen record.
134.34 Petition for review of initial decision.
134.35 Recommended decisions.
134.36 Termination of jurisdiction.
134.37 Settlements.
134.38 *Ex Parte* communications.

Authority: 15 U.S.C. 634(b)(7).

Subpart A—General

§ 134.1 Authority and implementation policy.

(a) The Office of Hearings and Appeals is established pursuant to the authority set forth in the Small Business Act, 15 U.S.C. 631 *et seq.*, as implemented in § 101.2–8 of this chapter. Delegations of Authority by the Administrator to the Assistant Administrator for the Office of Hearings and Appeals are set forth in 48 FR 29646 (June 27, 1983).

(b) The regulations in this Part represent a single, consolidated set of rules governing the conduct of all proceedings within the jurisdiction of the Office of Hearings and Appeals, except size determination and product or service classification appeals. The size determination and product or service classification appeals are governed by the rules set forth in § 121.11 of this chapter. Because the rules in this part govern the conduct of a wide range of proceedings extending from internal Agency matters involving Small Business Administration employees to external matters involving constituents of the Agency or organizations cooperating with or regulated by the Agency, they are necessarily comprehensive in scope. They provide for a range of practice extending from the informal to the formal. It is specifically recognized and contemplated that not all of these rules will be applied in all types of cases.

(c) The full panoply of formalities will be available, as appropriate, in individual cases required by law to be heard on the record in accordance with the Administrative Procedure Act (APA), the Small Business Act, as amended, the Small Business Investment Act of 1958, as amended, and ony other applicable statutes. In these cases, the Administrative Law Judge will determine the extent of such formalities that is appropriate upon consideration of the issues and nature of the case and the attendant requirements of due process of law. Of course, the legitimate needs of the parties will also be considered in this respect.

(d) In cases involving external parties, but which are not required to be heard on the record in accordance with the APA and other applicable statutes, a lesser degree of formality will normally be deemed to be appropriate. The Administrative Judge assigned will determine the extent of such formalities upon consideration of the issues and nature of the case, the due process requirements and the legitimate needs of the parties.

(e) In cases involving internal Agency matters, there is a presumption in favor of such informality as may best achieve essential fairness to all parties without undue resort to the formality that may be appropriate in certain of the external cases. The Administrative Judge assigned will determine which procedures in these cases will best meet the requirements of fairness, and will retain authority to resort to appropriate formality in cases in which the due process requirements, fairness, and the needs of the parties warrant such action.

(f) The principal areas where variation in practice is expected to occur are those addressed in § 134.19, concerning oral hearings, and in § 134.24, concerning discovery. The following general policies are, therefore, stated for the purpose of providing guidance to the judges and all parties, but this guidance retains a measure of flexibility due to the differences in types of cases and the circumstances attending each case.

(g) It is emphasized that the standard stated in § 134.19(b) shall be applicable in all decisions respecting the grant of an oral hearing, irrespective of the type of case. No oral hearing shall be granted unless there is genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. Section 134.19 authorizes the presiding judge to determine whether or not an oral hearing is appropriate in the circumstances of each case. This is a determination that, appropriately, is reserved to the judge to assure fairness and reasonable opportunity to be heard.

(1) In APA proceedings, the requirement of an opportunity for an oral hearing on the record raises a presumption in favor of an oral hearing, where requested, although resolution of APA cases on the basis of a written record is encouraged, where appropriate.

(2) In non-APA external cases involving sanctions imposed or proposed by the Agency, the judge shall have discretion to grant an oral hearing where there is a genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses. The presumption is that, while due process considerations may warrant oral hearings in many sanction-type non-APA cases, the fact that Congress has not required such cases to be heard on the record with full APA formality means that the requirements of due process of law may also be met in a decisional process not requiring an oral hearing but preserving the opportunity to be heard through written submissions. These sanction-type cases involving external parties, which are not required by law to be heard on the record and to conform to APA requirements, are enumerated in paragraphs (a), (g)–(j), and (l) of § 134.3.

(3) In internal Agency cases, enumerated in § 134.3 (e) and (f), it is recognized that, as a matter of law, there is not a right to the same full array of due process elements as may be appropriate in the external cases. Nevertheless, the same standard shall be applied in determining whether an oral hearing is necessary in any individual case. In making this determination, the judge may also assess the importance of the disputed fact of decisional significance in terms of the Agency's proper interest in resolving internal matters in ways consistent with sound budgetary and internal management practices. For example, it is not contemplated that grievances will ordinarily require oral hearings.

(h) Section 134.24 provides for discovery procedures to be available, in the judge's discretion and upon motion, including requests for admissions, interrogatories, depositions, and requests for production of documents. This section contemplates that, in the more formal proceedings, the individual circumstances of any case may warrant discovery. However, consistent with the three basic classes of cases recognized above (APA, non-APA external cases, and internal Agency cases), it is also contemplated that formal discovery will be granted sparingly in internal Agency cases.

(1) In internal Agency cases, the practice of holding pre-hearing conferences for purposes of identifying the issues and providing appropriate information to all parties, through exchange of documents or otherwise, shall be favored by the judge irrespective of whether an oral hearing is granted. It should be noted that under § 134.27 the judge has available effective measures for directing or ordering the parties to cooperate in a timely and efficient process of defining and resolving the issues.

(2) In the external cases, discovery beyond that which may result from pre-hearing conferences is more likely to be appropriate in some cases. This, again, is a matter that must remain within the discretion of the judge. The judge shall be guided by consideration of the extent and formality of the due process required by the circumstances of the case. In neither the APA nor non-APA external cases will discovery be a matter of right. It may be granted regarding any matter not privileged that is relevant to the subject matter of the proceeding. In the non-APA external cases, Agency policy more strongly favors the use of pre-hearing conferences and orders to achieve the basic purposes of discovery, but this policy also preserves the discretion of the judge to grant discovery where it is appropriate.

§ 134.2 Definitions and miscellaneous rules.

(a) *Definitions.* As used in this part:

(1) "Act" means the Small Business Act, as amended, 15 U.S.C. 631 *et seq.*

(2) "Address" means the record address of a party, including the street location (in addition to a postal box number, where used), and postal zip code and the telephone number.

(3) "Administrator" means the Administrator of the Agency.

(4) "Agency" means the United States Small Business Administration.

(5) "Day" means a calendar day, unless otherwise indicated.

(6) "Determination" means only those appealable written Agency actions that are subject to the jurisdiction of the Office of Hearings and Appeals as enumerated in § 134.3 of this part.

(7) "Judge" means an Administrative Law Judge or an Administrative Judge of the Office of Hearings and Appeals appointed by the Administrator, or a delegatee, to serve the Agency in that capacity.

(8) "Hearing" means the presentation of evidence, whether oral or written, for the record.

(9) "Office" means the Office of Hearings and Appeals of the Small Business Administration.

(10) "Party" means the petitioner, grievant, complainant, respondent, intervenor, or Agency (when appropriate).

(11) "Petition," as used in § 134.11 of this part, includes an appeal from any written Agency determination (other than a size determination or product or service classification), a grievance, a complaint, or a request for initiation of a proceeding authorized in this chapter. Appeals from size determinations and product or service classifications are governed by Part 121 of this chapter.

(12) "Petitioner" means the Agency or any person or legal entity entitled to initiate a proceeding under the statutes and regulations administered by the Agency.

(13) "Pleadings" includes all written submissions (other than documentary or testimonial evidence) that are intended to be included in, and considered a part of, the record in any proceeding conducted pursuant to this part.

(14) "Respondent" means the Agency or any person or legal entity against whom a proceeding has been instituted pursuant to this part.

(15) "Agency reviewing official," as used in §§ 134.32(b) and 134.34, concerning initial decisions, means: The Administrator, in those proceedings specified in § 134.32(b) (1), (3) and (8); the Associate Administrator for Minority Small Business and Capital Ownership Development, in those proceedings specified in § 134.32(b)(2); and the Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office, in those proceedings specified in § 134.32(b)(4), (5), (6), (7) and (9).

(16) "SBIA" means the Small Business Investment Act of 1958, 15 U.S.C. 661 *et seq.*

(17) "SOP" means Standard Operating Procedure.

(b) *Miscellaneous Rules.* As used in this part:

(1) Singular nouns, pronouns, and verbs shall be read to include the plural, as appropriate.

(2) In computing the time set forth for the filing of pleadings or for compliance with orders issued pursuant to this part, the day from which the time is computed is not counted. The last day of the designated time period is counted, unless it is a Saturday, Sunday, or a Federal holiday, in which event the next business day following the Saturday, Sunday, or Federal holiday is counted.

§ 134.3 Jurisdiction and function.

The Office will conduct the following proceedings in accordance with the Act, the SBIA, other relevant statutes, the rules set forth in this part and other applicable regulations:

(a) Contractor debarment and suspension proceedings, pursuant to Office of Federal Procurement Policy Letter No. 82–1 and § 125.11 of this chapter;

(b) Proceedings relative to revocation or suspension of Small Business Investment Company licenses; cease and desist orders; and removal or suspension of directors and officers of licensees of Small Business Investment Companies, pursuant to the SBIA and Part 107 of this chapter;

(c) Proceedings to terminate participants from the Act's Section 8(a) Minority Small Business and Capital Ownership Development Assistance Program, pursuant to 15 U.S.C. 637(a), and Part 124 of this chapter;

(d) Proceedings relative to violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and Parts 112 or 113 of this chapter and violations of the Equal Credit Opportunity Act of 1974, 15 U.S.C. 1601 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendment of 1972, as amended, 20 U.S.C. 1681 *et seq.*; and section 4(b) of the Act, 15 U.S.C. 633(b), pursuant to Part 113 of this chapter, alleged by a person who claims to have been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any financial assistance activities of the Agency;

(e) Proceedings relative to employee formal stage grievances, pursuant to Agency SOP 37–71;

(f) Arbitrations arising under any pertinent labor agreement where all parties agree that the matter should be heard by the Office;

(g) Proceedings relative to the privilege of any applicant or agent to appear before the Agency, pursuant to 15 U.S.C. 634 and 642 *et seq.* and Part 103 of this chapter;

(h) Proceedings relative to the eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in Agency loan programs, once they have begun to do so, pursuant to 15 U.S.C. 634 (b)(6) *et seq.* and Parts 120 and 122 of this chapter;

(i) Proceedings relative to the termination of surety bond program participants, pursuant to 15 U.S.C. 694(a) *et seq.* and Part 115 of this chapter;

(j) Proceedings relative to the rights, privileges or obligations of development companies, pursuant to sections 501, 502, and 503 of the SBIA, 15 U.S.C. 687 *et seq.* and Part 108 of this chapter;

(k) Proceedings to determine allowance of costs and fees, pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and Part 132 of this chapter;

(l) Proceedings relative to debarment from appearance before the Agency because of post-employment restrictions, pursuant to 18 U.S.C. 207(a) *et seq.* and Part 105 of this chapter;

(m) Proceedings relative to the collection of debts owed to the Agency and to the United States, pursuant to the Debt Collection Act of 1982 and Part 140 of this chapter.

(n) Such other hearing, determination or appeal proceedings, other than those regarding size determinations or product or service classifications, as may be referred to the Office by appropriate authority.

§ 134.4 Waiver and interpretation of rules.

(a) *Waiver.* In the exercise of discretion and for good cause shown, the judge may, after notice to all parties, waive any time limit set forth in this part, other than those time limits in § 134.11(a) of this part for filing petitions, unless such time is limited by statute.

(b) *Interpretation.* The rules set forth in this part shall be liberally construed to carry out the purposes of the Act, the SBIA, and rules administered by the Agency, and to secure just and prompt determinations in all proceedings.

Subpart B—Rules of Practice

§ 134.10 Applicability.

The rules set forth in this subpart shall apply to proceedings regarding those matters specified in § 134.3 of this part.

§ 134.11 Commencement proceedings.

(a) *By Petition.* A proceeding may be commenced by a party other than the Agency by serving and filing a petition in accordance with §§ 134.14 and 134.15 of this part.

(1) The petition shall be in writing, shall be affirmed in accordance with § 134.15, and shall contain the following:

(i) The legal authority and jurisdiction for the proceeding;

(ii) A clear and concise statement setting forth the factual basis for the commencement of the proceeding;

(iii) A statement of the relief requested; and

(iv) The signature of the petitioner or authorized representative and his or her address.

(2) Except as provided in paragraphs (a)(3), (4), (5), and (6) of this section, a petition shall be served and filed no later than 30 days after the date of issuance of the written Agency action to which it applies.

(3) In the case of complaints alleging discrimination pursuant to §§108.502–1(k) and 122.2(d)(3) of this chapter, a petition shall be filed no later than 90 days after the alleged discrimination occurs.

(4) In the case of applications for an award of fees pursuant to Part 132 of this chapter, a petition shall be filed no later than 30 days after the decision to which it applies becomes final in accordance with § 134.32 of this part.

(5) Except in those cases where such time limit is waived by the judge for good cause shown, a formal employee grievance petition shall be filed no later than 20 days after issuance of the deciding official's decision to which it applies or after expiration of the time limit set forth in Agency SOP 37–71 for issuing such decision, whichever is earlier.

(6) In the case of debt collection proceedings pursuant to Part 140 of this

chapter, a petition shall be filed no later than 15 days after receipt of a notice of indebtedness and intention to collect such debt by salary or administrative offset.

(b) *By Order to Show Cause.* The Agency will commence a proceeding by issuing to the respondent an appropriate written order to show cause or notice containing the information set forth in paragraph (a)(1) of this section.

(c) *Motion for More Definite Statement.* Where a reasonable showing is made by a respondent that he or she cannot frame a responsive answer based on the allegations contained in the petition, order to show cause or notice, the respondent may move for a more definite statement of the allegations before filing an answer. Such motion shall be filed no later than 15 days after the service of the petition, order to show cause or notice and shall identify the defects complained of and the details desired. The filing of such motion shall stay the time for filing an answer set forth in § 134.12 of this part.

§ 134.12 Answer.

(a) *Time for filing.* The answer to a petition, order to show cause or notice shall be served and filed in accordance with §§134.14 and 134.15 of this part, no later than 30 days after the service of such petition, order to show cause or notice or an amendment thereto made in response to a motion for more definite statement pursuant to § 134.11(c) of this part or an amendment made pursuant to § 134.13.

(b) *Contents.* The answer to a petition, order to show cause or notice shall contain the following:

(1) A specific admission or denial of each factual allegation contained in the petition, order to show cause or notice or a statement that the respondent denies knowledge or information sufficient to determine the truth of the allegation, which will then be deemed denied;

(2) A concise statement of the facts supporting any affirmative defenses raised; and

(3) The signature of the respondent or authorized representative and his or her address.

(c) *Failure to Deny.* Allegations in the petition, order to show cause or notice not answered in accordance with paragraph (b)(1) of this section shall be deemed to be admitted.

(d) *Admission of Allegations.* An answer that admits all factual allegations shall constitute a waiver of the right to present evidence or witnesses pursuant to § 134.28(c) of this chapter but the right to further participation in the proceeding shall continue and questions of law and Agency precedent may be addressed.

(e) *Default.* Failure of the respondent to file an answer within the time set forth in paragraph (a) of this section shall constitute a default, and the judge will, without further notice, render an appropriate decision. The respondent shall have no right to participate further in the proceeding.

§ 134.13 Amendments and supplemental pleadings.

(a) *Amendments by Leave.* If a determination of a controversy on the merits will be facilitated thereby, the judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to pleadings, except that an application for amendment of an order to show cause may be allowed only if the amendment is reasonably within the scope of the proceeding initiated by the original order to show cause.

(b) *Conformance to Evidence.* When issues not raised by the pleadings, but reasonably within the scope of the proceeding initiated by the original petition, order to show cause or notice, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings, and such amendments of the pleadings as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time.

(c) *Supplemental Pleadings.* The judge may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events that have taken place since the date of the pleading sought to be supplemented and that are relevant to any of the issues in the proceeding.

§ 134.14 Filing and service of pleadings.

(a) *Filing.* Except as otherwise specifically provided in this part, an original and one copy of all pleadings shall be filed with the Office by mail addressed to: Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416, or by personal delivery to Suite 300, 2100 K Street, NW., Washington, D.C. The date of filing shall be the date the pleading is received by the Office.

(b) *Service.* Except as provided in Agency SOP 37–71 relating to formal employee grievances, each party shall be responsible for service of all its pleadings upon all other parties or their authorized representatives. Service shall be complete upon personal delivery or upon mailing first class postage prepaid, to the record address, unless otherwise ordered by the judge. All pleadings shall include a signed certificate stating how and when service was made.

(c) *Excision of Confidential Information.* Any information in pleadings that constitutes proprietary or confidential information need not be served upon other parties so long as such deletions are identifed and described in copies served upon such other parties. Such excisions may be the subject of a discovery motion pursuant to § 134.24 of this part and may be released under a protective order, where the judge deems appropriate.

(d) *Waiver of Rights to Service.* A party's failure to include a complete address, or to advise the Office of a changed address, shall constitute a waiver of the right to notice and service as provided in this part.

§ 134.15 Form requirements for pleadings.

Except as provided in Agency SOP 37–71, pleadings shall be typewritten on 8½ by 11-inch opaque paper, shall contain a caption that sufficiently identifies the parties, and shall be signed by an authorized person. Petitions, orders to show cause (except those signed by the Administrator), answers, interrogatories, and answers to interrogatories shall also contain a statement by the signatory stating as follows: "I have read this document and, under penalty of law and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I affirm that, to the best of my knowledge, the statements made herein are true and correct, and that this document is not being filed for the purpose of delay or harassment."

§ 134.16 Appearances.

(a) *Qualifications.* Except in arbitrations and in proceedings involving formal employee grievances (which are governed by the provisions of Agency SOP 37–71), parties to a proceeding may be represented only by a member in good standing of the bar of a Federal court or the highest court of any state or territory of the United States, or may represent themselves (appear *pro se*). A member of a partnership may represent the partnership and an authorized officer of a corporation, trust or association may represent the corporation, trust or association.

(b) *Notice of appearance.* An attorney or other representative appearing on behalf of a party shall serve and file a written notice of appearance in accordance with §§ 134.14 and 134.15 of this part.

(c) *Restrictions as to Former Employees.* No former employee of the Agency shall appear as attorney for any party in any proceeding, or represent a party in any capacity, in violation of §§ 105.401, 105.402, 105.405 or 105.406 of this chapter.

(d) *Standards of Conduct.* Attorneys appearing in any proceeding shall conform to the standards of ethical conduct required in the Courts of the United States.

(e) *Withdrawal of Appearance.* An attorney or other representative wishing to withdraw from a proceeding shall serve and file a written motion for withdrawal of appearance in accordance with §§ 134.14 and 134.15 of this part. Except in arbitrations or in proceedings involving formal employee grievances, in which a written request for withdrawal by either the grievant or the representative shall be automatically granted, withdrawal of appearance will be allowed by the judge, for good cause shown.

§ 134.17 Intervention.

(a) *Intervention as of Right.* The following rules shall apply to those proceedings in which an oral hearing is conducted pursuant to § 134.19 of this part, provided that the notice or motion is filed prior to the commencement of the oral hearing.

(1) The Agency may intervene, as a matter of right, by serving and filing a notice of intervention in accordance with § 134.21(a) of this part.

(2) Any individual partnership, association, corporation, or other agency shall serve and file a motion to intervene in accordance with § 134.21(a) of this part. The motion shall contain a brief statement of the movant's relationship to an interest in the proceeding. The judge shall grant leave to intervene, to such extent and upon such terms as are appropriate, upon finding that:

(i) There is a statutory right to intervene; or

(ii) The movant has an immediate property, financial, or other justiciable interest; the relief requested in the proceeding will affect such interest; and other means are not available to protect the movant's interest.

(b) *Discretionary intervention.* After commencement of an oral hearing or at any stage of a proceeding for which no oral hearing has been provided, the Agency or any other agency, individual, partnership, association or corporation may seek to intervene by serving and filing a motion in accordance with § 134.21(a) of this part. The motion shall contain a brief statement of the movant's interest in the proceeding. The judge may grant leave to intervene, to such an extent and upon such terms as appropriate, if:

(1) The movant's interest will not be represented by the existing parties;

(2) The movant's participation may reasonably be expected to assist in the development of a proper record; and

(3) The movant's participation will not broaden the issues, resulting in prejudicial delay of the proceeding.

§ 134.18 Judges.

(a) *Assignment of Judge.* Proceedings subject to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, shall be assigned to the Chief Administrative Law Judge or, by him or her, to another Administrative Law Judge. All other proceedings subject to this Part shall be assigned to an Administrative Judge or to an Administrative Law Judge. The Office will notify all parties of the identity of the judge assigned.

(b) *Duties and Powers of Judges.* The judge will assume jurisdiction upon assignment to a proceeding and shall have the power to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas and protective orders;

(3) Rule upon motions to quash or to modify subpoenas;

(4) Rule upon offers of proof and receive evidence;

(5) Take or cause depositions to be taken and determine their scope;

(6) Hold pre-hearing and other conferences for the settlement, simplification or clarification of the issues, and for other appropriate purposes;

(7) Dispose of procedural requests and motions;

(8) Regulate the course of the proceeding, require an oral hearing or telephone conference, if appropriate, fix the time and place of such oral hearing or conference, and exclude persons from such oral hearing or conference for contumacious conduct;

(9) Call and examine witnesses and introduce documentary or other evidence;

(10) Require the parties to state their respective positions concerning any issue in the proceeding at any time;

(11) Issue decisions and orders; and

(12) Take any other appropriate action authorized by this Part or the Delegations of Authority to the Office.

(c) *Protective orders.* Upon motion by a party, or by any person from whom discovery is sought, for good cause shown, or upon his or her own motion, the judge may issue such orders as justice requires to protect a party or person from harassment, embarrassment, oppression, or undue burden or expense, or from breach of confidentiality of material or information warranting protection.

(d) *Recusal.* The following rules shall apply regarding recusal of judges in proceedings under this part:

(1) A judge shall recuse himself or herself from a proceeding on his or her own initiative whenever such judge deems himself or herself to be disqualified.

(2) At any time following assignment of the judge and before issuance of the judge's decision under § 134.32 of this part, any party may request the judge to recuse himself or herself on the grounds of personal bias or disqualification, by serving and filing a motion, promptly upon the discovery of the alleged facts, with an affidavit setting forth, in detail, the matters alleged to constitute grounds for disqualification.

(3) If, in the opinion of the judge, the affidavit is sufficient on its face, the judge shall recuse himself or herself. If the judge does not recuse himself or herself, the judge shall so rule, state the grounds for the ruling, and continue with the proceeding or issue the decision. A denial of a request for recusal may be appealed to the Assistant Administrator or Chief Administrative Law Judge of the Office, but such appeal shall not stay the proceeding.

(e) *Interference.* No officer, employee or agent of the Agency or other person or party shall interfere with a judge's decisional independence. If the judge has a question as to whether there has been a prohibited interference with his or her independence, the matter shall be made part of the record in the proceeding on notice to the parties.

(f) *Substitution of Judge.* In the event of substitution of a new judge for the one originally assigned, any motion predicated upon such substitution shall be made no later than seven days thereafter.

§ 134.19 Oral hearings.

(a) *Request for Oral Hearing.* Any party may request the opportunity for an oral hearing to adduce testimony to support or refute any fact alleged in a pleading. The request for an oral hearing shall be served and filed in accordance with § 134.21(a) no later than 20 days after the service of the answer to such pleading.

(b) *Notice of Oral Hearing.* If a judge grants a request for an oral hearing, or makes his or her own determination that one is necessary, because of a genuine dispute as to a material fact of decisional significance that cannot be resolved except by confrontation of witnesses, he or she will so advise the

parties and, with appropriate notice, designate the time and place for such hearing and the issues to be addressed. The judge shall give due regard to the convenience and necessity of the parties or their authorized representatives in designating the time and place of the oral hearing and may conduct such hearing by telephone conference in appropriate circumstances.

(c) *Postponements.* Postponement of an oral hearing will be allowed only upon good cause shown or upon agreement of the parties, concurred in by the judge. Except in unusual circumstances, no motion for a postponement will be considered unless it is served and filed in accordance with § 134.21(a) at least seven days in advance of the date designated for the oral hearing.

(d) *Failure to Appear.* The failure of a party to appear for an oral hearing or to participate in a prearranged telephone conference, unless excused by the judge for good cause shown, before or after the fact, may be deemed to be a waiver by that party of all rights to participate further in the proceeding.

(e) *Public Access to Oral Hearing.* All oral hearings, except those involving employee grievances, shall be public unless, for good cause shown, a closed hearing is ordered by the judge.

(f) *Witnesses.* Subpoenaed witnesses shall be paid the same fees and mileage costs as are paid in the Federal courts. The party who requests the witness's presence shall be responsible for paying such fees. Except in the case of subpoenas issued on behalf of a Federal government entity, one day's fees and mileage costs shall be tendered to the subpoenaed witness at the time of service of the subpoena. Subsequent entitlements shall be payable following the appearance and release of the witness.

(g) *Recording and Transcripts.* Oral hearings will be recorded verbatim. The judge may make a final, initial or recommended decision without having an official transcript of the record, unless a transcript is required pursuant to statute or to rules set forth in this chapter. A transcript or copies of a recording may be obtained by the parties upon request to the recording service. Any fees in connection therewith shall be the responsibility of the parties.

§ 134.20 Prehearing conferences.

(a) *Nature of Prehearing Conference.* The judge, upon motion of any party or upon his or her own motion, may direct all parties or their counsel to confer and consider:

(1) Simplification, clarification, compromise, or settlement of the issues;

(2) Necessity and desirability of amendments to the pleadings;

(3) Stipulations, admissions of fact, and the contents, admissibility, and authenticity of documents;

(4) Where an oral hearing is involved, expedition in the presentation of evidence, including, but not limited to, restriction of the number of witnesses;

(5) A statement of the issues as they then appear;

(6) A proposed plan and schedule of discovery;

(7) Any limitations proposed to be placed on discovery; and

(8) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of witnesses and furnishing for inspection or copying of non-privileged documents, papers, books, or other physical exhibits, which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of any party to the proceeding.

(b) *Record of Prehearing Conference.* A pre-hearing conference may be conducted by telephone or in person at a time and place convenient to all parties, and, in the discretion of the judge, may be recorded verbatim.

(c) *Order.* After such prehearing conference, the judge will issue an order that recites the actions taken and the agreements made. Such order shall control the subsequent course of the proceeding, unless modified.

§ 134.21 Motions.

(a) *Filing and Service.* Except where the judge permits an oral motion to be made at a conference, or on the record in an oral hearing or telephone conference, all motions shall be written, shall be filed with the Office, and shall be served upon all parties in accordance with §§ 134.14 and 134.15 of this part.

(B) *Contents of Motion.* All motions shall state the particular order, ruling, or action requested and the grounds and authority therefor.

(c) *Answer and Filing of Briefs.* No later than ten days after the service of any motion, or within such time as the judge may direct for good cause shown, the opposing party shall serve and file an answer to the motion, or be deemed to have consented to the relief sought. The moving party shall have no right to reply, except as permitted by the judge. No oral argument will be heard on motions unless the judge directs otherwise. Written briefs may be filed with motions and with answers thereto.

(d) *Disposition of Motion.* All motions shall be ruled upon by the judge assigned, unless the judge is unavailable. In that event, if circumstances warrant, such motion may be acted upon by the Assistant Administrator or the Chief Administrative Law Judge of the Office, as appropriate.

§ 134.22 Summary decision.

(a) *Motion for Summary Decision.* Any party who believes that there is no genuine issue of material fact of decisional significance, and that he or she is entitled to a decision as a matter of law, may move for a summary decision as to all or any part of the proceeding.

(b) *Contents of Motion.* The motion shall include a statement of the facts as to which the moving party contends there is no genuine issue, shall be supported by the pleadings, and may be accompanied by affidavits and a legal memorandum or brief.

(c) *Answer to Motion.* No later than 20 days after the service of the motion, any other party may serve and file an opposition thereto, and may countermove for summary decision in his or her favor.

(d) *Order.* When a motion for summary decision is granted, the judge will issue an appropriate order as to the issues so determined. If the motion is denied, in whole or in part, the judge will issue an order specifying those facts about which there is no genuine issue and those material facts of decisional significance found to be controverted in good faith. Further proceedings will then be ordered.

§ 134.23 Interlocutory appeals.

(a) *General Rules.* An interlocutory appeal is an appeal of a ruling made by a judge during the course of the proceeding, other than a ruling on a request for recusal or a ruling that is fully dispositive of the proceeding. A motion for leave to take an interlocutory appeal will not be entertained in those proceedings specified in § 134.32(a) (2) and (3) of this part, in which the judge's decision is the final decision of the Agency, or in formal employee grievances. In all other proceedings, an interlocutory appeal shall not be permitted unless, upon motion by a party, or upon the judge's determination, the judge certifies that the question presented is immediately appealable. Interlocutory appeals from a ruling by a judge will be decided by the Agency reviewing official identified in the applicable substantive regulations governing the proceeding.

(b) *Motion for Certification.* A party seeking leave to take an interlocutory

appeal shall file a motion for certification no later than 10 days after issuance of the ruling to which the motion applies. The motion shall include arguments in support of both the certification and the relief requested on the merits.

(c) *Basis for Certification.* The judge will certify a ruling for interlocutory review only if he or she determines that:

(1) The ruling involves an important question of law or policy regarding which there are substantial grounds for a difference of opinion; and

(2) An immediate review will materially expedite completion of the proceeding or denial of review would cause undue hardship to a party or the public.

(d) *Order.* The judge will issue expeditiously an order granting or denying a motion for certification and, if certification is granted, will refer the record to the Agency reviewing official. If certification is denied, the issue may be raised in any appeal of the judge's decision on the merits.

(e) *Stay of Proceeding.* A stay of the proceeding, while an interlocutory appeal is pending, shall be at the discretion of the judge.

§ 134.24 Discovery.

In the judge's discretion, and upon motion, a party may obtain discovery in the form of requests for admissions, interrogatories, depositions, or requests for production of documents, regarding any matter, not privileged, that is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought will be inadmissible, if it appears reasonably calculated to lead to the discovery of admissible evidence. The judge will ordinarily limit the length of time allowed for discovery consistent with the exigencies of the proceeding.

§ 134.25 Subpoenas.

(a) *Scope.* A request for the issuance of a subpoena requiring a witness to appear and testify at a specific place and time or production of documents shall be made to the judge, except that subpoenas shall not be authorized for any proceeding relative to internal Agency determinations, *e.g.* formal employee grievances and arbitrations.

(b) *Requests.* Requests for subpoenas may be made on the record at the oral hearing or *ex parte* by written application, in triplicate. All requests shall clearly identify the person subpoenaed and shall be supported by a showing of the relevance, scope and materiality of the evidence sought. Requests for a subpoena *duces tecum* shall specify with particularity the books, papers, and documents desired and the facts expected to be provided thereby, and shall be affirmed in accordance with § 134.15 of this part.

(c) *Service.* The following rules shall apply to service of subpoenas:

(1) Service of a subpoena shall be made by any person who is over 18 years of age, or by certified mail, return receipt requested.

(2) Service of a subpoena by a person other than a United States Marshal or Deputy shall be attested by the person making such service. The attesting affidavit shall state the date, time, and method of service.

(3) In the case of service by certified mail, a copy of the document shall be addressed to the person or business entity to be served, at its residence, principal office or place of business. The return receipt shall be proof of service of the document.

(d) *Motion to Quash.* Motions to limit or quash a subpoena shall be served and filed no later than 10 days after receipt of service of the subpoena or by the return date specified. Any response to such motion shall be served and filed within seven days after the service of the motion, unless a shorter time is specified by the judge to meet the exigencies of a particular case. Oral argument on the motion may be heard at the judge's discretion.

§ 134.26 Motions to compel.

Subject to the limitations of § 134.25(a) of this part, and upon reasonable notice to all other parties and persons affected thereby, a party may make a motion for an order compelling discovery or for the production of witnesses or documents. The judge may deny the motion or compel discovery or production and may also issue a protective order, upon the request of the party or person from whom discovery or production is sought or upon his or her own motion.

§ 134.27 Sanctions.

If any party fails to comply with a written or oral order of the judge, the judge may impose appropriate sanctions including, but not limited to:

(a) Drawing an inference in favor of a party regarding the information sought;

(b) Prohibiting the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, evidence relating to the information sought;

(c) Permitting the requesting party to introduce secondary evidence concerning the information sought;

(d) Striking any part of the pleadings of the party failing to comply with such request; or

(e) Taking such other appropriate action as is deemed necessary to serve the ends of justice.

§ 134.28 Evidence.

(a) *Applicability of the Federal Rules of Evidence.* Unless otherwise provided by statute or this part, the Federal Rules of Evidence may be used as a general guide in all proceedings subject to this part.

(b) *Admissibility.* All material, relevant, and otherwise reliable information is admissible, but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or if it is needlessly cumulative. Introduction of hearsay evidence will be permitted when it is deemed reliable, probative, material and relevant. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(c) *Parties' Rights to Present Evidence or Witnesses.* The parties shall have the following rights regarding the presentation of evidence and witnesses:

(1) When an oral hearing or a telephone conference has been provided, a party shall be entitled to present his or her case or defense by oral, documentary and physical evidence, by depositions, and by duly authenticated copies of records and documents, to submit rebuttal evidence, and to conduct reasonable cross-examination.

(2) When no oral hearing or telephone conference has been provided, a party shall be entitled to present his or her case or defense by documentary and physical evidence, by depositions, and by duly authenticated copies of records and documents.

(d) *Objections.* Motions objecting to the admission of evidence, or to the conduct of the proceeding, may be made orally on the record where an oral hearing or telephone conference has been provided, or shall be served and filed in accordance with § 134.21(a) of this part, and shall include a short statement of the grounds therefor. Argument thereon, or briefs or legal memoranda, if requested by the judge, shall be included in the record. Rulings on objections will be made at the time of the objection or prior to the receipt of further evidence, unless the judge orders otherwise, and will be a part of the record. No objections shall be deemed waived by further participation in the proceeding and an automatic exception shall be deemed applicable to every adverse ruling.

(e) *Stipulations.* The parties may, in writing, or orally on the record where an oral hearing or telephone conference has

been provided, agree upon any facts or procedures relevant to the proceeding. Such stipulations shall be binding on the parties.

(f) *Exhibits.* All exhibits offered into evidence shall be numbered and marked so as to identify the party offering the exhibit and shall be filed with the judge in accordance with a pre-trial order or, if there is no pre-trial order, no later than seven days prior to the oral hearing or telephone conference. Copies of all such exhibits shall be served simultaneously upon the opposing party in the proceeding. Admission of exhibits not so served shall be within the judge's discretion. Any information that constitutes proprietary or confidential information may be made the subject of a motion for a protective order.

(g) *Offer of proof.* Whenever evidence is excluded by the judge, the offering party may make an offer of proof of what the party expects to establish with respect thereto. In the case of an oral hearing or telephone conference, if the offer of proof consists of an oral statement, it shall be included in the record. If the offer of proof consists of an exhibit or other documentary evidence, it shall be marked for identification and retained in the record so as to be available for consideration by any reviewing authority.

§ 134.29 Record.

(a) *Docket File.* Upon commencement of a proceeding, the matter will be assigned a docket number. The docket file will consist of the petition, order to show cause or notice, all other pleadings, motions, judge's orders and decisions, evidence admitted into evidence during the proceeding, and any oral hearing or telephone conference record. Public access to such file shall be permitted as follows:

(1) Except as provided in paragraph (a)(2) of this section, the docket file will be available for public inspection at the Office during normal business hours, and copies of such material may be obtained upon payment of the applicable charges;

(2) The following information in the docket file shall not be subject to public inspection or copying:

(i) Information subject to a protective order issued pursuant to § 134.18(c) of this part;

(ii) Any proprietary or confidential information the withholding of which is provided pursuant to § 134.14(c) of this part or which is identified and contained in the Agency case file compiled prior to commencement of the proceeding; and

(iii) Any other information to which public access is prohibited by law or regulation.

(b) *Basis for Decision.* The documents included in the docket file pursuant to paragraph (a) of this section shall constitute the exclusive record for decision. Where the decision is based on official notice of a material fact not appearing in the record, any party will, on written request filed no later than seven days following issuance of the decision, be afforded an opportunity to show the contrary.

(c) *Closing of Record.* The record of the proceeding shall be closed in accordance with the following procedures:

(1) When an oral hearing or telephone conference has been provided, the record will be closed at the conclusion of such hearing, unless the judge directs otherwise. After the record has been closed, no additional evidence or argument will be accepted, except upon the grant of a motion to reopen the record under § 134.33 of this part. If a transcript of the hearing is made, corrections may be permitted upon motion made no later than ten days after receipt of the transcript, and corrections will be permitted by the judge only if errors of substance are involved. The judge may, on his or her own motion and on notice to the parties, make such corrections as are deemed necessary. The judge shall make a part of the record any approved corrections to the transcript and any motions and rulings made after the closing of the record.

(2) When no oral hearing has been provided, the record will be closed on the date set by the judge as the final date for the receipt of submissions from the parties. After the record has been closed, no additional documents will be accepted except upon grant of a motion to reopen the record under § 134.33 of this part. The judge shall make a part of the record any motions and rulings made after the closing of the record.

(d) *Certification of Record.* Upon the closing of the record, the judge shall certify and file with the Office a true and correct copy of the entire record consisting of the recording or transcript of testimony, if any, and all exhibits, pleadings, orders, papers, and requests filed in the proceeding.

§ 134.30 Proposed findings, conclusions, and order.

(a) *Request to File.* Upon request, in those proceedings where such filing is not a matter of right, the judge may allow the parties to file proposed findings of fact and conclusions of law and a proposed order accompanied by a supporting brief.

(b) *Required by Judge.* In any proceeding, the judge may, in his or her discretion, direct the parties to file proposed findings of fact and conclusions of law and a proposed order accompanied by a supporting brief. In the event of non-compliance with such direction, the defaulting party may be deemed to have waived his or her right to object to the findings and conclusions of the judge.

§ 134.31 Contents of decisions

(a) *Contents.* The decision of the judge will be based upon the whole record, will be predicated upon a preponderance of the evidence, and will include findings of fact and conclusions of law, with reasons therefor, upon each material issue of fact and law of decisional significance.

(b) *Service of Decisions and Orders.* A copy of each written decision and order issued by the judge shall be served by the Office on each party to the proceeding.

§ 134.32 Finality of decisions.

(a) *Final decisions.* A decision by the judge shall be the final decision, upon issuance, in the following proceedings:

(1) Proceedings relative to formal employee grievances, pursuant to Agency SOP 37–71, which shall be final 15 days after issuance, provided that the deciding official designated in such SOP has not petitioned the Deputy Administrator (or the Inspector General, in the case of OIG grievances) for review, upon concurrence of the General Counsel (or the Counsel to the Inspector General in the case of OIG grievances), within such 15 day period, based on an allegation that the decision issued by the judge is contrary to law, regulation or Agency policy or is impracticable to implement, in which case the final decision shall be rendered by the Deputy Administrator (or Inspector General, as appropriate);

(2) Arbitrations arising under any pertinent labor agreement;

(3) Proceedings relative to the collection of debts owed to the Agency and to the United States, pursuant to the Debt Collection Act of 1982 and Part 140 of this chapter.

(b) *Initial Decisions.* Except as otherwise provided by statute, unless a petition for review has been filed pursuant to § 134.34(a) of this part or the Agency reviewing official has ordered review pursuant to § 134.34(b), an initial decision of the judge shall be deemed adopted by the reviewing official and shall be the final decision of the Agency 30 days after issuance, in the following proceedings:

(1) Proceedings relative to revocation or suspension of Small Business

Investment Company licenses; cease and desist orders; and removal or suspension of directors and officers of licensees of Small Business Investment Companies, pursuant to the SBIA and part 107 of this chapter;

(2) Proceedings to terminate participants in the Act's Section 8(a) Minority Small Business and Capital Ownership Development Assistance Program, pursuant to 15 U.S.C. 637(a) and part 124 of this chapter;

(3) Proceedings relative to violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.*, and Parts 112 or 113 of this chapter, and violations of the Equal Credit Opportunity Act of 1974, 15 U.S.C. 1601 *et seq.*; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Title VIII of the Civil Rights Act of 1968; Title IX of the Education Amendment of 1972, as amended, 20 U.S.C. 1681 *et seq.*; and section 4(b) of the Act, 15 U.S.C. 633(b), pursuant to Part 113 of this chapter, alleged by a person who claims to have been excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any financial assistance activities of the Agency;

(4) Proceedings relative to the privilege of any applicant or agent to appear before the Agency, pursuant to 15 U.S.C. 634 and 642 *et seq.*, and Part 103 of this chapter;

(5) Proceedings relative to the eligibility of, or preferred or certified status of, any bank or non-bank lender to continue to participate in Agency loan programs, pursuant to 15 U.S.C 634(b)(6) *et seq.*, and Parts 120 and 122 of this chapter;

(6) Proceedings relative to the termination of surety bond program participants, pursuant to 15 U.S.C. 694(a) *et seq.*, and Part 115 of this chapter;

(7) Proceedings relative to the rights, privileges or obligations of development companies, pursuant to sections 501, 502, and 503 of the SBIA, 15 U.S.C. 687 *et seq.*, and Part 108 of this chapter;

(8) Proceedings to determine allowance of costs and fees, pursuant to the Equal Access to Justice Act, 5 U.S.C. 504 and Part 132 of this chapter; and

(9) Proceedings relative to debarment from appearance before the Agency because of post-employment restrictions, pursuant to 18 U.S.C. 207(a) *et seq.*, and Part 105 of this chapter.

(c) *Recommended Decisions.* A recommended decision will be issued by the judge in contractor debarment and suspension proceedings, pursuant to Office of Federal Procurement Policy Letter 82–1 and § 125.11 of this chapter. A final decision by the Agency reviewing official shall be issued and become final in accordance with § 134.35 of this part.

§ 134.33 Requests to reopen record.

(a) *Clerical Errors.* Clerical errors resulting from oversight or omission may be corrected by the judge at any time after the record has been closed, on his or her own initiative after notice to all parties or on motion of any party.

(b) *New Evidence.* If new and material evidence of decisional significance becomes available, which was not available to the moving party before issuance of the decision by the judge, despite due diligence, such party may move to reopen the record within 30 days of issuance of the decision. Such motion shall be directed to the judge by whom the proceeding was conducted.

§ 134.34 Petition for review of initial decision.

(a) *By Petition.* Any party may serve and file a petition for review with the Agency reviewing official identified in the applicable substantive regulations governing the proceeding, within 30 days of issuance of the initial decision. A petition for review shall set forth exceptions to the initial decision, supported by specific references to relevant law, regulations, Agency policy, and the record, and may be supported by a brief.

(b) *By Order.* The Agency reviewing official may issue an order on his or her own motion, within 30 days of issuance of the initial decision, directing that the case be placed on the docket for review and shall serve a copy of such order on all parties to the proceeding.

(c) *Answer.* Within ten days after the filing of the petition or order for review, any party may file an answer.

(d) *Grounds for Review.* The Agency reviewing official may grant a petition for review when it is established that:

(1) The decision of the judge is based on an erroneous finding of fact or an erroneous interpretation or application of law, regulation or Agency policy; and

(2) Review is necessary and appropriate to ensure a just and proper disposition of the proceeding and to protect the interests of the parties.

(e) *Order and Effective Date.* After consideration of the record, the Agency reviewing official may:

(1) Affirm, reverse, or modify the initial decision, which action by the reviewing official shall be the final decision of the Agency, upon issuance;

(2) Remand the initial decision to the judge, with directions, for appropriate further proceedings; or

(3) Deny a petition for review summarily, in which case the decision of the judge shall forthwith become adopted by the reviewing official and shall become the final decision of the Agency.

§ 134.35 Recommended decision.

(a) *Exceptions.* Any party may serve and file exceptions to the recommended decision with the Agency reviewing official identified in the applicable substantive regulations governing the proceeding, within 30 days of the issuance of the recommended decision.

(b) *Contents.* Such exceptions shall be supported by specific references to relevent law, regulations, Agency policy, and the record, and may be supported by a brief.

(c) *Answers.* Within ten days after filing of the exceptions, any party may file an answer.

(d) *Order and Effective Date.* After consideration of the record, the Agency reviewing official may:

(1) Adopt, reject, or modify the recommended decision, which action by the reviewing official shall be the final decision of the Agency, upon issuance; or

(2) Remand the recommended decision to the judge, with directions, for appropriate further proceedings.

§ 134.36 Termination of jurisdiction.

The jurisdiction of the judge shall terminate upon issuance of the final, initial, or recommended decision, except as provided in § 134.33 of this part or unless the case is remanded for appropriate further proceedings.

§ 134.37 Settlements.

(a) *Contents of Settlement Agreement.* At any time after the commencement of the proceeding, the parties may submit to the judge a settlement agreement that includes:

(1) The basis for the agreement;

(2) A statement of jurisdiction;

(3) A provision that the settlement order will have the same force and effect as a decision issued in accordance with this part, except that it shall be final and may not be altered, modified, or set aside;

(4) A waiver of further Agency proceedings and the right to seek judicial review or otherwise challenge the validity of the order;

(5) A statement that the allegations in the petition, order to show cause or notice commencing the proceedings are fully resolved by the agreement and order;

(6) Signatures of the parties to the agreement; and

(7) A proposed order.

(b) *Action on Settlement Agreement.* After considering the agreement and proposed order, the judge will, within 30 days:

(1) Approve the settlement agreement and issue an order incorporating such agreement by reference; or

(2) Reject the settlement agreement and issue an order notifying the parties of the resumption of the proceeding.

(c) *Continuance Pending Settlement.* Any party may move to recess the proceeding for a reasonable time to permit negotiation of a settlement. The allowance of such continuance, and the duration thereof, is in the discretion of the judge. On or before the expiration of the time allowed for negotiations, the parties shall:

(1) Submit the proposed settlement agreement to the judge for consideration; or

(2) Inform the judge that an agreement cannot be reached so that the proceeding can be resumed.

(d) *Admissibility.* A rejected settlement agreement and all negotiations relative thereto shall not be admissible in evidence.

§ 134.38 Ex Parte communications.

Except to the extent required for the disposition of *ex parte* matters as authorized by law or this chapter, no person, party or employee of the Agency who performs any investigative or prosecutorial function in connection with a proceeding under this part shall consult or communicate with a judge concerning any fact or question of law or Agency precedent at issue in such proceeding, except on notice and opportunity for all parties to participate. In the event that such an unauthorized consultation or communication is initiated, the judge shall disclose that occurrence on the record with notice to the parties, either by filing therein a memorandum or by making a statement, if the transaction was oral, or by filing any writing delivered to him or her. When such a prohibited communication has been initiated by a party, the judge may give appropriate consideration to the imposition of such sanctions or remedial relief as the circumstances warrant.

Dated: August 15, 1984.

James C. Sanders,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AWA-16]

Alteration of VOR Federal Airway V-18, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment extends VOR Federal Airway V-18 from Millsap, TX, VORTAC (MQP) to Guthrie, TX, VORTAC (GTH), to enhance traffic flows for westbound traffic originating at or overflying the Dallas-Fort Worth terminal area and to improve flight plan handling for aircraft on this route.

DATES: Effective date—0901 G.m.t., October 25, 1984. Comments must be received on or before October 8, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Southwest Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-16, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves extending VOR Federal Airway V-18 from Millsap, TX, to Guthrie, TX, to enhance traffic flows for westbound traffic originating at or overflying the Dallas-Fort Worth terminal area and to improve flight plan handling for aircraft on this route, in conjunction with the implementation of new standard instrument departures from the Dallas-Fort Worth terminal area and, thus, was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to extend VOR Federal Airway V-18 from the Millsap, TX, VORTAC (MQP) to the Guthrie, TX, VORTAC (GTH) § 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to extend V-18 so the airway will coincide with the new standard instrument departures from the Dallas-Fort Worth terminal area, to be effective October 25, 1984. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the next charting date.

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

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

V–18 [Amended]

By removing the words "From Millsap, TX, via" and substituting the words "From Guthrie, TX, via INT Guthrie 156° and Millsap, TX, 274° radials; Millsap;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on August 17, 1984.

Harold W. Becker,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84–22488 Filed 8–23–84; 8:45 am]

BILLING CODE 4510–13–M

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14 CFR Part 71

[Airspace Docket No. 84–ASW–26]

Designation of Federal Airways; Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Transition Area; Freeport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will alter the transition area at Freeport, TX. The intended effect of the amendment is to provide additional controlled airspace for helicopters executing a new standard instrument approach procedure (SIAP) to a point in space. This amendment is necessary since there is a new point in space SIAP for helicopters being developed for the Air Logistics landing area.

EFFECTIVE DATE: October 25, 1984.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 877–2630.

SUPPLEMENTARY INFORMATION:

History

On June 28, 1984, a notice of proposed rulemaking was published in the **Federal Register** (49 FR 26600) stating that the Federal Aviation Administration proposed to alter the Freeport, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections.

Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181, of the Federal Aviation Regulations (14 CFR Part 71) as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, is amended, effective 0901 G.m.t., October 25, 1984, by adding the following:

Freeport, TX Revised

and within 2.5 miles each side of the Scholes Vortac 233° radial at a point beginning 19.5 miles southwest of the vortac and extending to 26.5 miles southwest.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.61(c))

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

Issued in Fort Worth, TX, on August 10, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84–22490 Filed 8–23–84; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 40804–4104]

15 CFR Part 399

Decontrol of Certain Flame Retardant Chemicals; Interim Rule and Request for Comments

AGENCY: Office of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: This rule removes national security export controls on certain flame retardant chemicals to specified country groups. These flame retardant chemicals are:

Decabromodiphenyloxide
Tetrabromobisphenol A
Tetrabromophthalic anhydride and its esters
Octabromodiphenyloxide
Hexabromocyclododecane
Ethylenebistetrabromophthalimide

The Office of Export Administration in consultation with Departments of Defense and State, has determined that such controls on these flame retardant chemicals need no longer be maintained, especially in light of wide availability abroad. These chemicals however, will be subject to foreign policy controls to Country Groups S and Z, consistent with the policy of prohibiting exports to such country groups. Therefore, these chemicals, previously controlled under entry 5799D of the Commodity Control List (a listing of items subject to Department of Commerce export controls) are now controlled under entry 6799G.

DATES: Effective date shall be August 24, 1984. Comments must be received by October 23, 1984.

ADDRESS: Written comments (six copies) should be sent to: Betty Ferrell, Exporter Services Division, Office of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Betty Ferrell, Exporter Services Division, Telephone: (202) 377–3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation to Comment

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. Since this regulation involves a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring a notice of proposed rulemaking, an opportunity for public participation and a delay in effective date are inapplicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in developing final regulations. These regulations may be revised before the end of the comment period. Accordingly, interested persons who desire to comment are encouraged to do so at the earliest possible time to permit the fullest consideration of their views.

2. This rule does not contain a new collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

3. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

4. This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291 (46 FR 13193, February 19, 1981), "Federal Regulation."

The period for submission of comments will close October 23, 1984. All comments received before the close of the comment period will be considered by the Department in the development of final regulations. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured. Public comments that are accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the person who submitted them and will not be considered in the development of final regulations.

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

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377–3031.

List of Subjects in 15 CFR Part 399

Exports.

§ 399.2 [Amended]

Accordingly, the Export Administration Regulation (15 CFR Parts 368–399) are amended by inserting the following six flame retardant chemicals in Interpretation 24 of Supplement No. 1 to § 399.2, "Chemicals", as follows:

Under the category of "organic chemicals",

"Decabromodiphenyloxide"; is inserted between "Cytosine hemihydrate" and "Decahydronapthalene";

"Ethylenebistetrabromophthalimide" is inserted between "Ethylcyanoacetate" and "Ethylene carbonate";

"Hexabromocyclododecane"; is inserted between "Heptylic acid" and "Hexachlorobenzene";

"Octabromodiphenyloxide" is inserted between "Nucleotides or mono nucleotides" and "1-Octadecanol"; and

"Tetrabromobisphenol A" and "Tetrabromophthalic anhydride and its esters" are inserted between "Terpinyl acetate" and "Tetrabutyl titanate".

Authority: Secs. 203, 206, Pub. L. 95–223, Title II, 91 Stat. 1626, 1628 (50 U.S.C. 1702, 1704), Executive Order No. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984).

Dated: August 7, 1984.

John K. Boidock,

Director, Office of Export Administration, International Trade Administration.

[FR Doc. 84–22552 Filed 8–23–84; 8:45 am]

BILLING CODE 3510-DT-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Expansion of Commodity Option Pilot Program

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending the regulations governing its pilot program for the trading of commodity options on domestic boards of trade. The Commission's regulations currently permit domestic boards of trade to be designated as contract markets for two options on futures contracts, two options on physical commodities, or one option on a futures contract and one option on a physical commodity for all commodities other than those domestic agricultural commodities specifically enumerated in section 2(a)(1)(A) of the Commodity Exchange Act ("Act"). The Commission's regulations separately allow each exchange to be designated for two options on futures contracts in the enumerated agricultural commodities. The Commission is now amending these regulations to modify the pilot program's numerical limitations with respect to options which do not involve domestic agricultural commodities to permit qualifying boards of trade to be designated for up to five such option contracts, of which no more than two contracts may involve an option on a physical commodity. Options on futures contracts involving domestic agricultural commodities remain subject to existing restrictions.

EFFECTIVE DATE: The rule amendment will become effective upon the expiration of 30 calendar days of continuous session of Congress after the transmittal of the amendment, and related materials, to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry pursuant to section 4c(c) of the Commodity Exchange Act, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Kenneth M. Rosenzweig, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 21, 1984, the Commodity Futures Trading Commission proposed to amend the regulations governing its pilot program for the trading of commodity options on domestic exchanges in order to increase the number of options on futures contracts for which a board of trade could be designated as a contract market. 49 FR 25483 (June 21, 1984). As the Commission explained at that time, its proposal did not expand its new and separate three-year pilot program for the domestic agricultural commodities specifically enumerated in section 2(a)(1)(A) of the Act (7 U.S.C. 2), which had only been recently established and under which trading had not yet commenced. 49 FR 25485. The Commission further indicated that it was proposing to retain the existing restriction on the number of options on physicals for which an exchange could be designated as a contract market, noting that limiting the exchanges to no more than two options on a physical had not thus far appeared to "adversely affect the exchanges or the Commission's evaluation of the pilot program." *Id.* The Commission nonetheless specifically requested

comments on whether it was appropriate to continue these two limitations in effect as well as on the more generalized question of whether it should broaden the pilot program at this time.

The Commission received twenty-six comments on its proposal. In particular, the Commission received comment letters from Futures Commission merchants, banks and other commercial users of the option markets as well as from the Chicago Mercantile Exchange, Chicago Board of Trade, Philadelphia Stock Exchange, the Montreal Exchange and the Futures Industry Association. The commentors were virtually unanimous in support of the Commission's proposal. Indeed, a substantial number of those commentors urged the Commission to expand the pilot program even further in order to allow a still greater, if not an unlimited, number of option contracts to be offered under the pilot program. The Commission has carefully considered these comments and has reviewed its proposal in this connection. For the reasons set forth below, however, the Commission has determined that it would not be appropriate at this time to expand the pilot program beyond the limits recently proposed by the Commission. The Commission is, therefore, adopting its proposals without change.

II. Expansion of the Option Pilot Program

Option trading on the domestic commodity exchanges was resumed, after a statutorily-imposed hiatus of nearly fifty years' duration, on October 1, 1982 following the adoption by the Commission of regulations establishing a limited and tightly controlled pilot program. *See* 46 FR 54500 (November 3, 1981). As the Commission explained at that time, its decision initially to limit trading under the pilot program to one option on a futures contract on each exchange was intended to ensure that the abusive practices which had formerly characterized the offer and sale of certain off-exchange option transactions would not be permitted to recur. Although the Commission subsequently adopted rules and rule amendments which allowed the domestic exchanges to be designated additionally for an option on a physical commodity, for two options of either type (*i.e.*, for two options on futures contracts, two options on physical commodities, or one option on a futures contract and one option on a physical) and, most recently, as part of a separate pilot program, for two options on futures contracts involving the domestic agricultural commodities,[1] the Commission has nonetheless repeatedly made clear that it intended to proceed cautiously and deliberately with any expansion of the pilot program.[2]

It is in this context that the Commission recently proposed to broaden the pilot program still further by increasing the number of options on "non-agricultural" futures contracts for which domestic exchanges could be designated as contract markets. As the Commission noted at that time, its experience to date had "largely mitigated its earlier concerns" with respect to the adequacy of the programs established by the self-regulatory organizations (*i.e.*, the exchanges and National Futures Association) to monitor and enforce compliance with the special sales practice safeguards for option customers that had been established by the Commission's pilot program regulations. 49 FR at 25484. The Commission further observed that "continuing to provide the exchanges with greater flexibility in the selection of option contracts will foster the further development of the pilot program and, correspondingly, will provide the Commission with data essential to the Commission's continuing evaluation of that program * * * [and] should permit a fuller test of commercial interest in the use of options on futures contracts and * * * of the exchanges's abilities to conduct effective surveillance of active option markets * * *." *Id.* at 25485.

As indicated above, the commentors strongly supported the concept underlying the Commission's proposal. In particular, the commentors noted that commodity options trading had rapidly become one of the most successful endeavors in the history of the commodity industry and that options offered unique opportunities for risk management. In this connection, a number of the commentors noted the increasingly widespread commercial interest in, and acceptance of, options on foreign currency contracts.

Thus, many of these commentors urged the Commission either to remove the limit on options on "non-agricultural" futures contracts which can be traded on domestic exchanges to the extent that limit applies to options on foreign currency futures contracts (or alternatively, to treat all foreign currencies as one interchangeable market for purposes of computing any numerical limitation on the permitted number of option constracts), to increase the numerical limit beyond that proposed by the Commission to permit the Chicago Mercantile Exchange ("CME") to offer options on several additional foreign currency futures contracts as well as on short-term interest rate contracts such as Eurodollar and Treasury-bill futures, or to lift the limit entirely with respect to the number of options on non-agricultural futures contracts which can be traded on the domestic commodity exchanges.[3] These commentors argued that the reasons earlier advanced by the Commissions in support of its proposal—the fact that there have not been any apparent options sales practice or trading abuses under the pilot program, coupled with the ability of the Commission to continue to gather sufficient data and information about options trading in order to make an informed decision about the future direction and structure of that program—could support a greater expansion of the program than that which had been proposed by the Commission.

The Commission is, of course, aware of these considerations. The Commission believes, however, that one of the principal factors underlying the success of its exchange-traded option program has been that the pilot program was designed to permit the exchanges to structure their self-regulatory programs under circumstances which made it possible for those programs to accomodate the steadily-increasing volume and diversity of the products offered. This measured approach has, in turn, helped to assure that any expansion of the pilot program did not undermine the Commission's ability to successfully regulate that program.

The Commission's pre-eminent concern with respect to any proposal to increase the size or scope of the pilot program continues to be the protection of customers. The Commission has previously recounted the sales practice abuses that formerly typified the offer and sale of commodity options and which ultimately resulted in the suspension of virtually all domestic commodity option transactions. *See* 43 FR 16153 (April 17, 1978). Accordingly,

[1] 49 FR 2752 (January 23, 1984); 48 FR 41575 (September 16, 1983); 47 FR 56996 (December 22, 1982).

[2] *See, e.g.*, 49 FR 25483, 25484 (June 21, 1984); 49 FR 2752, 2755–56 (January 23, 1984); 47 FR 56996, 56997 (December 22, 1982); 47 FR 28401, 28404 (June 30, 1982); 46 FR 54500, 54501–02 (November 3, 1981); 46 FR 33293, 33294, 33295 (June 29, 1981).

[3] As the Commission noted in its proposal, the CME has petitioned the Commission either to delete entirely the numerical limitations on the permitted number of option contracts contained in Commission regulation 33.4(a)(6) or, in the alternative, to exempt options on foreign currencies and currency futures contracts from the limits established by that regulation. 49 FR at 25484.

when the Commission adopted regulations to permit the resumption of option trading, it made the assumption, by the self-regulatory organizations, of direct and primary responsibility for their members' conduct a critical element of its new pilot program. As the Commission explained at that time:

> [T]he pilot program places significantly greater self-regulatory duties and responsibilities on boards of trade than is presently the case for futures trading, particularly with respect to the protection of the public from sales practices abuses. Thus, the Commission will require, as a prerequisite for option trading, that each board of trade implement procedures for, and conduct comprehensive sales practices audits of, member [futures commission merchants] engaged in the offer and sale of commodity options. It is only by placing these regulatory responsibilities on the exchanges that the Commission believes it can presently assure that sufficient regulatory resources will be deployed to prevent a recurrence of the abuses which have characterized commodity options in the past.[4]

As reflected in the Commission's proposal, the Commission's staff has since conducted numerous audits of the programs adopted by the exchanges and National Futures Association to enforce the sales practice rules adopted by those self-regulatory organizations.[5] Those audits have not revealed any serious deficiencies in the exchanges' sales practice programs; indeed, the most recent follow-up audits conducted by the Commission's staff indicate that the exchanges' programs have continued to improve. These programs have nonetheless not yet been fully tested by the kind of widespread public participation that the Commission expects will ultimately result from the steadily increasing number of option contracts—including options on "agricultural" commodities—that the exchanges may offer under the Commission's pilot programs. The Commission therefore believes it would be imprudent to remove the remaining limits on the number of options which the exchanges may offer to the public at this time. In this regard, the Commission notes that many of the commentors who urged the Commission to proceed on the basis of this limited experience are commercial or institutional users of the option markets and are not, therefore, the persons with whom the Commission was principally concerned when it first adopted the special sales practice protections contained in its pilot program regulations.

The Commission additionally believes that it must proceed cautiously and with deliberation if it is to continue to be able "to regulate successfully" all aspects of the option pilot program, as contemplated by section 4c(c) of the Act. The Commission believes that its decision is consistent not only with its original determination to permit the resumption of option trading only under a narrow, tightly-controlled pilot program not to exceed three years but also with its duty to monitor and report to Congress on the uses and effects of the option markets before determining whether, and under what circumstances, option trading should be continued in the future. Option trading commenced under the pilot program on October 1, 1982; the pilot program, therefore, has only been operational for less than two years. Any further expansion of option trading can appropriately be deferred at least until the Commission has had an opportunity to evaluate more fully whether its experience and that of the industry under the pilot program merits further relief.

The Commission has nonetheless indicated that it recognizes that

> both the industry and other option market participants will need to know prior to the scheduled expiration of that program whether or not the pilot program will be made permanent, modified or terminated. The Commission will, therefore, give notice of its determination in this regard well before the expiration of the pilot program.[6]

Assuming that the Commission's essentially favorable experience with the pilot program to date is sustained as the volume of trading increases and new contracts and exchanges enter the markets and as trading progresses under the agricultural options pilot program, the Commission contemplates that it would completely remove any remaining numerical restrictions on the number of options on non-agricultural futures contracts no later than October 1, 1985. In this connection, the Commission anticipates that it will adopt an appropriate rule implementing this decision and would provide the materials contemplated by section 4c(c) of the Act to the Commission's Congressional oversight committees sufficiently in advance to permit acceptance of applications for designation of proposed option contracts by no later than that date. The Commission also expects to continue to assess the pilot program and to report to Congress on any changes in that program which should be implemented prior to its termination.

The Commission nonetheless intends to continue in effect the current limits on the number of options on futures contracts involving the domestic agricultural commodities specifically enumerated in section 2(a)(1)(A) of the Act. As the Commission explained in its proposal, "a limited pilot program for the trading of options on domestic agricultural futures contracts, as contemplated by section 4c(c) of the Act, is essential to permit adequate consideration * * * of the issues particular to such contracts." 49 FR at 25485. Nothing in the comments received by the Commission on this aspect of its proposal has convinced the Commission to reconsider that position at this time.

The Commission similarly intends to continue to limit the exchanges to two options on physicals. The Montreal Exchange asserted in its comment that the Commission's proposal would unnecessarily channel commercial development and interest to options on futures contracts at the expense of options on physicals. The Commission has previously indicated, however, that in view of the "unique attributes" of options on physicals, "the more prudent course would be to continue to limit the number of options on physicals which may be traded on any single board of trade, at least until the Commission can gain greater experience with those contracts and the effects, if any, of such trading on the futures markets." [7] The Philadelphia Board of Trade, a subsidiary of the Philadelphia Stock Exchange which recently applied to the Commission for contract market designation for options on Eurodollar time deposits, separately argued that continuing these numerical limitations was unnecessary insofar as the Commission could address its concerns with respect to options on physicals in the context of particular contract market designation proceedings. This latter approach is, of course, completely contrary to the rationale underlying the Commission's pilot program and, in the absence of any experience whatsoever the exchange-traded options on physicals, the Commission declines to change its approach at this time. As is the case with options on futures, if the Commission's experience with options on physicals so dictates, the Commission will act to expand or remove these limits at an appropriate time.[8]

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[4] 46 FR 54500, 54502 (November 3, 1981).

[5] 49 FR at 25484 & n.6.

[6] 46 FR 54500, 54502 (November 3, 1981); *see* 49 FR 25425 (June 21, 1984).

[7] 49 FR at 25485; *see id.* at 25485 n.9; 47 FR 28401 (June 30, 1982).

[8] As noted above, the Chicago Mercantile Exchange filed a petition with the Commission on February 9, 1984 in which it requested that the Commission either delete regulation 33.4(a)(ö) entirely or, in the alternative, amend that regulation

Continued

Regulatory Flexibility Act

The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act (5 U.S.C. 605) and that the requirements of that Act do not, therefore, apply to contract markets. 47 FR 18618 (April 30, 1982). Furthermore, the Chairman of the Commission has previously certified on behalf of the Commission that comparable rule proposals would not, if adopted, have a significant economic impact on a substantial number of small entities. *See, e.g.*, 48 FR 32835, 32836 (July 19, 1983).

For the reasons set forth above, and pursuant to section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the following amendment to Commission regulation 33.4(a)(6) will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 33

Commodity options, Commodity exchange designation procedures, Commodity futures.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 8a and 15 thereof, 7 U.S.C. 6c, 12a, 19, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as set forth below. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

to exempt options on foreign currencies and currency futures from the limitations established therein. By letter dated March 1, 1984, the Chicago Board of Trade ("CBT") separately petitioned the Commission to repeal regulation 33.4(a)(6) in its entirety or, in the alternative, to increase uniformly the number of option contracts permitted under the Commission's pilot programs. If the Commission were to adopt this latter approach, each board of trade designated for option trading would be authorized to trade a predetermined number of option contracts, which number would be uniform for all exchanges and for all three types of option contracts permitted under the Act and the Commission's regulations (*i.e.*, options on futures contracts involving the domestic agricultural commodities, and options on "non-agricultural" futures and physicals). The CME filed a second petition, this time in support of the position advanced by the CBT, on May 2, 1984. For the reasons set forth above, the Commission has decided to deny the petitions filed by the CBT and CME to the extent that the petitions are inconsistent with the final rule herein adopted by the Commission.

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. Section 33.4 is amended by revising paragraph (a)(6) to read as follows (the introductory text has not been changed but is included for the convenience of the reader):

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery on any commodity regulated under the Act, or for options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in section 2(a)(1)(A) of the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

* * * * *

(6)(i) For commodities not specifically enumerated in section 2(a)(1)(A) of the Act, is not designated as a contract market for more than one other commodity option; and

(ii) For commodities not specifically enumerated in section 2(a)(1)(A) of the Act, is not designated for more than four other commodity options: *Provided, however,* that with respect to options on physicals, no such board of trade may be designated as a contract market for more than two commodity options.

* * * * *

Issued in Washington, D.C. on August 20, 1984, by the Commission.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-22491 Filed 8-23-84; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 1700, 1710, and 1730

[Docket No. R-84-1041; FR-1595]

Amendments Relating to Interstate Land Sales Registration; Correction

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

ACTION: Final rule: correction.

SUMMARY: This document corrects a final rule on Interstate Land Sales Registration that was published in the Federal Register on Monday, August 6, 1984 (49 FR 31366). This action corrects typographic errors and inserts omitted language.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Sally Watts, 202-755-7084. (This is not a toll-free number).

The following corrections are made in FR Doc. 84-20695 appearing on 31366 in the issue of August 6, 1984.

§ 1710.11 [Corrected]

1. On page 31368, column three, paragraph (b) of § 1710.11 appeared as part of paragraph (a)(4) of that section. It should have been displayed as a separate paragraph and indented, as follows:

"(b) The sale must also comply with the anti-fraud provisions of §§ 1710.4(b) and (c)."

§§ 1700.35 and 1710.102 [Corrected]

2. On page 31370, column two, the heading "§§ 1700.35 and 1710.102 (Amended)" is corrected to read "§§ 1710.100 and 1710.102 (Amended)". On page 31370, column 2, the boldface heading which reads " 1700.35 and 1710.102 Amended should be removed.

§§ 1700.100 and 1710.102 [Corrected]

3. Also, on page 31370, column two, item 26, "26. Sections 1700.100 and 1710.102 are amended by adding at the end of each of them, the following words:" is corrected to read, "26. Sections 1710.100 and 1710.102 are amended by adding at the end of each of them, the following words:"

4. On page 31370, column two, second paragraph, "(Approved by the Office of Management and Budget under OMB control number 2502-0243.)" is corrected to read, "(Information collection requirements have been approved by the Office of Management and Budget under OMB control number 2502-0243.)"

PART 1730 [CORRECTED]

5. On page 31372, second column, after the heading that reads, "PART 1730—APPLICATION OF REGULATIONS TO EXISTING AND FUTURE FILINGS", the following paragraph is added:

"38. An authority citation for Part 1730 is added, to read as follows:

Authority: Sec. 1419, Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1718; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)."

6. On page 31372, second column, the existing paragraph 38 is renumbered as paragraph 39.

Dated: August 17, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-22384 Filed 8-23-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Extension of Deadline for Satisfaction of Conditions of Approval of the Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement is announcing the Secretary of the Interior's decision to extend the deadline for Illinois to meet two conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concern sediment ponds and covering coal seams with water.

EFFECTIVE DATE: August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Field Office Director, Office of Surface Mining, 600 E. Monroe Street, Room 20, Springfield, Illinois 62701; Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 [47 FR 23858]. Information pertinent to the general background, revisions, modifications and amendments to the proposed program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982 **Federal Register**.

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set forth in the notice of conditional approval. The schedule is established in consultation with the State based on the time required for changes to be adopted under State procedures or legislative schedules.

In accepting the Secretary's conditional approval, Illinois agreed to satisfy conditions (a), (d) and (e) by December 1, 1982 and conditions (b) and (c) by June 1, 1983. Conditions (a), (d) and (e) have been removed (48 FR 23412, May 25, 1983, and 48 FR 51619, November 10, 1983). On May 23, 1983, Illinois requested a six-month extension of the June 1, 1983 deadline to satisfy conditions (b) and (c). On August 19, 1983, OSM announced the decision to extend the deadline to December 1, 1983 (48 FR 37625).

On December 1, 1983, Illinois requested a further extension of the deadline for satisfying conditions (b) and (c), until June 1, 1984. In its request, the State pointed to certain developments in the litigation on the approval of the Illinois program. The State noted that the United States District Court for the Central District of Illinois had granted, on November 30, 1983, the Secretary's motion to remand the *Illinois South Project.* v. *Watt* (Civ. No. 82-2229) case to the Secretary for review in light of legal developments that have occurred since the approval data. Because conditions (b) and (c) concern subjects that are directly at issue in the litigation and in order to avoid rulemaking proceedings which might prove to be unnecessary, the State requested a six-month extension of the December 1, 1983 deadline. On February 22, 1984, OSM announced the decision to extend the deadline to June 1, 1984 (49 FR 6487).

Condition (b) stipulates that Illinois must amend its program to require a cover of the pit floor and highest coal seam with a minimum of ten meters (33 feet) of water, and that pending completion of the above, Illinois may not use its authority to approve covering with less than 10 meters of water or the approval will terminate. Condition (c) stipulates that Illinois must amend its program to demonstrate that Illinois understands that at the present time the best technology currently available for sediment control is sedimentation ponds and should Illinois wish to approve any other technology, the State will first send the proposal to OSM for review and approval as either an experimental practice or a program amendment. Furthermore, pending completion of the above Illinois may not use its authority to approve siltation structures other than sedimentation ponds or the approval will terminate.

Proposal to Extend Deadline

On May 31, 1984, Illinois requested a further extension of the deadline, until November 30, 1984. The State noted that the conditions are directly affected by two cases which are still unresolved—*Illinois South Project* v. *Watt* and *Illinois Department of Mines and Minerals* v. *Watt.* The State indicated that it had hoped that the cases would have been resolved by June 1, 1984, but as they have not been, Illinois requested that possibly unnecessary rulemaking proceedings be delayed for six months. In the interim, Illinois stated that it would continue to enforce its regulations in accordance with the Federal regulations.

In accordance with the State's request, on July 3, 1984, OSM published a notice in the **Federal Register** (49 FR 27324) proposing that the deadline for the State to meet these conditions be extended until November 30, 1984. Comment was solicited for 30 days ending August 2, 1984.

Public Comment

The Illinois South Project (ISP) objected to the proposed extension. ISP stated that approval of an extension for these conditions would be tantamount to tacit approval of the State's position that the rule changes at this time might be unnecessary in light of the pending litigation in *Illinois Department of Mines and Minerals* v. *Watt.* Such tacit approval, ISP stated, would undermine the Secretary's position in that litigation that the rule changes are necessary. With regard to condition (b), ISP noted that the Secretary's position that the rule change is necessary was stated in his April 5, 1984 decision on remand and that the Secretary's approval of the rule was granted based on the rule being modified by the State. ISP stated that, with regard to condition (c), granting an extension would also undermine the Secretary's position that an amendment to Illinois rule 1816.46(b) is needed (49 FR 13510).

The Secretary does not agree that a six-month extension constitutes tacit approval of the State's position or undermines the Secretary's position that amendments are needed. An extension merely recognizes that, as a result of the litigation, issues remain unresolved and a deferral of rulemaking may be appropriate until the litigation is resolved. The Secretary does not intend to continue to extend the deadline for the State to meet these two conditions. The Secretary anticipates that the litigation will be concluded in the near future. At that time, all remaining issues

with regard to Illinois' program approval will be resolved and necessary changes can be made.

Secretary's Decision

After considering the State's request, the circumstances surrounding the request, and the public comments received, the Secretary has determined that an extension of the deadline for Illinois to satisfy conditions (b) and (c) is warranted. Illinois has agreed to continue to enforce its regulations in accordance with the Federal regulations until such time as the conditions are removed.

Procedural Matters

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Accordingly, Part 913 of Title 30 is amended as set forth herein.

Dated: August 20, 1984.

Garrey E. Carruthers,

Assistant Secretary, Land and Minerals Management.

PART 913—ILLINOIS

§ 913.11 [Amended]

Section 913.11 is amended in paragraphs (b) and (c) by substituting "November 30, 1984" for "June 1, 1984" each time it appears.

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

[FR Doc. 84–22561 Filed 8–23–84; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

San Diego Bay, CA; Naval Restricted Area

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army is establishing a naval restricted area in the Pacific Ocean in North San Diego Bay, California. The restricted area would protect persons and property from the dangers associated with the ammunition pier.

EFFECTIVE DATE: September 24, 1984.

ADDRESS: HQDA, DAEN–CWO–N, Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Clark at (213) 688–5606 or Mr. Ralph T. Eppard at (202) 272–0200.

SUPPLEMENTARY INFORMATION: The U.S. Navy has requested the Corps of Engineers establish a naval restricted area in the Pacific Ocean in North San Diego Bay, California, to protect persons and property from dangers associated with an ammunition pier. The proposed restricted area was published in the Proposed Rules Section of the **Federal Register** on 5 May 1983, (48 FR 20249) and in a public notice, dated 10 May 1983, distributed by the Commander, Los Angeles District, Corps of Engineers. The notice in the proposed rules section of the **Federal Register** received no objections. However, the U.S. Coast Guard, Marine Safety Office, San Diego, did express concern about the effect of the restricted area on the local boating community. One comment was received from Inland Empire Chapter of the Western Mining Council in response to the local public notice concerning the restriction of the public in the area of Bravo Pier. The Corps of Engineers, after reviewing this matter and meeting with the U.S. Navy, has determined that the type and amount of ammunition and explosives being handled now and in the future at Bravo Pier warrants the establishment of a restricted area. Accordingly, the Department of the Army is establishing a restricted area under 33 CFR 207.612(a) as set forth below.

Note.—This regulation is not a major regulation and is issued with respect to a military function of the Defense Department. Accordingly, the provisions of Executive Order 12291 do not apply. The Corps of Engineers also certifies that this regulation will not have a significant economic impact on a substantial number of entities and thus does not require preparaton of a regulatory flexability analysis.

List of Subjects in 33 CFR Part 207

Transportation, water transportation, marine safety. Navigation, water transportation and marine carriers.

Dated: August 7, 1984.

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil Works).

PART 207—AMENDED

Section 207.612 is amended by adding paragraph (a).

§ 207.612 San Diego Harbor, California; restricted area.

(a) Restricted area at Bravo Pier, Naval Air Station.

(1) The area. The water of the Pacific Ocean in North San Diego Bay in an area extending from the western boundary of North Island about 0.2 nautical miles bayward and basically outlined as follows:

Station	Latitude	Longitude
1	32°41'51.3" N	117°13'34.0" W.
2	32°41'51.3" N	117°13'46.6" W.
3	32°41'43.3" N	117°13'50.0" W.
4	32°41'35.8" N	117°13'48.0" W.
5	32°41'35.8" N	117°13'35.0" W.

(2) The regulations. (i) The restricted area shall not be open to swimming, fishing, mooring or anchorage.

(ii) Transit will be allowed through the restricted area except that no transit will be allowed within 100 feet of the ammunition pier (Bravo Pier). All unauthorized vessels entering the restricted area shall proceed across the area by the most direct route and without unnecessary delay. Only vessels owned by, under hire to, or performing work for the Naval Air Station or the Naval Weapons Station may operate within 100 feet of the ammunition pier.

* * * * *

Authority: 33 U.S.C. 1.

[FR Doc. 84-22567 Filed 8-23-84; 8:45 am]
BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[OW-FRL-2660-8]

Ocean Dumping; Extension of Interim Site Designations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA today extends the interim designation of several existing dredged material disposal sites to allow completion of final rulemaking with full public participation. The interim designations of the following sites are extended until July 31, 1985, or until final rulemaking is completed, whichever is sooner: Portland, ME; San Juan, PR; Charleston Harbor, SC; Wilmington Harbor, NC; Savannah River, GA; Sabine-Neches, TX; Mouth of Columbia River, OR. This action is necessary to provide acceptable ocean dumping sites for the disposal of dredged material essential to maintain navigation until formal rulemaking is completed.

DATE: This action will become effective on August 24, 1984. Comments must be received on or before September 24, 1984.

ADDRESS: Send comments to: Mr. T. A. Wastler, Chief, Marine Protection Branch (WH-585), EPA, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. T. A. Wastler, 202/755-0356.

SUPPLEMENTARY INFORMATION: Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 et seq. ("the Act"), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On September 19, 1980, the Administrator delegated the authority to designate ocean dumping sites to the Assistant Administrator for Water and Waste Management, now the Assistant Administrator for Water.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 et seq.) and was extended on February 7, 1983 (48 FR 5557 et seq.). That list established the Portland, ME; San Juan, PR; Charleston Harbor, SC; Wilmington Harbor, NC; Savannah River, GA; Sabine-Neches, TX; and Mouth of Columbia River, OR, sites as interim sites and extended their period of use until July 31, 1984. Today's extension will modify the previous extension by placing these sites in a new list of sites having interim designation until July 31, 1985, or until final rulemaking is completed, whichever is sooner.

Rulemaking is in process on all of these sites, but it has not been possible to complete the rulemaking within the time of the existing extension and allow for full public participation in the process. This interim extension will allow careful consideration of all comments received during the rulemaking process.

Continued designation of these interim dredged material disposal sites is necessary to assure the uninterrupted availability of the adjacent harbors to interstate and foreign commerce. These site designations expired July 31, 1984. Accordingly, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), the Agency has determined that notice and public procedure on the interim designations, prior to their extension, is impracticable and contrary to the public interest. However, the Agency solicits public comment on the extension of the interim designations and will address any comments received in the final rulemaking. For the same reasons, EPA has determined, pursuant to the Administrative Procedure Act, 5 U.S.C. 553(d)(3), that there is good cause to make this extension effective immediately.

It should be emphasized that, if an ocean dumping site is designated, such a site designation does not constitute or imply EPA's approval of actual disposal of materials at sea. Before ocean dumping of dredged materials at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. If a Federal project is involved, the Corps must also evaluate the proposed dumping in accordance with those criteria. In either case, EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under the Act have not been met.

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this action does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of $100 million or more or cause any of the other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this action does not necessitate preparation of a Regulatory Impact Analysis.

This action does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Authority: 33 U.S.C. 1412 and 1418.

Dated: August 14, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended by removing subparagraph (i) of § 228.12(a)(1). Subparagraph (iii) of § 228.12(a)(1) is redesignated as subparagraph (i). Subparagraph (ii) of § 228.12(a)(1) is revised to read as follows:

§ 228.12 Delegation of management authority for interim ocean dumping sites.

(a) * * *

(1) * * *

(ii) Until such time as formal rulemaking is completed or until July 31, 1985, whichever is sooner:

(A) Portland, ME.

(B) San Juan, PR.

(C) Charleston/Savannah/Wilmington (3 sites): Wilmington Harbor, NC; Charleston Harbor, SC; and Savannah River, GA.

(D) Sabine-Neches, TX.

(E) Mouth of Columbia River, OR (5 sites).

[FR Doc. 84-22656 Filed 8-23-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 465

[OW-FRL-2659-4]

Coil Coating Point Source Category; Effluent Limitations Guidelines Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: This document corrects the promulgated effluent limitations and standards for the Coil Coating Point Source Category that appeared in the **Federal Register** on Wednesday, December 1, 1982, at 47 FR 54232. This notice corrects typographical errors, minor computational errors which were detected after the publication of the promulgated regulation and errors in the listing of some pollutants in the Appendices B through G. This correction of typographical errors reduces one chromium value from 0.34 to .034 mg/m^2 and increases one zinc value from 0.049 to 0.49 mg/m^2 and from 0.01 to 0.1 pounds per 1 million ft^2 in the final regulation. Minor computational errors appeared in several TSS values because an incorrect factor was used to calculate the final limit tables. This correction increases the TSS values which were published by less than ten percent.

ADDRESSES: Technical information about the Coil Coating regulation may be obtained by writing to Ms. Mary L. Belefski, Effluent Guidelines Division (WH-552), EPA, 401 M Street SW., Washington, D.C. 20460, or by calling (202) 382-7126. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, VA 22161 (703) 487-4600.

The Record is available for public review in EPA's Public Information Reference Unit, Room 2004 (Rear) (EPA Library), 401 M St., SW., Washington D.C. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, (202) 382-7126.

In FR Doc. 82-31393 beginning on page 54232 in the issue of Wednesday, December 1, 1982, make the following corrections:

Appendix B [Corrected]

1. On page 54243, Column 2, Appendix B[a], remove pollutant No. "034 2,4-dimethylphenol; add pollutant No. "123 Mercury".

2. On page 54243, Column 3, Appendix B[c], remove pollutant No. "044 Methylene chloride (dichloromethane)"; add pollutants No. "034 2,4-dimethylphenol" and "126 Silver".

3. On page 54243, column 3, Appendix B[d], remove pollutants No. "011 1,1,1-trichlorethane" and "038 Ethylbenzene"; add pollutants No. "034 2, 4-dimethylphenol" and "126 Silver".

Appendix C [Corrected]

4. On page 54243, column 3, Appendix C[a], remove pollutants No. "044 Methylene chloride (dichloromethane)" and "123 Mercury".

5. On page 54243, column 3, Appendix C[b], remove pollutants No. "123 Mercury" and "126 Silver".

6. On page 54243, column 3, and on page 54244, column 1, Appendix C[c], delete pollutants No. "044 Methylene chloride (dichloromethane)", "123 Mercury" and "126 Silver"; add pollutant No. "038 Ethylbenzene".

Appendix D [Corrected]

7. On page 54244, column 1, Appendix D[a], remove pollutants No. "066 Bis(2-ethylhexyl)phthalate", "067 Butyl benzyl phthalate", 069 Di-n-octyl phthalate" and "070 Diethyl phthalate".

8. On page 54244, column 1, Appendix D[b], remove pollutants "066 Bis (2-ethylhexyl) phthalate and "070 Diethyl phthalate".

Appendix E [Corrected]

9. On page 54244, column 1, Appendix E[a] remove pollutant No. "120 Copper", add pollutant No. "034 2,4-dimethylphenol".

10. On page 54244, column 1, Appendix E[c], remove pollutant No. "124 Nickel", add pollutant No. "011 1,1,1-trichloroethane".

Appendix F [Corrected]

11. On page 54244, column 1, Appendix F[a], add pollutants No. "066 Bis (2-ethylhexyl) phthalate", "067 Butyl benzyl phthalate", "069 Di-n-octyl phthalate" and "070 Diethyl phthalate".

12. On page 54244, column 2, Appendix F[b], remove pollutants No. "011 1,1,1-trichlorethane," "029 dichloroethylene" and "030 1,2-trans-dichloroethylene."

Appendix G [Corrected]

13. On page 54244, column 2, Appendix G[a], remove pollutants No. "054 Isophorone" and "065 Phenol".

14. On page 54244, column 3, Appendix G[b], remove pollutants No. "011 1,1,1-trichloroethane", "029 1,1-dichloroethylen" and "030 1,2-trans-dichloroethylene"; and pollutants No. "073 Benzo(a)pyrene (3,4-benzo pyrene)", "074 3,4-benzofluoranthene [benzo(b)fluoranthene", "075 11,12-benzofluoranthene [benzo(b)fluoranthene], "076 chrysene", "077 Acenaphthylene", "078 Anthracene", "079 1,12-benzoperylene [benzo(ghi)perylene]", "080 Fluorene", "081 Phenanthrene", "082 1,2,5,6-dibenzanthracene [dibenzo (a,h)anthracene]", "083 Indeno[1,2,3-cd] pyrene" and "084 pyrene".

§ 465.11 [Corrected]

15. On page 54245, column 3, 465.11 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.12 [Corrected]

16. On page 54245, column 3, 465.12 table headings under BAT effluent limitations should match the table headings under 465.11 BPT effluent limitations.

17. On page 54245, column 3, 465.12 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.13 [Corrected]

18. On page 54245, column 3, 465.13 table headings under NSPS should match the table headings under 465.11 BPT effluent limitations.

19. On page 54245, column 3, 465.13 in the table; change: "Mg/m^2" to "mg/m^2".

20. On page 54245, column 3, 465.13; (b) For TSS; change: "3.48" to "3.79"; and change: "0.72" to "0.78".

§ 465.14 [Corrected]

21. On page 54246, column 1, 465.14 table headings under PSES should match the table headings under 465.11 BPT effluent limitations.

22. On page 54246, column 1, 465.14 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.15 [Corrected]

23. On page 54246, column 1, 465.15 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.21 [Corrected]

24. On page 54246, column 2, 465.21 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.22 [Corrected]

25. On page 54246, column 2, 465.22 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.23 [Corrected]

26. On page 54246, column 3, 465.23 in the table; change: "Mg/m^2" to "mg/m^2".

27. On page 54246, column 3, 465.23; For TSS; change: "3.78" to "4.12", and change: "0.78" to "0.84".

§ 465.24 [Corrected]

28. On page 54246, column 3, 465.24 in the table; change: "Mg/m^2" to "mg/m^2".

§ 465.25 [Corrected]

29. On page 54246, column 3, 465.25 in the table; change: "Mg/m²" to "mg/m²".

§ 465.31 [Corrected]

30. On page 54247, column 1, § 465.31 in the table; remove the closing parenthesis after "mg/m²".

§ 465.32 [Corrected]

31. On page 54247, column 2, § 465.32 in the table; remove the closing parenthesis after "mg/m²".

§ 465.33 [Corrected]

32. On page 54247, column 2, § 465.33 in the table; change: "Mg/m²" to "mg/m²".

33. On page 54247, column 2, § 465.33; For TSS; change: "5.23" to "5.70", and "1.07" to "1.17".

§ 465.34 [Corrected]

34. On page 54247, column 3, § 465.34 in the table; change: "Mg/m²" to "mg/m²".

35. On page 54247, column 3, § 465.34; For Chromium; change: "0.34" to "0.034".

§ 465.35 [Corrected]

36. On page 54247, column 3, § 465.35 in the table; change: "Mg/m²" to "mg/m²".

37. On page 54247, column 3, § 465.35; For Zinc; change: "0.049" to "0.49", and "0.01" to "0.10".

Dated: August 9, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84-22537 Filed 8-23-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 704

[OPTS-82012; FRL 2605-5]

Reporting and Recordkeeping Requirements Category of Chemical Substances Known as Chlorinated Naphthalenes; Submission of Notice of Manufacture or Import

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule requires manufacturers and importers of chlorinated naphthalenes (CNs) to notify EPA of current and prospective manufacture or import of CNs. This reporting rule will allow EPA to track the manufacture, import, and end uses of CNs, and to investigate the health and environmental impacts of such activity. Small businesses that manufacture or import CNs are exempt from this rule.

EFFECTIVE DATE: This rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on September 2, 1984. This rule becomes effective on October 8, 1984.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB control number 2070-0036.

I. Authority

The Agency is promulgating this rule pursuant to section 8(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607(a). Section 8(a) authorizes the Administrator to promulgate rules which require each person, (other than a small manufacturer or processor) who manufactures or processes or who proposes to manufacture or process a chemical substance, to submit such reports as the Administrator may reasonably require.

This rule applies to a category of 19 chemical substances known as chlorinated naphthalenes (CNs), and requires current and prospective manufacturers and importers to notify EPA of any current or prospective manufacture or import of CNs. The notice must state whether a person is manufacturing CNs, or is importing or proposing to import CNs as a chemical substance in bulk or as part of a mixture. The notice must also include information on intended or expected uses, production quantities, chemical composition, and wastes.

II. Chemical Substances Subject to This Rule

This notification rule applies to a category of 19 chemical substances known as CNs. EPA is exercising the authority granted by section 26(c) of TSCA which allows EPA to take action with respect to a "group of chemical substances the members of which are similar in molecular structure. . . ." All CNs consist of two fused benzene rings where one or more of the eight hydrogen atoms are replaced with a chlorine atom. For this rule the category includes the 19 CNs listed on the TSCA Inventory of Chemical Substances in Commerce as follows:

CAS Registry Number	Chemical substance
90-13-1	Naphthalene, 1-chloro-
91-58-7	Naphthalene, 2-chloro-
1321-64-8	Naphthalene, pentachloro-
1321-65-9	Naphthalene, trichloro-
1335-87-1	Naphthalene, hexachloro-
1335-88-2	Naphthalene, tetrachloro-
1825-30-5	Naphthalene, 1,5-dichloro-
2050-69-3	Naphthalene, 1,4-dichloro-
2050-72-8	Naphthalene, 1,2-dichloro-
2050-73-9	Naphthalene, 1,7-dichloro-
2050-74-0	Naphthalene, 1,8-dichloro-
2050-75-1	Naphthalene, 2,3-dichloro-
2065-70-5	Naphthalene, 2,6-dichloro-
2196-75-6	Naphthalene, 1,3-dichloro-
2198-77-8	Naphthalene, 2,7-dichloro-
2234-13-1	Naphthalene, octachloro-
25586-43-0	Naphthalene, chloro-
32241-8-0	Naphthalene, heptachloro-
70776-03-3	Naphthalene, chloro derivs

The manufacture or import of CNs not listed on the Inventory requires submission of a premanufacture notice under section 5(a)(1) of TSCA. Accordingly, they are not covered by this rule.

Based on the structural similarity of the members of the category and the available health and environmental effects data on certain CNs, EPA believes there is a reasonable basis for concern about the entire category of CNs. While some category members may present more or less concern for the effects identified, EPA does not believe there is adequate justification for distinguishing between individual category members.

III. Background

During the 1920s about 20 million pounds of CNs were produced annually. Their primary end use was as a cable insulator. Other major past applications include use in: Wood preservatives, engine oil and gasoline additives, electroplating masking compounds, and dye production and dye carriers. Since the 1920s the use of CNs declined steadily. Current use consumes approximately 30,000 pounds of CNs per year; all of these are imported. Domestic production ceased in 1980. CNs are currently used as refractive index oils and as impregnants for capacitors.

In 1978 the Interagency Testing Committee (ITC), pursuant to section 4(e) of TSCA, recommended that the following tests be considered for CNs: Mutagenicity tests, teratogenicity tests, long-term carcinogenicity tests, environmental effects tests and chronic studies to evaluate the other effects of prolonged exposures (43 FR 16684, April 19, 1978). However, because CNs were no longer manufactured in the United States and were imported only in limited volumes, EPA decided not to propose a section 4 test rule (46 FR 54491, November 2, 1981).

Instead, EPA requested comments on several alternatives to testing. These included a significant new use rule

(SNUR) under section 5(a)(2), a section 8(a) reporting rule, and listing CNs pursuant to section 5(b)(4). Comments on these alternatives were received from the Natural Resources Defense Council (NRDC) and the Chemical Manufacturers Association (CMA).

CMA preferred the use of a section 8(a) rule rather than a SNUR. However prior to promulgating a section 8(a) rule, CMA stated that EPA should, independent of the ITC's review, study the available information on CNs and determine that in the event exposure to CNs became significant CNs would be a strong candidate for a testing rule. Section 8(a) does not require such a determination and, even if exposure is anticipated to become significant, EPA is not restricted to regulatory action under section 4.

NRDC recommended that EPA combine a section 8(a) rule with the placement of CNs on the section 5(b)(4) list and a SNUR. NRDC agreed with CMA that a section 8(a) rule would keep EPA apprised of the pattern of production and use of CNs, but was concerned that the section 8(a) small business exclusion would deprive EPA of essential production and use information. By placing CNs on the section 5(b)(4) list and promulgating a SNUR, small manufacturers would not be exempt from section 8(a) reporting requirements (section 8(a)(3)(A)(ii)), and persons engaging in a significant new use of CNs would also be required to report to EPA (section 5(b)(2)(A)).

EPA believed that a section 8(a) rule might not provide notice of all potentially significant exposures to CNs. These chemical substances have the potential to produce adverse human health and environmental effects, and because small businesses are exempt from section 8(a) reporting requirements, significant adverse exposures could occur without EPA's knowledge. Without notification EPA would not initiate an examination of the exposure, the chemical substance, or regulatory action to protect against an adverse exposure. EPA also believed that the use of section 5(b)(4) was not presently needed but that it was possible that CNs would be included on the list at a later date.

EPA proposed in the **Federal Register** of May 6, 1983 (48 FR 20668), a SNUR for CNs that would have required persons to notify EPA at least 90 days prior to any import greater than 100,000 pounds per year or any manufacture of CNs in the United States. The proposed rule set forth EPA's reasoning for utilizing a SNUR rather than the regulatory approaches suggested by the commenters.

Commenters to the proposed SNUR discussed the appropriateness, advantages, and disadvantages of utilizing a SNUR for CNs; and again suggested either promulgating a section 8(a) rule or, in addition to the SNUR, promulgating a rule that combines sections 8(a) and 5(b)(4). These comments are more fully discussed in Unit IV.B of this preamble.

After a careful review of the comments to all the **Federal Register** notices for CNs, the high cost of producing CNs, the impact of section 6(e) of TSCA on the manufacture of CNs, the current and projected uses of CNs, the human exposure to and environmental release of CNs, and the toxicity of CNs, EPA has decided to promulgate this section 8(a) reporting rule.

Even though EPA had proposed a SNUR for CNs, it has decided to adopt one of the alternatives that has been considered by EPA and discussed by commenters—a section 8(a) reporting rule. Since the section 8(a) reporting rule is less burdensome than a SNUR and the issues involved were raised for comment, first during consideration of the ITC designation and subsequently in the SNUR proposal, EPA has decided that no further comment is necessary. The provisions of the rule are very similar to other section 8(a) rules, and the small business exemption is the same exemption used by EPA in other section 8(a) rules. Except for certain exclusions, this final rule requires all manufacturers and importers of CNs to notify EPA of any current or prospective manufacture or import of CNs. There is no longer a 100,000 pound per year exclusion for importers.

The proposed SNUR for CNs made these substances subject to section 12(b) of TSCA, the export reporting requirements. Since EPA is promulgating a section 8(a) rule rather than a SNUR the export reporting requirements no longer apply to CNs.

IV. Reasons for This Rule

A. EPA 's Concerns for Health and Environmental Effects of CNs

1. *Toxicity.* EPA is primarily concerned about the potential for oncogenicity (the capacity to produce or form tumors) in humans exposed to CNs. Although there are no known human studies on oncogenic effects caused by CNs, there are reports showing tissue changes in exposed animals that may indicate a tumorigenic response. EPA is also concerned about the potential for liver degeneration, hyperkeratosis (thickening of the skin), acute dermatitis, and other health effects in humans exposed to this class of chemical substances.

Chloracne is the most commonly reported human health effect from subchronic exposure to CNs. Several other health effects have also been reported in workers exposed for different lengths of time and seem to be linked with the higher CNs, tetra through octa. These effects include yellow atrophy and necrosis of the liver, malaise, anorexia, vertigo, nausea, and jaundice. Other observed human effects include perforating ulcers of the duodenum, varices of the esophagus, swollen gall bladder, gallstones, necrosis and fibrosis of the pancreas, parenchymatous degeneration of adrenal gland cells, and degeneration of the kidney tubules and glomeruli.

There are also potential ecological hazards that may result from a release of CNs into the environment. CNs are highly toxic to marine and freshwater algae, as well as aquatic and terrestrial invertebrates, and appear to be a cumulative toxicant in these organisms. Based on the calculated octanol/water partition coefficients for the eight major CNs, mono- through octa-chloronaphthalene, there is also reason to expect that CNs bioconcentrate and are transported through the food chain. Evidence the CNs may be transported through the aquatic food chain to fish-eating birds is the detection of CNs in plants, fish, and birds. Futhermore, based on analogy to other chlorinated hydrocarbons, EPA believes that CNs have the potential to persist in the environment.

2. *Exposure to and release of CNs* In the past, CNs were produced in large quantities and used in many applications that resulted in significant human exposure to and environmental release of CNs. For example, capacitors were impregnated with CNs by dipping the parts into an open vat. This process provided substantial opportunity for the release of vaporous CNs and their inhalation by workers. Dermal exposure may have occured when coated parts were handled manually. Environmental releases may have occurred from the volatilization of heated CNs, cleaning of process equipment, and disposal of rejected parts and other wastes. CNs have been detected in the air and water near capacitor plants.

Auto mechanics and consumers were frequently exposed dermally and via inhalation to CNs contained in engine oil and gear oil during changes of these fluids. Similarly, workers in the metalworking fluids industry were often exposed dermally and by inhalation to CNs contained in metalworking fluids

during the machining of metal. Use of CNs as feedstocks in the production of dyes for textiles may have resulted in exposing workers to the unreacted chloronaphthalene present in the filter cake or waste material. Environmental releases of potential concern may have also resulted when CNs were used as feedstocks in the production of dyes. Probable releases include airborne emissions from reactor and condenser vents, discharges into liquid waste streams, and bottoms from distillation equipment used to produce CNs.

Today there is less consumption of and therefore less exposure to CNs. Only about 30,000 pounds of CNs are imported and processed annually, the largest percentage of which, 20,000 lbs., is for use in refractive index oils. Monochloronaphthalene is mixed with mineral oils to produce testing oils with various high refractive indices. Exposure to and release of CNs during the preparation of these mixtures are small because only simple mixing of liquids and filling of containers is involved. This operation is conducted under a ventilated hood and workers wear gloves and protective clothing.

These refractive index oils are used in small amounts during the preparation of slides for observation in crime and petrographic laboratories. Dermal exposure may be frequent for the microscopist who manually prepares the slides. The low vapor pressure of monochloronaphthalene and the use of ventilation hoods would limit any inhalation exposures. CNs are still used in some capacitors, (primarily for military applications), and therefore the potential for human exposure to and releases to the environment of CNs continues. However, the exposure to and release of CNs are limited by the small amount of CNs processed for this use, and the expectation that workers are wearing impervious gloves in accordance with Occupational Safety and Health Administration regulations.

EPA would be concerned if previous end uses (i.e. use as a dye intermediate or dye carrier) resumed or if CNs were again produced or imported in large quantities. The domestic production or increased import of CNs would signal a resumption of past end uses, an increase in present uses, and/or the development of new end uses. If the use of CNs increases, exposures to CNs are likely to increase and these exposures may have significant human health or environmental effects.

B. Response to Comments on the Proposed SNUR

On May 6, 1983, EPA proposed a SNUR for CNs that would have required persons to notify EPA at least 90 days prior to any import greater than 100,000 pounds per year or any manufacture of CNS in the United States. The proposed rule would have provided EPA with notice of all potentially significant increases in exposures to CNs, and would have allowed EPA to act quickly to protect against adverse exposures. Commenters questioned EPA's authority to define significant new use as "any manufacture" or "any import greater than 100,000 pounds." Although this final rule does not implement that definition, EPA continues to believe that in appropriate circumstances these activities can be properly determined as significant new uses of a chemical substance.

Commenters also suggested again that EPA either promulgate a section 8(a) rule or, in addition to the SNUR, promulgate a combined sections 5(b)(4) and 8(a) rule. The reasoning for promulgating a rule that incorporates a SNUR, section 5(b)(4), and section 8(a) would be to subject all prospective manufacturers, importers, and processors of CNs to a reporting requirement. Pursuant to this regulatory mechanism small businesses and persons engaging in a significant new use of CNs would be required to report to EPA. EPA believes that for this category of chemical substances, there is only a small probability of generating additional information by combining sections 5(b)(4) and 8(a). Because of the high cost to manufacture CNs, the noted decline in the use of CNs, their rising cost, the availability of substitutes, and the increased awareness of CNs' adverse health and environmental effects, it is unlikely that a small business will manufacture CNs or that a person will engage in a significant new use of CNs.

Most of the cost of producing CNs arises from the need for special processes and equipment. A manufacturer must have glass equipment to distill CNs; because of the risk of combustion when other compounds are combined with CNs, the equipment must be set aside only for distilling CNs; and the distillation process results in residues which must be burned or buried. Another factor that increases the cost of producing CNs is the difficulty of isolating pure compounds. Only mono- and octa-CNs can be made into pure products. Other CN products are complex combinations of various CNs that require carefully controlled reaction and distillation processes to obtain the desired combination.

The manufacture of CNs may be subject to additional costs because this chemical process has a high potential for generating polychlorinated biphenyls (PCBs) (See 48 FR 55076). Section 6(e) of TSCA prohibits the manufacture, processing, distribution in commerce, and use of PCBs. A person may petition for an exemption to this rule, and the Administrator may grant an exemption only if (1) an unreasonable risk of injury to health or environment would not result, and (2) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such PCB.

EPA has promulgated a section 6(e) rule that exempts inadvertently generated PCBs from the PCB ban. However, in order to qualify for the exemption, manufacturers of inadvertently generated PCBs must sample for and monitor the PCB concentrations present in their products, in wastes vented to the ambient air, and in wastes discharged to the water. Process wastes containing PCBs must be disposed of according to disposal regulations; records must kept; and compliance to these regulations certified (49 FR 28172).

CNs are also regulated pursuant to rules promulgated under the Clean Water Act and the Resource Conservation and Recovery Act, see (40 CFR Parts 401.15, 403, and 261).

These large production costs have been the primary reason for the increases in the price of CNs and make it unlikely that CNs will be produced in small amounts or by a small manufacturer. The last domestic manufacturer of CNs produced 700,000 pounds in 1978 and only 100,000 pounds in 1980. By 1981, demand had declined to the point where the company found it more economical to import rather than manufacture CNs. This manufacturer believes that no United States manufacturer is currently equipped to produce CNs. Some companies, such as chlorinated paraffin producers, have the necessary chlorination equipment, but none has both the necessary reaction vessels and special distillation equipment.

After reviewing the significant aspects of CNs, EPA believes that a section 8(a) rule is, for this category of chemical substances, a resource efficient regulatory mechanism that will provide EPA with sufficient information to track the manufacture, import, and use of CNs. EPA will be notified when domestic manufacture occurs and can monitor the amount of CNs imported into the United States. Once alerted to possible increases in exposure to CNs,

EPA could reevaluate its decision that a section 4 test rule is not warranted, or initiate other regulatory action.

V. Persons Subject to Reporting Requirements

Persons, as defined in 40 CFR 704.3(n), who are manufacturing or importing CNs on the effective date of this rule, must submit a notice to EPA within 30 days of the effective date. Persons who propose to import CNs on or after the effective date must notify EPA within 30 days of the effective date or within 15 days after making the management decision to import CNs, whichever is later in time. Lastly, persons who manufacture CNs after the effective date must notify EPA within 30 days after the first day of manufacture. In any event, a person is required to report only once for each CN produced or imported by that person.

Prospective importers and manufacturers must report at different times because EPA needs complete and accurate information. EPA believes that 15 days after a management decision to import CNs, importers can completely and accurately file the notice required by this rule. Manufacturers, however, are subject to an additional reporting requirement and are less able to submit the needed quality of information within the time prescribed for importers.

The additional reporting requirement for manufacturers of CNs concerns the wastes generated during the manufacturing process. Because these wastes have the potential to cause health and environmental harm, EPA needs to know the amount and constituents of the wastes, and the method for their disposal. Therefore, if the waste contains CNs the manufacturer must: Report the quantity of CNs present in the waste, identify the other constituents of the waste, state the rate of waste generation, describe where in the manufacturing process the waste is generated, and describe the method for disposal of the waste.

This rule also requires reporting from importers of mixtures containing CNs. Since TSCA defines manufacture as including import, EPA considers an importer of a mixture as the manufacturer of each chemical substance contained in the mixture. Therefore, a person intending to import a mixture containing CNs is required by this rule to submit a notice to EPA. An importer of a mixture may be exempt from reporting if the small business exemption is applicable. Thus, if a person with annual sales of less than $40 million but more than $4 million imports a mixture containing CNs, the importer is a small business and need not submit notice to EPA. However, if the annual import of a CN in a mixture exceeds 45,400 kilograms (not 45,400 kilograms of mixtures containing CNs) then the small business exemption no longer applies and the importer must submit notice.

No reporting is required from small manufacturers, small importers, and persons who manufacture or import CNs solely for research and development, as a byproduct or impurity, or as part of an article. The small business exemption standards were designed to reduce the paperwork burden on small chemical manufacturers while ensuring that EPA will receive sufficient chemical use, production, and exposure information to assess a chemical's risk to human health or the environment. EPA believes that these standards serve the purpose of this rule.

The notice must include company name and address, principal technical contact, and, to the extent that it is known to or reasonably ascertainable by the company, a description of the use or intended use of the CNs; chemical composition information; estimated production volume; and, if appropriate, the proposed date for initiating import.

After receiving notice of current or prospective manufacture or import of CNs, EPA will determine whether the activity presents or may present a risk to human health or the environment that necessitates additional regulatory action to investigate or control the activity.

The codified material following this preamble will appear in Part 704 of Title 40 of the Code of Federal Regulations (CFR). Part 704 was recodified in the **Federal Register** of May 25, 1983 (48 FR 23420). The scope and compliance, general definitions, exemptions, and confidentiality claim sections are now found in Subpart A of the recodified 40 CFR Part 704. Persons should familiarize themselves with Subpart A.

VI. Confidentiality

The procedures for submitting a notice with a confidentiality claim are set forth in 40 CFR Part 704.7. A person submitting a claim of confidentiality attests, among other things, that: my company has taken measures to protect the confidentiality of the information, we intend to continue to take such measures, and the information is not, and has not been, reasonably obtainable by other persons (other than government bodies) without our consent.

VII. Economic Impact

EPA estimates that compliance costs will range from $300–$2,000 for each notice. The cost estimate for data acquisition assumes that the data are known to or reasonably ascertainable by the person submitting the notice and therefore does not include laboratory costs for determining isomeric ratios. Cost include:

Data acquisition	$168–$1,632
Notice preparation (typing)	19–76
Managerial and legal review	111–333
Total	298–2,041

EPA expects to receive few notices under this rule because available information shows that there is only one importer of CNs and no domestic manufacturers. For reasons presented earlier, EPA does not expect this situation to change.

Upon receipt of a notice under this rule, EPA will decide what, if any, further information gathering, testing, or control actions are needed. Estimates of the costs of some possible actions are included in the economic support document that is contained in the public record for this rule. The actual costs of such actions will be assessed by EPA in the development of the appropriate follow-up action.

VIII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the **Federal Register**, as reflected in **"DATES"** in this notice. The effective date has, in turn, been calculated from the promulgation date.

IX. Public Record

EPA has established a public record for this rulemaking (docket number OPTS–82012) which is available for inspection in Rm. E–107, 401 M St., SW., Washington, D.C. 20460, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents. EPA requests that it be notified of any omissions from this record within the next 30 days.

1. Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, (43 FR 16684).

2. Response to the ITC (46 FR 54491) and all comments received thereon.

3. Economic analysis of proposed significant new use rule on chlorinated naphthalenes.

4. Economic Analysis of Final Section 8(a) Rule on Chlorinated Naphthalenes.

5. Chlorinated Naphthalenes: Workplace Exposure and Release.

6. Exposure assessment for incidentally produced Polychlorinated Biphenyls (PCBs) Volume III. (August 15, 1983).

7. Proposed significant new use rule for CNs (48 FR 20668) and all comments received thereon.

8. OMB comments and EPA's response.

X. Regulatory Assessment Requirements

A. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0036.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. There are no domestic manufacturers of CNs and only one importer. This rule also contains a small manufacturer exemption. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95–345), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 million or more on the economy. It is expected to have an annual cost of less than $2,000. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to OMB for review as required by Executive Order 12291.

XI. List of Subjects in 40 CFR Part 704

Environmental protection, Hazardous materials, Recordkeeping and reporting requirements.

Dated: August 9, 1984.

Alvin L. Alm,

Acting Administrator.

PART 704—[AMENDED]

Therefore, Title 40, Chapter I, is amended by adding § 704.83 to read as follows:

§ 704.83 Chlorinated Naphthalenes.

(a) *Definitions.* (1) "Extent of chlorination" means the percent by weight of chlorine.

(2) "Import" means to import in bulk form or as part of a mixture.

(3) "Isomeric ratio" means the relative amounts of each isomeric chlorinated naphthalene that composes the chemical substance; and for each isomer the relative amounts of each chlorinated naphalene designated by the position of the chlorine atom(s) on the naphthalene.

(4) "Polychlorinated biphenyl" means any chemical substance that is limited to the biphenyl molecule and that has been chlorinated to varying degrees.

(5) "Small manufacturer" means a manufacturer (including importers) who meets either paragraph (a)(5) (i) or (ii) of this section:

(i) A manufacturer of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production volume of a particular chemical substance at any individual site owned or controlled by the manufacturer is greater than 45,400 kilograms (100,000 pounds), the manufacturer shall not qualify as small for purposes of reporting on the production of that chemical substance at that site, unless the manufacturer qualifies as small under paragraph (a)(5)(ii) of this section.

(ii) A manufacturer of a chemical substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of the particular chemical substance produced by that manufacturer.

(iii) For imported mixtures containing a chemical substance identified in paragraph (b) of this section, the 45,400 kilograms (100,000 pounds) standard in paragraph (a)(5)(i) of this section applies only to the amount of the chemical substance in a mixture and not the other components of the mixture.

(6) "Waste" means any solid liquid, semisolid, or contained gaseous material that results from the production of a chemical substance identified in paragraph (b) of this section and which is to be disposed.

(b) *Substances subject to reporting.* The chemical substances subject to reporting under this section are:

Chemical substance	CAS registery number
Chloronaphthalene	25586-43-0
1-Chloronaphthalene	90-13-1
2-Chloronaphthalene	91-58-7
1,2-Dichloronaphthalene	2050-69-3
1,3-Dichloronaphthalene	2198-75-6
1,4-Dichloronaphthalene	1825-31-6
1,5-Dichloronaphthalene	2050-72-8
1,6-Dichloronaphthalene	2050-73-9
1,7-Dichloronaphthalene	2050-74-0
1,8-Dichloronaphthalene	2050-75-1
2,3-Dichloronaphthalene	2065-70-5
2,7-Dichloronaphthalene	2198-77-9
Trichloronaphthalene	1321-65-9
Tetrachloronaphthalene	1335-88-2
Pentachloronaphthalene	1321-64-8
Hexachloronaphthalene	1335-87-1
Heptachloronaphthalene	32241-08-0
Octachloronaphthalene	2234-13-1
Naphthalene, chloro derivs	70776-03-3

(c) *Persons who must report.* (1) Persons who are manufacturing or importing a chemical substance identified in paragraph (b) of this section on October 8, 1984.

(2) Persons who propose to import a chemical substance identified in paragraph (b) of this section on or after October 8, 1984.

(3) Persons who manufacture a chemical substance identified in paragraph (b) of this section after October 8, 1984.

(4) A person is required to report only once for each chemical substance identified in paragraph (b) of this section.

(d) *Persons exempt from reporting.* (1) Small manufacturers.

(2) Persons described in § 704.5.

(e) *What information to report.* Persons described in paragraph (c) of this section must notify EPA of current or prospective manufacture or import. The notice must include, to the extent that it is known to or reasonably ascertainable by the person making the report, the following information:

(1) Company name and address.

(2) Name, address, and telephone number of the principal technical contact.

(3) For chemical substances proposed to be imported, the proposed date of import.

(4) A description of the use(s) or intended use(s) for the chemical substance.

(5) A description of the isomeric ratio and extent of chlorination of the chemical substance and the impurity level of polychlorinated biphenyls.

(6) The quantity (by weight) manufactured or imported within 12 months prior to October 8, 1984, if any, and the estimated quantity (by weight)

to be manufactured or imported for the first 3 years following the date of the report or the date of the intended start of import whichever occurs later.

(7) The number of persons exposed to the chemical substance during manufacture, import, processing, distribution in commerce, use, and disposal.

(8) If a manufacturer's waste contains one or more of the chemical substances identified in paragraph (b) of this section, the manufacturer must:

(i) Provide the quantity (by weight) of the chemical substances identified in paragraph (b) of this section present in the waste.

(ii) Identify the constituents of the waste and their concentrations.

(iii) State the rate of waste generation as a percentage of production volume.

(iv) Describe where in the manufacturing process the waste is generated, and

(v) Describe the method for disposal of the waste.

(f) *When to report.* Persons who are manufacturing or importing a chemical substance identified in paragraph (b) of this section on October 8, 1984 must notify EPA by November 6, 1984.

(2) Persons who propose to import a chemical substance identified in paragraph (b) of this section on or after October 8, 1984 must notify EPA by November 6, 1984, or 15 days after making the management decision described in § 704.3(p) whichever is later in time.

(3) Persons who manufacture a chemical substance identified in paragraph (b) of this section after October 8, 1984 must notify EPA within 30 days after the initial date of manufacture.

(g) *Where to send reports.* Reports must be submitted by certified mail to the United State Environmental Protection Agency, Document Processing Center, P.O. Box 2070, Rockville, MD 20852. ATTN: Chlorinated Naphthalene Notification.

[FR Doc. 84-22535 Filed 8-23-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61 and 62

[Docket No. FEMA-FIA]

National Flood Insurance Program Coverage; Sales and Eligibility Provisions

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule revises the National Flood Insurance Program (NFIP) regulations dealing with flood insurance coverage, the Standard Flood Insurance Policy terms and provisions, the sale of flood insurance in communities participating in the NFIP and the administration, by communities, of community record keeping efforts as part of the NFIP community participation arrangements. The purpose of this rule is, also, to revise the Program regulations to reflect business practices followed in the Flood Insurance Manual used by private sector property insurance agents and brokers in producing flood insurance business, coverage changes in the contract of flood insurance, and the business practices of "Write-Your-Own" companies, which market and service flood insurance coverage under arrangements with the Federal Insurance Administrator (see 48 FR 46789, published October 14, 1983).

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, D.C. 20472; telephone number (202) 287-0740.

SUPPLEMENTARY INFORMATION: On April 27, 1984, FEMA published for comment in the **Federal Register** (Vol. 49, Page 18131) a proposed rule containing revisions to the National Flood Insurance Program (NFIP) which were the result of a continuing reappraisal, begun in 1981, of the NFIP from the standpoint of maintaining a business-like approach to the administration of the NFIP by emulating successful property insurance programs in the private sector while, at the same time, supporting the major FEMA goals of achieving greater administrative and fiscal effectiveness in the operation of the NFIP (see "National Flood Insurance Program Coverage Sales and Loss Prevention Provisions," 47 FR 19138, May 4, 1982, and "National Flood Insurance Program Coverage, Sales and Eligibility Provisions, 48 FR 39066, August 29, 1983).

A number of the twenty-six comments received (two of which were from the same organization) were not in regard to the revisions that were proposed. Based on the comments that did address proposed revisions, substantive changes have been made in two areas to the proposed rule.

The first area is the proposal to exempt from the exclusionary language in the Standard Flood Insurance Policy (SFIP), whereby coverage is not provided for finished elements enclosed and contained below the elevated floors of an elevated building, those buildings that were in existence prior to the effective date of the community's initial Flood Insurance Rate Map (FIRM) so long as the building was not substantially improved after issuance of the initial FIRM. While some comments suggested granting the same or a similar exemption from the companion exclusionary language applying to finished basements and their contents, FEMA found the comment of the State official (the Flood Insurance Coordinator of one of the more active States in flood plain management) more cogent. In commenting on this proposed elevated building exemption, he pointed out that this would impact primarily coastal communities and stated, "it seems that by grandfathering in the structures in these areas, the NFIP is taking a step backwards toward achieving fiscal soundness." With the ratio of losses and expenses to premiums for basement buildings and elevated buildings running almost four times that ratio for other buildings, FEMA believes that this State official's view is compelling and that a more equitable distribution of economic burdens between the general taxpaying public and the affected policyholders in this subsidized Program will be achieved by not making this proposed exemption. Therefore, this proposed change has been deleted from this final rule, so that this exclusion of coverage for both Post-FIRM and Pre-FIRM buildings remains in effect.

The second area is the proposal to provide reimbursement for the reasonable expenses incurred, up to the amount of the policy's deductibles, for the purchase of sandbags used in saving the property due to the imminent danger of a flood loss and preserving the property at the premises after a flood loss. A number of comments supported this revision and asked that the material covered include not only the sandbags, but also the sand itself, plastic sheeting, lumber, and similar expenses. FEMA intended that sand be covered and has clarified that in this final rule. FEMA agrees that plastic sheeting and lumber are part of a reasonable measure to save and preserve the property by the use of sandbags, so coverage for those items in connection with the use of sandbags has been provided for in this final rule. Most of the sandbag comments also recommended that the cost of labor be

covered. The proposed rule did provide for the value of the insured's own labor at prevailing Federal minimum wage rates, so this final rule makes no change to the proposed rule in regard to this item. One comment suggested that the evacuation orders required for reimbursement of sandbag expenses not be limited to orders issued by the community, but rather should include such orders issued by any legally authorized official. That suggested change has been made in this final rule. The Supplementary Information section of the proposed rule pointed out that the sandbag provisions had conditions to avoid the speculative stockpiling of costly sandbags. One comment favored stockpiling because of possible availability problems. FEMA continues to believe that the speculative stockpiling of costly sandbags should be avoided and that the conditions in the sandbag provisions are reasonable. Therefore, these conditions remain in this final rule. Because the SFIP currently provides for reimbursement for one way of protecting insured contents, i.e., by removing them to a safe place, with only a $50 deductible, this final rule provides reimbursement for sandbag expenses only under building coverage. This final rule also conforms the provision for reimbursement of contents removal expenses in the SFIP General Property Form to that provision in the SFIP Dwelling Form by adding the condition that removal must be to a place protected from the elements. One other change to the sandbag provisions was made for internal consistency: "used in saving" was changed to "for the purpose of saving."

Two other revisions that were proposed received comments. Both of these revisions were designed to make the NFIP insurance concepts and usage consistent with the flood plain management aspects of the NFIP. One of these comments was on the proposed revision of the definition of "start of construction" to conform the definition for the flood plain management purposes of the NFIP to the definition for insurance purposes of the NFIP. A State official, while concurring with using as the start of construction date, the building permit date, as described in the proposed definition, suggested one modification: using the actual start of construction date if it is known or can be certified. For purposes of consistency, FEMA has decided to make no changes to the proposed rule, so this final rule is the same as the proposed rule in the definition of "start of construction."

The other of these comments was on the proposed revision to the requirements for record keeping by NFIP participating communities in regard to the elevation of a building. The proposed revision would eliminate the requirement for records of a building's lowest *habitable* floor," requiring instead records of a building's "lowest floor," a term which was defined in the proposed rule. The comment from a local government official was that the floor of an unfinished residential garage that did not impede the flow of flood waters by virtue of the opening of its doors should not be considered the lowest floor of the building for either flood plain management requirements of the NFIP or insurance rating purposes of the NFIP. FEMA agrees, and since the proposed rule specifically provides for this in the definition of "lowest floor," the final rule makes no change to the proposed rule in regard to the lowest floor provisions. One other comment was made on the lowest floor issue. A State official recommended that the Elevation Certification Form used by the NFIP to show the elevation of the lowest floor of a building be sent to the community permit official. That recommendation will be held for further study in connection with the possibility of some community rating options FEMA will be considering.

Also to be held for further consideration are comments on some of the NFIP's mobile home provisions received from two trade associations and a comment from a FEMA Regional Office on floodproofing. These comments, which do not concern revisions that were proposed, will be considered for the FY85 NFIP rulemaking process.

Comments on other matters that were not being considered for revision in the proposed rule, such as eliminating the finished basement limitation, eliminating the exclusion for losses from sewer backup or seepage, extending the waiting period for new policies from five to fifteen days, and a complaint about the application of the mandatory purchase requirement to a particular property, are not being dealt with here, and no rule changes in regard to them are being planned.

Editorial revisions have been made to clarify the intent of the changes to the condominium provisions and the provisions for premium refunds for policies having terms of three (3) years. Also, an inadvertent inconsistency between the SFIP Dwelling Form and the SFIP General Property Form earth movement exclusions has been resolved by revising paragraph D of the PERILS EXCLUDED section of the SFIP General Property Form to agree with Article III.A.1 of the SFIP Dwelling Form.

FEMA has determined, based upon an Environmental Assessment, that this rule does not have significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street, SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59, 60, 61, and 62

Flood insurance.

Accordingly, Parts 59, 60, 61, and 62 of Subchapter B of Chapter 1 of Title 44 are amended as follows:

PART 59—GENERAL PROVISIONS

§ 59.1 [Amended]

1.a. At § 59.1, the definition of "Basement" is added in alphabetical order, as follows:

§ 59.1 Definition.

* * * * *

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

b. At § 59.1, the definition of "Habitable Floor" is deleted.

2. At § 59.1, the definition of "Lowest Floor" is added in alphabetical order, as follows:

* * * * *

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *provided* that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of section 60.3.

* * * * *

3. At § 59.1, the definition of "Start of Construction" is amended to read as follows:

* * * * *

"Start of construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act [Pub. L. 97-348]), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (other than a mobile home) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not as part of the main structure. For a structure (other than a mobile home) without a basement or poured footings, the "actual start" includes the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For mobile homes not within a mobile home park or mobile home subdivision, the "actual start" means the affixing of the mobile home to its permanent site. For mobile homes within mobile home parks or mobile home subdivisions, the "actual start" is the date on which the construction of facilities for servicing the site on which the mobile home is to be affixed (including, at a minimum the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.

* * * * *

4. Section 59.22(a)(9)(iii) is revised to read as follows:

§ 59.22 Prerequisites for the sale of flood insurance.

(a) * * *

(9) * * *

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of floodproofing, and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

* * * * *

PART 60—[AMENDED]

5. Section 60.3 (b)(5) and (e)(2) are revised to read as follows:

§ 60.3 Flood plain management criteria for flood-prone areas.

* * * * *

(b) * * *

(5) For the purpose of the determination of applicable flood insurance risk premium rates within Zone A on a community's FHBM: (i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

* * * * *

(e) * * *

(2) For the purpose of the determination of applicable flood insurance risk premium rates within Zone V1-30 on a community's FIRM: (i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not such structures contain a basement, (ii) obtain, if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed, and (iii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

* * * * *

PART 61—[AMENDED]

6. Section 61.5(h)(2)(ii)(B) is revised to read as follows:

§ 61.5 Special terms and conditions.

* * * * *

(h) * * *

(2) * * *

(ii) * * *

(B) Provided paragraph (h)(2)(ii)(A) of this section does not apply, the insured remits and the insurer receives that additional premium required to purchase for the current policy term and for the previous policy term, if then insured, the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required, or nonreceipt of such premium by the insurer within thirty (30) days from the date of notice of premium due, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amount of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee); provided, further, the insurer is under no obligation to send the insured any written notice of additional premium due or notice of premium due under this subsection "B".

* * * * *

7. Section 61.11(e) is revised to read as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

* * * * *

(e) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium payment by the agent, does not constitute payment to the NFIP. Therefore, it is important that an application for Flood Insurance and its premium be mailed to the NFIP (P.O. Box 459, Lanham, Maryland 20706) promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the premium payment are received at the NFIP within ten (10) days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases

where the application and premium payment are mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of application even though the application and premium payment are received at the NFIP after ten (10) days following the date of application. Thus, if the application and premium payment are received after ten (10) days from the date of the application or are not mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of receipt by the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term "endorsement" for the term "application" in this paragraph (e). With respect to the submission of an application in connection with new business, a renewal of a policy in effect and an endorsement to a policy in effect, the payment by an insured to an agent or the issuance of premium payment to a Write-Your-Own (WYO) Company by the agent, accompanied by a properly completed application, renewal or endorsement form, as appropriate, shall commence the calculation of any applicable waiting period under this section, provided that the agent is acting in the capacity of an agent of a Write-Your-Own (WYO) Company authorized by 44 CFR 62.63, is under written contract to or is an employee of such Company, and such WYO Company is, at the time of such submission of an application in connection with new business or a renewal of or endorsement to flood insurance coverage, engaged in WYO business under an arrangement entered into by the Administrator and the WYO Company pursuant to § 62.63.

Appendix A(1) of Part 61—[Amended]

8. Appendix A(1) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended, in the following particulars:

a. At "Article III—Losses Not Covered," paragraph B.1 is revised to read as follows:

* * * * *

B. Losses of the following nature:

1. Loss caused by your failure to use means reasonably accessible to you to save the property from loss resulting from a flood and to preserve the property after a flood; however, when the insurance under this policy covers a building, the reasonable expenses incurred by you for the purchase of sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, for the purpose of saving the building due to the imminent danger of a flood loss and preserving the building at the premises after a flood loss, including the value of your own labor at prevailing Federal minimum wage rates, are a covered loss in an amount up to the amount of the minimum building deductible, without the policy's building deductible amount, as provided for at Article VI, being applied to this reimbursement, but being applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph B.1 to apply, the following conditions must be met:

(i) The insured property must be in imminent danger of sustaining flood damage; and

(ii) The threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) a general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood.

* * * * *

b. "Article IV—Property Covered" is amended by the addition of the following to subparagraph A.1.:

* * * or, as described in the Application as a residence designed for principal use as a dwelling place for no more than one family, we cover your dwelling unit in a condominium building, along with your insurable tenant in common interest in the building's common elements; provided that, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to you as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of building coverage available for the insuring of single-family dwellings under the Act, then the limits of building coverage under this policy shall be reduced in regard to that loss by the amount of such excess;

* * * * *

c. "Article IV—Property Covered" is amended by the addition of the following at the end of paragraph C. Limitation:

* * * In the case of personal property owned by you in a condominium building, as a dwelling unit owner, as well as in common with other dwelling unit owners, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to you as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available for the insuring of single-family dwelling owners under the Act, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

* * * * *

d. At Article VIII—General Conditions and Provisions, paragraph C. Other Insurance is revised to read as follows:

* * * * *

C. Other Insurance: We shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by us upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

* * * * *

e. At Article VIII—General Conditions and Provisions, paragraph E. Cancellation of Policy By You is amended by the addition of a new subparagraph c, as follows:

* * * * *

c. You cancel a policy having a term of three (3) years, on an anniversary date, and the reason for the cancellation is:

(i) A policy of flood insurance has been obtained or is being obtained in substitution for this policy and we have received a written concurrence in the cancellation from any mortgagee of which the NFIP has actual notice, or (ii) you have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph "c", shall be on a short-rate basis.

* * * * *

f. At Article VIII—General Conditions and Provisions, subparagraph F(2)(ii)(b) is amended by the addition, after the word "purchase", of the parenthetical phrase "(for the current policy term and the previous policy term, if then insured)"; and, by the deletion of the phrase "or within sixty (60) days of the loss if no notice of premium is received by you"; and, by the deletion of the phrase "or within sixty (60) days of the loss, whichever is sooner"; and, by the addition of the following, at the end of paragraph

(F)(2)(ii)(b), after deletion of the period: "; provided, further, we are under no obligation to send you any written notice of additional premium due or notice of premium due under this subsection."

Appendix A(2) of Part 61—[Amended]

9. Appendix A(2) of Part 61, referenced at § 61.13, Standard Flood Insurance Policy, is amended in the following particulars:

a. At the "PERILS EXCLUDED" section, paragraph D is revised to read as follows:

* * * * *

D. By theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of flood.

b. At the "PERILS EXCLUDED" section paragraph F is revised to read as follows:

* * * * *

F. Caused directly or indirectly by neglect of the Insured to use all reasonable means to save the property from loss resulting from a flood and to preserve the property after a flood; however, when the insurance under this policy covers a building, the reasonable expenses incurred by the Insured for the purpose of sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, for the purpose of saving the building due to the imminent danger of a flood loss and preserving the building at the premises after a flood loss, are a covered loss in an amount up to the amount of the minimum building deductible, without the policy's building deductible amount, as provided for herein under "DEDUCTIBLES", being applied to this reimbursement, but being applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph "F" to apply, the following conditions must be met:

(i) The insured property must be in imminent danger of sustaining flood damage; and

(ii) the threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) a general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood. Provided, further, that for contents covered herein and subject to the terms of the policy, including the limits of liability, the Insurer will reimburse the Insured for reasonable expenses necessarily incurred by him for removal or temporary storage (not exceeding 45 days), or both, of insured contents, from the described premises because of the imminent danger of flood if the contents so removed are placed in a fully enclosed building or otherwise reasonably protected from the elements.

* * * * *

c. At the "GENERAL CONDITIONS AND PROVISIONS" section, subparagraph E(2)(ii)(b) is amended by the addition, after the word "purchase", of the parenthetical phrase "(for the current policy term and the previous policy term, if then insured)"; and, by the deletion of the phrase "or within sixty (60) days of the loss if no notice of premium is received by the Insured"; and, by the deletion of the phrase "or within sixty (60) days of the loss, whichever is sooner"; and, by the addition of the following, at the end of subparagraph (E)(2)(ii)(b), after deletion of the period: "; provided, further, the Insurer is under no obligation to send the Insured any written notice of additional premium due or notice of premium due under this subsection."

d. At the "GENERAL CONDITIONS AND PROVISIONS" section, a new subparagraph is added to the end of paragraph "K. Cancellation of Policy or Reduction in Amount of Insurance", as follows:

* * * * *

This policy, if it is a policy for a term of three years, may be cancelled at any of its anniversary dates at the request of the Insured, provided, a policy of flood insurance has been obtained or is being obtained in substitution for this policy and the insurer receives a written concurrence in the cancellation from any mortgagee of which the insurer has actual notice; or the Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be on a short-rate basis.

* * * * *

PART 62—[AMENDED]

10. Section 62.5. "Premium Refund", is amended by the addition of the following:

§ 62.5 Premium refund.

* * * A Standard Flood Insurance Policyholder may cancel a policy having a term of three (3) years, on an anniversary date, where the reason for the cancellation is that a policy of flood insurance has been obtained or is being obtained in substitution for the NFIP policy and the NFIP obtains a written concurrence in the cancellation from any mortgage of which the NFIP has actual notice; or the policyholder has extinguishing the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be on a short-rate basis.

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 41943), E.O. 12127, dated March 31, 1979 (44 FR 19367) E.O. 11988, dated May 24, 1977 and 44 CFR 2, Delegation of Authority of Federal Insurance Administrator)

Dated: July 31, 1984.

Issued at Washington, D.C.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 84-22518 Filed 8-23-84; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 81-496; FCC 84-294]

Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action adopts new rules and policies that relieve noncommercial educational FM and television stations of the obligation to follow formal ascertainment procedures and relaxes program log requirements for these licensees. The Commission found that the existing requirements in these areas were unnecessary to achieve its regulatory goals and that continued imposition of the burdens associated with them was therefore unwarranted.

DATE: Effective September 25, 1984.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Lane Moten, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television and radio broadcast.

Report and Order (Proceeding Terminated)

In the matter of revision of program policies and reporting requirements related to Public Broadcasting Licensees; BC Docket No. 81-496.

Adopted: June 27, 1984.

Released: August 22, 1984.

By the Commission.

Introduction

1. This proceeding began with the adoption of a *Notice of Proposed Rule Making* on July 30, 1981. 46 FR 55125, published November 6, 1981.[1] The

[1] The proceeding also included a petition for rule making which had been filed by National Public Radio requesting deregulation of various aspects of public radio station operation.

Notice invited comments on deregulatory steps to remove unnecessary or outdated public broadcasting [2] programming and reporting requirements. Proposals were made in three areas: (1) *General Programming Responsibility*, (2) *Ascertainment Requirements* and (3) *Program Logging Requirements*.

2. The proposals were set forth in the context of a series of Commission actions dealing with deregulation. In particular, the *Notice* referred to proceedings leading to the deregulation of commercial radio (BC Docket No. 79–219) [3] and to the proceeding in BC Docket No. 80–253 that led to a major simplification of the procedures to be followed when seeking renewal of a station's license.[4] In addition to these references, the *Notice* also discussed the history of public broadcasting and the evolution of the regulatory strictures applied to it.

The Nature of Public Broadcasting and Its Regulation

3. From its beginning as a primarily instructional service, public broadcasting has evolved into a much broader noncommercial service.[5] Most of the early stations were FM stations connected with educational institutions or school systems. For the most part, they were used as a vehicle for delivering instructional programming, and in many cases they were considered as a training ground for students who operated the station. While there were early exceptions, most of what we now consider as public broadcasting is a relatively new development. The broadened scope of expectations in regard to public broadcast stations and the service they provide were clearly set forth in the House Report 97–82 on H.R. 3238, the Public Broadcasting Amendments Act of 1981 (Pub. L. 97–35):

> [T]he existing Act clearly emphasizes the intent of Congress that diverse programming with sensitivity to the diverse needs, interests and concerns of our Nation's people, which may be underserved by commercial broadcasting, remain central to the unique service provided by Public Broadcasting. [At p. 11.]

4. Over the years the Commission has developed a body of law dealing with the programming obligations of broadcast licensees. The most definitive expression is found in the *1960 Policy Statement*.[6] While the *1960 Policy Statement* accentuated the degree of Commission involvement in the programming area, formal ascertainment, as the term is now understood, was not a part of the process. An applicant for a new station or for renewal was required to be knowledgeable about its community of license and its environs. However, no particular method for obtaining this information was specified.

5. Gradually, the Commission formalized the ascertainment process. Thus, on February 18, 1971, the Commission adopted a *Primer* for new station applicants regarding the ascertainment of community problems and the presentation of programs to meet those problems.[7] Later, separate procedures were developed for renewal applicants. *See Renewal Primer*, 57 F.C.C. 2d 418 (1975), 41 FR 1372. Although these procedures were directly applicable only to commercial stations, the Commission had held that public stations also had a duty to ascertain community needs and to program to meet those needs. Ultimately, the Commission adopted specific procedures for public television and radio applicants and licensees. Public television stations were treated in a fashion similar to commercial stations, but somewhat less formalized ascertainment requirements were applied.

6. Public television stations had to observe four specific requirements designed to show that local needs had been properly ascertained and that programs to respond to those needs had been developed. The public television licensee was required to:

(1) Complete and place in its public file demographic data on its community of license;

(2) Conduct interviews with community leaders representative of all significant groups, following a checklist of leader categories;

(3) Conduct a general public survey, either using the traditional random sample method mandated for commercial stations, or by call-in programs or public meetings;

(4) Compile, place annually in the public file, and submit with each application a problems/programs list such as is required of public radio and commercial licensees.

7. Public radio licensees were allowed more flexibility. They were permitted to ascertain by any reasonable method that was designed to provide them with an understanding of the problems, needs and interests of their service areas. The process was to be documented by an annually prepared narrative report and problems/programs list. The narrative report detailed the sources consulted and the methods followed in conducting the ascertainment. It also summarized the principal needs and interests discovered. In addition, each year radio licensees were required to prepare a list of up to 10 problems ascertained in the past 12 months, together with examples of programs broadcast to meet those problems. The narrative statement and the problems/programs lists were to be placed in the station's public file. They also were to be submitted as part of the next application for license renewal. New applicants were required to file with the Commission a similar narrative report and problems list. However, the programs pertaining to the ascertained problems were listed prospectively rather than retrospectively. Class D FM stations were exempted from all formal ascertainment requirements.[8]

8. When these requirements were adopted, the Commission also adopted new forms with which to implement the changes. Several months later, the program logging rules were changed to bring the program categories specified therein in line with the program categories being used in the renewal form.[9] At that time public licensees were

[2] Although generally referred to as public broadcasting stations, these stations are classified in the Commission's rules as "noncommercial educational FM stations" or "noncommercial educational television stations." "Noncommercial" and "public" broadcasting are used interchangeably in this *Report and Order*.

[3] *Deregulation of Radio*, 84 F.C.C. 2d 968, *recon. granted in part*, 87 F.C.C. 2d 797 (1981), *aff'd in part and remanded in part sub nom. Office of Communication of the United Chruch of Christ* v. *F.C.C.*, 707 F.2d 1413 (D.C. Cir. 1983) (Hereinafter, *UCC* v. *FCC*).

[4] On March 26, 1981, the Commission adopted new and simplified procedures for license renewals which were applied to all broadcast stations, commercial and public, television and radio. 49 RR 2d 740, *recon. denied*, 50 RR 2d 704 (1981), *aff'd Black Citizens for a Fair Media* v. *F.C.C.*, 719 F.2d 407 (D.C. Cir. 1983).

[5] The history of public broadcasting can be traced as far back as 1934. Section 307(c) of the Communications Act of 1934 required the Commission to study the possibility of reserving facilities for noncommercial radio use.

[6] "The confines of the licensee's duty are set by the general standard of the public interest, convenience or necessity * * *. The principal ingredient of such obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area. If he has accomplished this, he has met his public responsibility." *Report and Statement of Policy re: Commission en Banc Programming Inquiry* (*Policy Statement*), 44 F.C.C. 2303 at 2312 (1960).

[7] 27 F.C.C. 2d 650 (1971), 36 FR 4092 (March 3, 1971).

[8] Class D stations were given special treatment for two reasons. First, they have operated with only 10 watts transmitter output power and thus have had a highly restricted coverage area. In addition, they were often connected with schools or colleges, serving an audience concentrated there. Many were designed to play a special educational function at the school as a training ground for the students rather than being designed to provide a broader service to the public at large.

[9] *Amendment of the Commission's Rules and Regulations Concerning Program Logs for*

Continued

also required to make the logs available for public inspection and to submit them to the Commission upon request.[10]

The Notice of Proposed Rule Making

9. This proceeding was begun to explore the degree to which social and market forces could be relied upon to function as a substitute for governmental regulation of public stations. Another reason compels us to reexamine existing programming regulations governing public stations, particularly those receiving substantial funding through grants from the Corporation for Public Broadcasting and the National Telecommunications and Information Administration. Federal funding for these public broadcasting stations has been substantially reduced, and therefore the costs of meeting unnecessary regulatory burdens may have an adverse effect on the service these stations are able to provide.

10. With these points in mind, the Commission proposed a series of options ranging from ending the requirements entirely (or at least greatly reducing them) to retaining existing requirements. The options were:

General Program Responsibility

(1) Eliminate all Commission programming oversight not based on the "consideration received" [11] rules or specific statutory requirements.

(2) Retain a programming obligation broader than (1) above but rely on licensee good faith as much as possible as to the manner of responding to local needs.

(3) Retain current responsibility to respond to all significantly expressed community needs but permit some specialization.

(4) Retain current requirements in full.

Ascertainment

(1) Eliminate the ascertainment obligation and existing ascertainment procedures.

(2) Retain an ascertainment obligation but allow the use of any reasonable means to fulfill this obligation; no documentation would be required to be filed.

(3) Same as (2) above except that records would be maintained in the public file and/or submitted to the Commission.

(4) Retain the current requirements while eliminating the most costly or least cost effective parts.

(5) Retain the current requirements in full.

Program Logs

(1) Eliminate program logging requirements.

(2) Establish a limited logging obligation as a substitute for the present requirements.

(3) Retain the present logging requirements.

11. Comments and reply comments were received from a wide variety of parties, including licensees, associations, law firms, citizens groups and individuals.[12] The comments ranged from one page letters to voluminous filings examining the pertinent issues in great detail. A summary of these filings is contained in Appendix C.

Discussion

Programming

12. Although the *Notice* raised the matter of the general programming obligations of public licensees, no specific deregulation is indicated in this area in view of the absence of processing guidelines such as those that have been applied to commercial stations. Moreover, even option 1, the broadest proposal in the programming area, did little more than reflect our traditional reliance on public licensees' good faith discretion and judgment in discharging their programming obligation to address community issues.[13] We intended no departure from this successful and minimally intrusive regulatory approach. Accordingly, we do not believe it necessary to discuss in detail the various options raised in the *Notice*. We do believe, however, that a brief review of the special status of public broadcasting and the implications of this status in terms of programming responsibilities is appropriate.

13. Public broadcasting is explicitly encouraged by various Commission rules and policies. Perhaps most notable among these is our spectrum reservation policy whereby noncommercial stations are afforded protected frequency allocations for their exclusive use. Other state and federal governmental entities also accord public stations favored status by various means, including preferential tax treatment and considerable direct financial subsidies. Yet, public broadcast stations are also subject to specific limitations, such as restrictions on their use of commercial matter and advertising and the definitional requirement that they be non-profit, educational entities. Thus, the very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different, in programming terms, from their commercial counterparts. With this in mind, we expect that as a practical matter the programming of these stations will reflect their special status and that they will provide their communities with significant alternative programming designed to satisfy the interests of the public not served by commercial broadcast stations. We would assume, for example, that in the rare case where the commercial media market appeared to ignore a significant issue in a community, the public stations would be among the first to address it, providing an important alternative and competitive spur to the other local media. Such responsive programming would be entirely consistent with the nature and historical performance of these stations.

14. Against this background, the Commission does not consider it necessary or appropriate to make any significant change in the programming obligation for noncommercial stations relied upon successfully in the past. Moreover, we believe that a more rigorous standard for public stations would come unnecessarily close to impinging on First Amendment rights and would run the collateral risk of stifling the creativity and innovative potential of these stations. Further, we wish to note that the programming formats of these stations, as with many of their commercial counterparts, have become increasingly specialized, particularly in the case of radio, and that we expect this trend to continue. To the extent that this development increases the diversity of programming available to the public, we find it entirely consistent with our traditional programming policies. Meanwhile, of course, we expect that public broadcasters will continue to serve the significant programming needs of their communities. Consistent with this expectation, the Commission will retain the basic issue-oriented programming responsibility of public stations and require that these stations document compliance with this bedrock obligation

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Noncommercial Educational Broadcast Stations, 62 F.C.C. 2d 120 (1976).

[10] *Revision of Application for Renewal of License of Commercial AM, FM and Television Licensees*, 46 FR 26236 (May 11, 1981). Public broadcast stations now utilize the new "short form" renewal application and are subject to the long form audit requirement and to on-site inspection by the Commission's Mass Media Bureau.

[11] Sections 73.503 and 73.621 of the Commission's Rules then barred public radio and television stations, respectively, from receiving consideration for programs or announcements.

[12] Appendix B lists the parties filing comments and reply comments in this proceeding.

[13] As in *Alabama Educational Television Commission*, 50 F.C.C. 2d 461 (1975). Commission action may be taken if a station abuses its discretion and fails to meet its obligations.

by maintaining issues/programs lists as detailed in the logging section below.

Ascertainment

15. The comments establish that the current ascertainment requirements are burdensome and time consuming. Specifically, they note that ascertainment costs can reach over $13,000 and $6,000 per year for public television and radio stations, respectively, and can involve hundreds of yearly hours of staff time. The record in this proceeding contains no allegations or data to dispute the substantial nature of these costs. In fact, the impact of these costs has increased because public radio and television licensees have had to absorb major reductions in federal and other funding. Thus, it has become even more important to relieve these stations of unnecessary burdens. Indeed, Federal agencies are required by the Paperwork Reduction Act of 1980 to reduce such paperwork burdens wherever possible.[14]

16. We conclude that ascertainment requirements are unwarranted, particularly in view of the substantial costs they impose. We recognize the fact that public radio licensees are subject to somewhat less onerous ascertainment requirements than either commercial or noncommercial television licensees.[15] Nevertheless, our finding that ascertainment procedures are unnecessary in light of the special direct contact that public stations have with the public by virtue of their noncommercial status (see para. 18, *infra*), renders any costs incurred in ascertainment unnecessary and therefore overly burdensome. They unnecessarily place the emphasis on the methodology used to determine community needs rather than on the key issue of the station's responsiveness to these needs.[16] Instead of focusing on these formalistic requirements, we believe licensees should be afforded wide discretion to determine how community needs should be ascertained and met.

17. Moreover, as a general proposition, we believe that the Commission should regulate only where social and market forces are unlikely to ensure service in the public interest. The First Amendment makes it all the more important to rely on these forces as much as possible when program related regulation is at issue. Thus, for example, in the radio deregulation proceeding we concluded that the market forces affecting those broadcasters would operate to ensure operation in the public interest. In that case we were referring to a marketplace system that works in the conventional way, one in which businesses respond to public desires. Thus, if the public has an interest in a particular type of program, it makes economic sense for the commercial broadcaster to identify this interest and to present appropriately responsive programming and thereby gather a large audience for which to charge advertisers. Conversely, programming which does not interest the public will not attract the audience and hence will not interest the advertiser.

18. We believe that similar mechanisms are often even more extensive and reliable in the public broadcasting area. Like commercial broadcasters, public broadcasters face the necessity of obtaining funding to support their programming. As found by the congressionally created Temporary Commission on Alternative Financing for Public Telecommunications, public broadcasting stations obtain funding from a diverse mix of sources—including state and local government support, federal grants, corporate underwriting, and individual contributions. The Temporary Commission found that this pluralism among contributors to public broadcast programming "plays a key role in preserving the unique character of this service." *See* Temporary Commission on Alternative Financing for Public Telecommunications, Final Report to Congress, 4–5 (Oct. 1983). While individual public broadcast licensees differ in the degree to which they rely on the various revenue sources available to public broadcasting as a whole, no detailed consideration of the system's financial structure is necessary to recognize that all public stations have a substantial interest in presenting programming that will encourage continued and increased financial support by their varied sponsors.

19. Contributions from individual viewers are a very important source of public broadcast support.[17] In this respect the relationship between the audience and the local public broadcaster is even more direct than in the case of commercial broadcasting because public broadcasting's subscribers pay directly for programming that meets their needs and interests. Failure to discover and repond to audience needs and desires would lead inevitably to a reduction in such contributions. We believe that this essential economic relationship between the public licensee and its audience will ensure that public stations discover and serve local needs. Indeed, to the extent that audiences are unwilling to pay for programming duplicative of that which they receive free from advertiser-supported television, this process will result in public stations adding to diversity by addressing needs unmet by commercial stations.

20. Public funding sources, such as the Corporation for Public Broadcasting (CPB) and state and local governments, also contribute positively to the program service offered by many noncommercial stations. These sources fund specific types of programs they wish to see increased. For instance, CPB has identified children's programming as its chief program objective in its 1983 and 1984 funding programs. Documentaries and special news programs also sometimes receive public funding. While not all noncommercial stations receive government program funding, these sources of funding add to the mix of programs available to noncommercial licensees.

21. Other factors also are likely to serve as a reliable substitute in the public broadcasting area. Here in particular, we believe that social forces are likely to serve as a reliable substitute for the Commission's ascertainment requirements. Many public broadcasters are required to have advisory boards and to hold public meetings when deciding important operating matters. Further, many other licensees such as WNET(TV) have public members on their governing boards. While it is true that stations licensed to state or local jurisdictions are not required to have advisory boards, these stations are often under even more direct public control since state and local officials are accountable for their action or inaction through the electoral process. Other stations licensed to organizations with a primary educational purpose are subject to the direction of these institutions and their governing boards. The station that ignores these representatives does so at its own peril.

22. Accordingly, in light of their not insubstantial costs, misplaced emphasis, doubtful necessity, and our judgment that the various social and market forces referred to above will combine to provide the necessary assurance that public stations will operate in the public

[14] Public Law 96–511, 44 U.S.C. 3501, *et seq.*

[15] *See*, Paras. 6–7, *supra*.

[16] "* * * [A]scertainment was never meant to be an end in and of itself. Rather, it is merely a tool to be used as an aid in the provision of programming." *Radio Deregulation*, 84 F.C.C. 2d 968, 993 (1981).

[17] Public broadcasting as a whole receives about one-sixth its revenue from individual subscribers. See Temporary Commission on Alternative Financing for Public Telecommunications, Final Report to Congress, Figure 1, at 5 (October 1983).

interest, ascertainment obligations will no longer be applied to public stations.

Program Logs

23. As was the case with ascertainment, the comments show that logging requirements are costly and time consuming. In particular, they demonstrate that such costs easily can reach $20,000 yearly for a public television station and $10,000 per year for a public radio station. In addition, the comments establish that the staff of each public station spends hundreds of hours in order to meet the logging requirements. According to a General Accounting Office study, the total logging workload of public stations is more than five and a half million hours of work per year.[18] Given the limited nature of our routine programming oversight responsibilities in connection with noncommercial licensees, we do not believe that these substantial costs are justified.

24. In addition, we note that comprehensive program logs for public radio and television stations do not provide definitive information needed by the Commission to determine whether a public radio or television station has operated in the public interest. Program logs provide statistics on the amount of programming that has been presented in the various program categories. However, these program percentages have not been used by the Commission to determine what action should be taken on the applications filed by public radio and television stations. In this respect, public station applications were treated differently from commercial radio and television applications. In the latter case, program percentages have been used to determine if applications could be granted by Commission staff action pursuant to delegated authority.[19] In addition, the program percentage figures for public broadcast stations were never used for "promise v. performance" purposes as they had been for commercial stations.

25. We have considered the appropriate nature and scope of the program logging obligation for commercial broadcasters in the wake of deregulation and the reduced routine Commission oversight of programming which it entailed. We believe that our analysis of the program logging issue in these proceedings is directly applicable to the question presented here and that we can obtain important guidance in defining that obligation as it applies to noncommercial broadcasting.

26. As stated in the *Second Report and Order* in Radio Deregulation,[20] the logging obligation of commercial radio broadcast licensees now consists of a requirement that they prepare and make available in their public inspection files a quarterly issues/programs list. The list must contain, in narrative form, a brief description of at least 5 to 10 issues which the licensee addressed with responsive programming during the preceding three months, along with a statement of how each issue was treated.[21]

27. In our view, this issues/programs list requirement will provide the information necessary for our regulatory oversight of public broadcasting as well as adequate data to permit the public, potential petitioners to deny and competing applicants to review and evaluate public broadcasters' performance. At the same time, the significant reduction in the costs of compliance for public licensees which this approach permits will enable these entities, already faced with decreasing federal support, to use their resources in a more cost effective manner. Furthermore, the highlighted issues/programs list will be easier for the public to review than the voluminous raw logs stations must currently maintain.

28. In addition, we no longer will subject public broadcasting stations to the long form audit, Form 303–N. This procedure which originated in the short form renewal proceeding, was applied to commercial television and to public radio and television stations. It was not applied to commercial radio because it was seen as inconsistent with the deregulation that had taken place.[22] Now that we have deregulated public licensees as well, this procedure will no longer be utilized in this area either. We emphasize, however, that elimination of the long form audit does not alter the substantive obligation of licensees to serve the public interest. We note as well that the Commission will continue to conduct random FOB technical inspections and to check the public inspection files of noncommercial licensees for completeness.

29. While program logging requirements are being eliminated, a licensee is still required to keep records of political candidate appearances or "uses" [see § 73.1810(f)(1)(v) and § 73.1810(f)(4)(ii) of the Commission's Rules] and a notation that it has performed the required Emergency Broadcast System tests.[23]

30. Regulatory Flexibility Analysis.

I. Need For and Purpose of the Rule

The Commission has concluded that present ascertainment requirements imposed on public radio and television stations can be removed and that program log keeping requirements should be less burdensome. This relaxation in current requirement is based on the conclusion that social and marketplace forces can be relied on to insure operation in the public interest.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made As a Result

A. Issues Raised

(1) Many of the parties favored deregulation in the two areas under consideration: ascertainment and log keeping.

(2) Several parties opposed all of these changes, arguing that these forms of regulatory oversight were needed to insure licensee accountability.

(3) Several filings took a middle position in favor of substantial deregulation along with retention of certain of the old requirements.

B. Assessment

The Commission concluded that deregulation in this area could provide important benefits to public and stations alike. In addition, it could aid these stations in enhancing their ability to raise needed funds and cut excessive costs.

C. Changes Made As a Result

(1) The Commission did not find the arguments in opposition to deregulation to be persuasive. The old requirements were generally found to be burdensome and, for the most, part unnecessary. We now eliminate our ascertainment

[18] *See* Appendix C.

[19] The radio deregulation proceeding deleted these delegation guidelines for commercial radio applications.

[20] 55 RR 2d 1401 (1984). The original statement of the program logging obligation for radio licensees adopted in the initial order in radio deregulation was remanded by court to the Commission for further consideration. *UCC v. FCC, supra* n.3. The *Second Report and Order* amended the obligation in response to the remand order.

[21] Action taken today applies an essentially similar requirement to commercial television licensees.

[22] 46 FR 26236, 26240–1.

[23] Stations also will be required to continue to:

(1) Provide donor identification announcements in accordance with § 73.1212;

(2) Make station identification announcements as required by § 73.1201;

(3) Make required local notice announcements under §§ 73.3580 and 73.3594; and

(4) Announce that material in a program was taped, filmed or recorded (where required by § 73.1203).

requirements and relax our program log requirements.

(2) While concluding that social and marketplace forces could be relied on as a substitute for regulation in most instances, the Commission did find it necessary to retain a generalized program obligation and some reporting requirements.

III. Significant Alternatives Considered and Rejected

No suggestions were offered beyond the range of options raised in the *Notice*. Our reasons for the choices made are described above.

31. Accordingly, it is ordered, That the Commission's Rules are amended, effective September 25, 1984, as set forth in the attached Appendix A.

32. It is further ordered, That FCC Form 303–N is eliminated.[24]

33. It is further ordered, That the Secretary shall cause a copy of this Report and Order to be printed in the FCC Reports.

34. It is further ordered, That this proceeding is terminated.

35. This action is taken pursuant to the authority contained in sections 4(i), 303(a), 303(b), 303(g), 303(j), 303(r) and 317(e).

(Secs 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 73—[AMENDED]

1. 47 CFR 73.295 is amended by revising paragraph (d) to read as follows:

§ 73.295 Use of multiplex subcarriers.

* * * * *

(d) The station identification, delayed recording and sponsor identification announcements required by §§ 73.1201, 73.1208, and 73.1212 are not applicable to material transmitted under an SCA.

* * * * *

§ 73.1210 [Amended]

2. 47 CFR 73.1210, TV/FM dual-language broadcasting in Puerto Rico, is amended by removing paragraph (b)(4) and marking it [Reserved].

§ 73.1212 [Amended]

3. 47 CFR 73.1212, Sponsorship identification; list retention; related requirements, is amended by removing paragraph (g)(2) and marking it [Reserved]

§ 73.1225 [Amended]

4. 47 CFR 73.1225 Station inspections by FCC, is amended by removing paragraphs (d)(2).

5. 47 CFR 73.1800 is amended by revising the section title and paragraphs (a) (c) and (g) to read as follows, and by removing paragraph (f) and marking it [Reserved].

§ 73.1800 General requirements related to the station log.

(a) The licensee of each station must maintain a station log as required by § 73.1820. This log shall be kept by station employees competent to do so, having actual knowledge of the facts required. All entries, whether required or not by the provisions of this Part, must accurately reflect the station operation. Any employee making a log entry shall sign the log, thereby attesting to the fact that the entry, or any correction or addition made thereto, is an accurate representation of what transpired.

* * * * *

(c) Any necessary corrections of a manually kept log after it has been signed in accordance with paragraph (a) of this section shall be made only by striking out the erroneous portion and making a corrective explanation on the log or attachment to it. Such corrections shall be dated and signed by the person who kept the log or the station chief operator, the station manager or an officer of the licensee.

* * * * *

(f) [Reserved]

(g) Application forms for licenses and other authorizations may require that certain technical operating data be supplied. These application forms should be kept in mind in connection with the maintenance of the station log.

§ 73.1810 [Removed]

6. 47 CFR 73.1810, Program logs, is removed in its entirety.

7. 47 CFR 73.1840 is amended by revising paragraph (b)(1) to read as follows:

§ 73.1840 Retention of logs.

* * * * *

(b) * * *

(1) Suitable viewing—reading devices shall be available to permit FCC inspection of logs pursuant to § 73.1226, availability to FCC of station logs and records.

* * * * *

§ 73.1850 [Removed]

8. 47 CFR 73.1850, Public Inspection of Program Logs, is removed in its entirety.

9. 47 CFR 73.3527 is amended by removing paragraphs (b) and (c) and such paragraphs and subdivisions which are a part thereof and marking them [Reserved]; and by revising paragraphs (a)(7), (a)(8) and paragraph (g) to read as follows:

§ 73.3527 Local Public Inspection file of noncommercial educational stations.

(a) * * *

* * * * *

(7) For noncommercial broadcast stations every three months a list of at least 5 to 10 community issues addressed by the station's programming during the preceding 3 month period. The list is to be filed by the tenth day of each calendar quarter (*e.g.*, July 10, October 10, January 10 and April 10) and should include a record of programming for the 3 preceding calendar months (*e.g.*, the list filed by July 10 would be a record of programming from April 1 through June 30). The list shall include a brief narrative describing how each issue was treated. The description of the program should include, but is not limited to, the time, date and duration of each program, the title, and the type of programming in which the issue was treated, (e.g. public service announcements, a call-in program with a public official, etc.). These lists are to be retained for the entire license period.

Note.—The first quarterly filing is to include at least the past three months of a station's programming performance. If the last annual issues/programs list was filed more than three months prior to October 1, 1984, the licensee must place in its public inspection file an issues/programs list encompassing the period of time between its last annual filing and October 1, 1984.

(8) The lists of donors supporting specific programs.

* * * * *

(b) [Reserved]

(c) [Reserved]

* * * * *

(g) *Period of retention.* The records specified in paragraph (a)(4) of this section shall be retained for the periods specified in § 73.1940 (two years). The manual specified in paragraph (a)(6) of this section shall be retained indefinitely. The donor lists specified in paragraph (a)(8) of this section shall be retained for two years. The contracts specified in paragraph (a)(9) shall be retained for the life of the contract(s) between the parties to the contract(s). The records specified in paragraphs

[24] By separate action today we are amending FCC Forms 302, 340, and 341 and have therein incorporated the appropriate changes dictated by our decision in this proceeding.

(a)(1), (2), (3), and (5) of this section must be retained as follows:

* * * * *

10. 47 CFR 73.3580 is amended by revising the introductory text of paragraph (d)(4)(i) and the introductory text of paragraph (d)(4)(ii) to read as follows:

§ 73.3580 Local public notice of filing broadcast applications.

* * * * *

(d) * * *

(4) * * *

(i) *Pre-filing announcements.* During the period and beginning on the first day of the sixth calendar month prior to the expiration of the license, and continuing to the date on which the application is filed, the following announcement shall be broadcast on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communication Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We must file an application for renewal with the FCC (date four calendar months prior to expiration date). When filed, a copy of this application will be available for public inspection during our regular business hours. It contains information concerning this station's performance during the last (period of time covered by the application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcast license renewal process is available at (address of location of the station's public inspection file) or may be obtained from the FCC, Washington, D.C. 20554.

* * * * *

(ii) *Post filing announcements.* During the period beginning of the date on which the renewal application is filed to the sixteenth day of the next to last full calendar month prior to the expiration of the license, all applications for renewal of broadcast station licenses shall broadcast the following announcement on the 1st and 16th day of each calendar month. Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

On (date of last renewal grant) (Station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (expiration date).

Our license will expire on (date). We have filed an application for renewal with the FCC.

A copy of this application is available for public inspection during our regular business hours. It contains information concerning this station's performance during the last (period of time covered by application).

Individuals who wish to advise the FCC of facts relating to our renewal application and to whether this station has operated in the public interest should file comments and petitions with the FCC by (date first day of last full calendar month prior to the month of expiration).

Further information concerning the FCC's broadcasat license renewal process is available at (address of location of the station's public inspection file) or may be obtained from the FCC, Washington, D.C. 20554.

* * * * *

§ 73.4020 [Removed]

9. 47 CFR 73.4020, Ascertainment (and annual list of problems and needs), is removed in its entirety.

§ 73.4021 [Removed]

10. 47 CFR 73.4021, Ascertainment evaluations by FCC, is removed in its entirety.

§ 73.4025 [Removed]

11. 47 CFR 73.4025, Ascertainment, noncommercial educational stations, is removed in its entirety.

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

Appendix B

Comments

Action for Children's Television
Alabama Public Television Network
Alaska Public Broadcasting Commission
The California State University & Colleges for the San Diego State University
The Committee to Save KQED (*et al.*) San Francisco, California
Corporation for Public Broadcasting
Curators of University of Missouri Columbia, Missouri
Department of Education Commonwealth of Puerto Rico
Educational Broadcasting Corp. (WNET-TV) Newark, New Jersey
Fresno Free College Foundation
Station WGBY-TV Springfield, Massachusetts
Greater Cincinnati Television Educational Foundation
Becky J. Ingrum Columbia, Missouri
Intercollegiate Broadcasting System, Inc.
Joint Comments 21 Parties (Arizona Board of Regents for Arizona State University (*et al.*)
Joint Comments 19 Parties (Central California Educational Television (*et al.*)
Joint Comments 4 Parties (Ohio Educational Broadcasting Network (*et al.*)
National Association of Broadcasters
National Association of Educational Broadcasters
National Association of Public Television Stations
National Federation of Community Broadcasters
National Public Radio
National Radio Broadcasters Association
National Religious Broadcasters
Radio Station WHJE-FM Carmel, Indiana
The Public Media Center
Dr. Willard D. Rowland, Jr. Research Assistant Professor Institute of Communications, University of Illinois
The State Board of Education of the State of Georgia
West Virginia Board of Regents (WWVU-TV) Morgantown, West Virginia

Reply Comments

National Association of Public Television Stations
Joint Comments 18 Parties Central California Educational Television *et al.*

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

Appendix C

Ascertainment

Comments in Support of Deregulation

1. All of the commenters, except ACT, The Committee to Save KQED, *et al.*, and PMC support a major deregulatory effort in the ascertainment area. These commenters view the ascertainment requirement as an obligation that imposes great costs while providing few, if any, benefits. In addition, many of these parties pointed to other mechanisms which they thought could be relied on to ensure service in the public interest.

2. *Ascertainment requirements impose substantial burdens*—Several parties, including Central California Educational Television, Inc., *et al.*, and the Alaska Public Broadcasting Commission offered information on the costs of meeting current ascertainment requirements. The

Alaska Public Broadcasting Commission estimates that meeting the ascertainment requirement costs each Alaska public television station $13,440 yearly. In addition, it notes that 960 hours of staff time are required, an amount almost equal to half of one employee's work year. For public radio, the respective figures in Alaska are said to be $6,328 and 452 hours yearly. APBC and others are convinced that the money and time involved in this process could be better spent on programming. Moreover, they note that federal funding for public broadcasting is diminishing and that it has thus become all the more important to eliminate unnecessary costs.

3. *Other mechanism provide and effective substitute for ascertainment*—Most of the parties filing comments assert that there are other mechanisms which can be relied on to ensure the responsiveness of the public broadcaster to its community. In particular, they refer to the use of advisory boards and the holding of public meetings by public broadcasters. They also specifically note a station's need to be reponsive in order to generate financial support from its audience. In fact, they argue that the very structure and philosophy of public stations necessarily results in a constant interaction with the audience, even without formal ascertainment obligations. This means that the social and market forces operating on public broadcasters impel them to deliver programming consistent with the public interest. Accordingly, they insist that no benefit attends retention of an ascertainment requirement, only costs that public broadcasters can ill afford.

4. *Alternatives to complete deregulation*—CPB agrees that the Commission should delete existing ascertainment requirements, but it would retain a general requirement that a licensee would need to be aware of and responsive to community needs. CPB prefers this approach because it would free the licensee to use any appropriate method to determine these needs rather than requiring the licensee to follow specific procedures that may be inappropriate to particular situations. CPB states that the licensee is in the best position to determine the appropriate methodology to employ and that the Commission should only be concerned with the responsiveness of the program proposal rather than the ascertainment process itself. Under CPB's approach, a licensee no longer would be required to document its specific ascertainment efforts or to provide narrative statements describing its methods. Instead, each public radio or television licensee would place an issues/programs list in its station file. Nothing more would be required.

5. Ohio Educational Broadcasting Network supports only partial deregulation because it believes that social and marketplace forces alone cannot alone be relied upon to guide licensee performance. The basis for its belief is that these forces focus on needs already recognized by the audience. In Ohio Network's view, the public broadcasting station must take a leadership role in identifying and responding to unrecognized needs which traditional ascertainment will not reveal. Therefore, Ohio Network proposes changing the current ascertainment requirement and substituting for both public radio and television a modification of the approach now used. Under its approach, each licensee would prepare: (1) A yearly narrative statement of the unfilled program needs and the unrecognized problems of the area; (2) a statement as to how these determinations were made; and (3) a list of responsive programs. Pertinent documentation would not be submitted to the Commission but would be placed in the station's public file.

Comments in Opposition To Deregulation

6. *Social and market forces are not appropriate substitutes*—The prinicipal opposition to ending the ascertainment requirement came from three citizens groups, ACT, PMC and the Committee to Save KQED, *et al.* They disagree with the premises on which the Commission relied in proposing deregulation. Thus, for example, they dispute the Commission's observation that public broadcasting has evolved to the point that ascertainment might no longer be required. Rather, they assert that public broadcasting is still evolving, particularly in connection with changes in funding sources, advertising practices and program priorities. Therefore, they do not think it is now possible to be sure that social and marketplace forces would operate as the Commission presumes. Moreover, they dispute the view that increased dependency on audience contributions will aid responsiveness. Likewise, they are not convinced that funding sources for public broadcasting are becoming more diversified. Rather, they are concerned that changes in funding may force public stations to imitate their commerical counterparts, rather than provide the diverse service expected of public stations. Also, in their view, the community advisory board and open meeting requirements of the Public Broadcasting Act are not substitutes for regulation by the Commission. In any event they assert that these requirements were adopted by Congress with full knowledge that accountability mechanisms were already in place at the Commission. Finally, these parties assert that the Commission must do more than say that station costs would be reduced. They insist that the Commission must compare the costs and benefits of the proposal giving full attention to the benefits provided by current program regulation as well as its costs.

7. *Insufficient facts exist to warrant relying on social and market forces*—The Committee to Save KQED states that the Commission has failed to set forth any empirical evidence to establish that marketplace forces would function as suggested.[1] Without such data, it does not believe that any change in policy by the Commission could withstand judicial scrutiny. In support, it cites *United Church of Christ* v. *F.C.C.*, 560 F. 2d 529 (2d Cir. 1977), for the proposition that the considerable leeway usually given an agency in creating a policy is notably circumscribed when the agency attempts to change a policy of long standing. It asserts that in such instances an agency is required to provide a "thorough and comprehensive" statement of its underlying reasons. The Committee believes that such a statement and supporting data are lacking here.

8. *Noncommercial stations require different treatment*—PMC contends that the Commission should not rely on deregulation of commercial broadcasting as a basis for deregulating public broadcasting. Rather, it asserts that the differences between noncommercial and commercial broadcasting are such that different regulatory treatment is required. In particular, the Commission is asked to recognize that public broadcasting was created as a supplement to commercial broadcasting. It was designed to be a means of responding to needs that would not be met by commercial stations operating with a profit motive. As PMC sees it, public broadcasters are not expected to compete in the marketplace. Instead, it insists that a higher level of service is required of public broadcasters to respond to needs

[1] It again states that this evidence could be developed by conducting an experiment to test the Commission's hypothesis that market forces would respond effectively to public needs. This experiment would compare the performance of selected stations exempted from the requirement with the performance of non-exempted stations.

and concerns that are not addressed by profit-oriented commercial broadcasters. PMC points to the legislative history of public broadcasting as indicating a special need for these stations to be responsive to local needs. PMC believes that any elimination of ascertainment requirements thus will undermine the concept of local service, particularly the need for each station to respond to ascertained local needs.

Program Logs

Comments in Support of Deregulation

9. *Log keeping is burdensome*—Many of the comments focus on the costs to the station of maintaining logs. They note that detailed records must be kept and that continuing attention is required to make sure that the logs are accurate and complete. They describe this process as a costly and time consuming effort. For example, APBC states that these costs can easily reach the level of $20,000 and more per year for a public television station and $10,000 per year for a public radio station. In addition, the Educational Broadcasting Corporation refers to a study by the General Accounting Office concerning the impact of Federal paperwork requirements on small businesses, including broadcast licensees.[2] According to this study, literally millions of hours each year were required to comply with Commission log keeping requirements. A significant portion of this burden falls on public broadcasters.[3]

10. Several commenters discuss the practical consequences as well as the dollar costs of log keeping. They point out that the logs are intricate documents which require particular care to maintain. Because of the volume of record keeping involved, they state that the extensive demands are placed on the station's staff. It is asserted that this can be a particular problem at public stations, because the staff is less experienced. In many instances, public stations must rely on untrained volunteers for staff support.

11. *Logs provide few public benefits*—Most of the parties believe that ending program log keeping requirements would not greatly affect the public, because much (if not most) of the same information is available elsewhere. They point to the schedules in *TV Guide* and in newspaper listings which they say provide extensive information on the programming of these stations. This, they say, is all the more true in the case of the program listings for those stations included in *Dial* magazine. In fact, they assert that these listings can contain even more information about the nature of the programs than is available from the logs. Many parties stress the skeletal nature of the program log which they say does not provide much useful information. They contend that all that can be derived from the logs is a statistical tally about programming in various categories. They point out that information about the nature of the program or its content is not included in the logs. Accordingly, they question the value of logs to the public in evaluating station performance. Likewise, they do not believe that logs can be used as a vehicle to ensure compliance with the fairness doctrine or the personal attack rule, since logs do not provide the necessary information to determine such compliance.

12. Several parties question whether program log keeping requirements for public broadcasting stations ever made sense. They point out that logs were designed to have a statistical function so that the Commission and the public could determine the amount of programming a station carried in various categories. For commercial stations, these percentages were thought to provide a measure of station performance and were specifically used for the purpose of comparing a station's "promise v. performance" in the programming area.[4] They assert that this purpose never had an applicability to public broadcasting. In particular, they note that program expectations were never expressed in percentage terms and that the Commission never employed a "promise v. performance" approach to public broadcast applications. Now that the Commission has deregulated commercial radio and deleted their log keeping obligations, they see even less reason to retain the logging requirements for public broadcasters.

Comments in Opposition To Deregulation

13. *Program logs are needed to measure station performance*—The Committee to save KQED questions the premises on which the logging proposal rests and argues that, without the data provided by the logs, the public would lack the information it requres to assure accountability. Although it acknowledges that public broadcasting is undergoing basic changes, it asserts that this makes it all the more important to retain accountability mechanisms so that the public can provide the necessary feedback on how well stations are performing. It further states that logs can assist the public in making sure that promises made in renewal applications are effectuated by the licensee. The Committee also contends that program logs are a crucial ingredient in advancing public dialogue with licensees with regard to programming concerns. Although it admits that there are costs imposed in the log keeping requirements, it believes that these costs are justified since public stations rely in good measure on public funds. Finally, the Committee states that logging information is necessary to test the Commission's assumptions about the operation of social and market forces.[5]

[FR Doc. 84-22538 Filed 8-23-84; 8:45 am]

BILLING CODE 6712-01-M

[2] *Federal Paperwork: Its Impact on Small Business*. General Accounting Office, November 17, 1978.

[3] This report was prepared before the Commission deleted the program logging requirements for commercial radio stations.

[4] "Promise v. performance" refers to a comparison of the programming actually broadcast in a particular category to the amount of such programming previously "promised."

[5] Although the *Notice* referred to the fact that the changes proposed might have an effect on the renewal procedures we employ, most commenters do not address this point directly. Instead, they treat it (if at all) as we had in the *Notice*, as a matter that turns on what we do on the three substantive areas already discussed. However, WNET does ask that public broadcasters be exempted from the "long form" audit procedure as well as on-site inspections.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Ch. 7

[AIDAR Notice 85-2]

Miscellaneous Amendments to the AIDAR

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to list information colle ction and recordkeeping systems, and show the OMB Control Number for these systems, as required by the Paperwork Reduction Act; the method for calculation and payment of overseas recruitment incentive is being revised; and several miscellaneous editorial changes are being made.

EFFECTIVE DATE: August 13, 1984.

FOR FURTHER INFORMATION CONTACT: M/SER/CM/SD/POL, Mr. J. M. Kelly. Telephone (703) 235-9107.

SUPPLEMENTARY INFORMATION: AID requested OMB approval of AID-specific information collection and recordkeeping systems required under the AIDAR, in accordance with the requirements of the Paperwork Reduction Act. Public notification of the submission to OMB was announced in 49 FR 5001. The information collection and recordkeeping systems required under the AIDAR were drawn directly from the predecessor regulation, so that no new requirements have been established. Publishing the list of systems, and the OMB Control Number for them, is not considered a "significant" regulation under OFPP Policy Letter 83–2 (48 FR 56806) or FAR 1.303(b) and 1.501; therefore, public comments on incorporating the list of systems and OMB Control Number into the AIDAR, were not solicited.

The change in the method of calculating and paying overseas recruitment incentive was published for public comments, as required by OFPP Policy Letter 83–2 and FAR 1.303(b) and 1.501, in 49 FR 22514. No comments were received on the proposed rule. It is therefore being implemented as proposed.

The remaining changes made by this AIDAR Notice are considered strictly editorial, and not "significant" under OFPP Policy Letter 83–2 or FAR 1.303(b) and 1.501. Public comments were not solicited. The changes are in three general categories: (1) Correction of cross-references to AIDAR or FAR sections; (2) recognition of a changed office title; and (3) editorial revisions. One item in category (3) which may be of interest to AIDAR users is the removal of the AID contract clause at AIDAR 752.216–70 covering post-determined indirect cost rates. It was found that this clause inadvertently duplicated coverage provided under FAR 52.216–7(d); the AID clause was therefore removed.

The AIDAR is a procurement regulation, and has been exempted by the Director, OMB, from the requirements of Executive Order 12291 (2/17/81) by memorandum dated 4/8/81, as subsequently amended 12/15/83.

As required by the Regulatory Flexibility Act, it is hereby certified that this AIDAR Notice 85–2 will not have a significant economic impact on a substantial number of small entities.

List of Subjects

48 CFR Parts 701, 732, 752 and 753

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 731

Accounting, Government procurement, reporting and recordkeeping requirements.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

1. Part 701 is amended to add a new Subpart 701.1 consisting of § 701.105 as follows:

Subpart 701.1—Purpose, Authority, Issuance

701.105 OMB Approval under the Paperwork Reduction Act.

The following information collection and recordkeeping requirements established by the AIDAR have been approved by OMB, and assigned OMB Control Number 0412–0520 (expiration date 5/31/87):

731.205–6(a)(2)
731.205–6(a)(3)
731.371(c)
731.772(c)
737.270(e)
752.219–8
752.228–70(b)
752.245–70
752.245–71
752.7001
752.7002(a)
752.7002(b)
752.7002(c)
752.7002(d)
752.7002(e)
752.7003(b)
752.7004
752.7013(a)
752.7016
752.7020
752.7027(a)
752.7027(b)
752.7028
752.7031(b)
752.7031(c)

Subpart 701.3—Agency for International Development Acquisition Regulation

2. Paragraph (a) of 701.372 is revised as follows:

701.372 Applicability.

(a) Unless a deviation is specifically authorized in accordance with Subpart 701.4, or unless otherwise provided, the FAR and AIDAR apply to all contracts (regardless of currency of payment) to which AID is a direct party.

* * * * *

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.2—Contracts With Commercial Organizations

3. 731.205–6 is amended to revise paragraph (a)(3) and to add a new paragraph (a)(4) as follows:

731.205–6 Compensation for personal services.

(a) * * *

(3) *Overseas Recruitment Incentive.* (i) Contractor employees serving overseas under a contract, who do not qualify for a U.S. tax exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), are eligible to receive a salary supplement (overseas recruitment incentive). The overseas recruitment incentive (ORI) shall not exceed a maximum of ten percent of the base salary per individual for the period of eligible services. This supplement, if offered by the contractor, shall be paid at the end of an employee's tour of duty overseas. The contractor shall require the employee to furnish a certification of the employee's non-eligibility for section 911 exclusion. Any questions of eligibility shall be settled by the Contracting Officer.

(ii) This supplement will not be paid in an amount which would cause the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS–1 in effect at the time the base salary was earned. The FS–1 rate is set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended. Any exception to the FS–1 limitation must be approved by the Contracting Officer.

(iii) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor a subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(4) The workweek for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the workweek for those employees of the

AID Mission and/or the cooperating country.

* * * * *

Subpart 731.3—Contracts With Educational Institution

4. 731.371 is amended by adding the following new paragraphs (c) and (d):

731.371 Compensation for personal services.

* * * * *

(c) *Overseas Recruitment Incentive.* (1) Contractor employees serving overseas under a contract, who do not qualify for a U.S. tax exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), are eligible to receive a salary supplement (overseas recruitment incentive). The overseas recruitment incentive (ORI) shall not exceed a maximum of ten percent of the base salary per individual for the period of eligible services. This supplement, if offered by the contractor, shall be paid at the end of an employee's tour of duty overseas. The contractor shall require the employee to furnish a certification of the employee's non-eligibility for section 911 exclusion. Any questions of eligibility shall be settled by the Contracting Officer.

(2) This supplement will not be paid in an amount which would cause the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS–1 in effect at the time the base salary was earned. The FS–1 rate is set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended. Any exception to the FS–1 limitation must be approved by the Contracting Officer.

(3) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor a subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(d) The workweek for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the workweek for those employees of the AID Mission and/or the cooperating country.

Subpart 731.7—Contracts With Nonprofit Organizations

5. 731.772 is amended by adding the following new paragraphs (c) and (d):

731.772 Compensation for personal services.

* * * * *

(c) *Overseas Recruitment Incentive.* (1) Contractor employees serving overseas under a contract, who do not qualify for a U.S. tax exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911), are eligible to receive a salary supplement (overseas recruitment incentive). The overseas recruitment incentive (ORI) shall not exceed a maximum of ten percent of the base salary per individual for the period of eligible services. This supplement, if offered by the contractor, shall be paid at the end of an employee's tour of duty overseas. The contractor shall require the employee to furnish a certification of the employee's non-eligibility for section 911 exclusion. Any questions of eligibility shall be settled by the Contracting Officer.

(2) This supplement will not be paid in an amount which would cause the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS–1 in effect at the time the base salary was earned. The FS–1 rate is set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended. Any exception to the FS–1 limitation must be approved by the Contracting Officer.

(3) In the event that an employee subsequently receives a section 911 exclusion for any part of the base salary upon which this supplement has been paid, such supplement or appropriate portion thereof shall be reimbursed by the contractor to AID with interest. The interest shall be calculated at the average U.S. Treasury rate in effect for the period that the contractor or his employee had the funds. Neither the contractor's nor the subcontractor's inability to collect refunds from eligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(d) The workweek for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the workweek for those employees of the AID Mission and/or the cooperating country.

PART 732—CONTRACT FINANCING

Subpart 732.4—Advance Payments

732.406–70–2 [Amended]

6. Paragraph (a)(3) of 732.406–70–2, Circumstances for use of an LOC, is amended by changing the reference ". . . Office of Financial Management, Program Accounting Division (M/FM/PAD) . . .", to ". . . Office of Financial Management, Program Accounting and Finance Division (M/FM/PAFD) . . .".

732.406–70–3 and 732.406–70–5 [Amended]

7. 732.406–70–3, Establishing an LOC, and 732.406–70–5, Revocation of the LOC, are amended by changing all references to ". . . M/FM/PAD . . .", to ". . . M/FM/PAFD . . .".

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

752.204–2 [Amended]

8. 752.204–2, Security Requirements, is amended by changing the reference ". . . 704.404 . . .", to ". . . 704.405 . . .".

752.216–70 [Amended]

9. 752.216–70 Post-determined Indirect Cost Rates, is removed.

752.228–70 [Amended]

10. Paragraph (a) of 752.228–70, Insurance—Worker's Compensation, Private Automobiles, Marine and Air Cargo, is amended by changing the reference ". . . FAR 28.309(b).", to ". . . FAR 28.309(a)."

752.232–70 [Amended]

11. The contract clause in 752.232–70, Letter of Credit Advance Payment, is amended by changing the date following the clause title from "(Apr. 1984)" to "(Aug. 1984)"; by changing the reference ". . . Office of Financial Management, Program Accounting Division (M/FM/PAD) . . ." in paragraph (a) of the clause to ". . . Office of Financial Management, Program Accounting and Finance Division (M/FM/PAFD) . . ."; and by changing references to ". . . M/FM/PAD . . .", appearing in paragraphs (b) and (d) of the clause, to ". . . M/FM/PAFD . . .".

Subpart 752.70—Texts of AID Contract Clauses

752.7002 [Amended]

12. The contract clause in paragraph (d) (*Alternate 73*) of 752.7002, Travel and Tranportation, is amended by changing the date following the title of the contract clause (Travel Expenses and Transportation and Storage Expenses)

from "(Apr. 1984)" to "(Aug. 1984)"; and by changing the reference appearing in paragraph (o)(1) of the contract clause from ". . . paragraph (c)(2) of the General Provision . . ." to ". . . paragraph (b)(1) of the General Provision. . .".

752.7007 [Amended]

13. The contract clause in 752.7007, Personnel Compensation, is amended by changing the date following the clause title from "(Apr. 1984)" to "(Aug. 1984)", and by removing the last two paragraphs lettered (c) from the clause.

752.7016 [Amended]

14. The contract clause in 752.7016, Family Planning and Population Assistance Activities, is amended by changing the date following the clause title from "(Apr. 1984)" to "(Aug. 1984)"; by removing paragraphs (a)(2) and (b)(2) of the clause; by redesignating paragraph (a)(1) as paragraph (a); by redesignating paragraph (b)(1) as paragraph (b); and by redesignating paragraph (c)(5) as paragraph (d).

752.7018 [Amended]

15. The contract clause in 752.7108, Health and Accident Coverage for AID Participant Trainees, is amended by changing the date following the clause title from ". . . (Apr. 1984) . . ." to ". . . (Aug. 1984) . . ."; by changing the reference ". . . M/FM/PAD . . ."; in paragraph (d) of the clause to ". . . M/FM/PAFD . . ."; and by changing the reference ". . . Office of Financial Management, Program Accounting Division . . ." in paragraph (d)(1) of the clause to ". . . Office of Financial Management, Program Accounting and Finance Division . . .".

PART 753—FORMS

Subpart 753.370—Illustrations of Forms

753.300 [Redesignated as] 753.370–1.

16. 753.300, Scope of subpart, is redesignated as 753.370–1.

Appendices to Chapter 7

Appendix F—Use of Collaborative Assistance Method for AID Direct Contracts for Technical Assistance

17. The attachment to Appendix F, now entitled "Appendix F—Guidelines for Requests for Expressions of Interest (REI) Under the Collaborative Assistance Method" is retitled as follows:

Attachment to Appendix F—Guidelines for Requests for Expressions of Interest

18. Paragraph A of the Attachment to Appendix F is amended by changing the word ". . . xpression . . ." appearing in the first sentence of paragraph A to ". . . Expression . . .".

This AIDAR Notice is issued under the authority of Sec. 621, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, September 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Dated: August 13, 1984.

Paul Spishak,

Acting AID Procurement Executive.

[FR Doc. 84–22439 Filed 8–23–84; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 571

[Docket No. 81–02; Notice 5]

Lamps, Reflective Devices and Associated Equipment; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correction.

SUMMARY: This notice corrects an error in the amendment published on May 17, 1984 (49 FR 20818) relating to lamps, reflective devices and associated equipment. The error appears in the amendment to Figure 10. It is therefore necessary to correct the error. The maximum candela value for a center-high mounted stop lamp was omitted.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590; (202)–426–1714.

SUPPLEMENTARY INFORMATION: In the response to petitions for reconsideration of the final rule on center-high mounted stop lamps, published on May 17, 1984 (49 FR 20818), the agency revised *inter alia* Figure 10 to make changes in the minimum design photometric requirements for center-high mounted stop lamps adopted on October 18, 1983 (48 FR 48235). At this time, a value of 160 candela was specified as the maximum permissible and included in Figure 10. The preamble to the response to petitions for reconsideration granted those seeking a reduction in certain minima but specifically denied those asking for a change in the value of 160 (p. 20820). However, in amending Figure 10 to reflect the revised minima, the maximum figure was inadvertently omitted, and must now be reinstated.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

§ 571.108 [Amended]

On page 20822, in Figure 10 of 49 CFR 571.108, Figure 10 is amended by adding at the bottom thereof:

FIGURE 10—MINIMUM DESIGN PHOTOMETRIC REQUIREMENTS FOR CENTER HIGH-MOUNTED STOP LAMPS

	Test points	Red (cd)
. . . . .		
	Maximum 160 [1]	

[1] The lamp shall not exceed the listed maximum over an area larger than that generated by a ¼ degree radius within a solid cone angle from 10L to 10R and from 10U to 5D.

The lawyer and program official principally responsible for this correction are Z. Taylor Vinson and Kevin Cavey, respectively.

(Secs. 103, 112, 114, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1403, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: August 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84–22579 Filed 8–23–84; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 49, No. 166
Friday, August 24, 1984

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. AO 83-1]

Kiwifruit Grown in California; Decision on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision would provide for a Federal marketing agreement[1] and order for kiwifruit grown in California. Kiwifruit producers will be given the opportunity to vote in a referendum to determine if they favor the proposed marketing order.

DATE: The voting period for purposes of the referendum herein ordered is between August 31 and September 10, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5975.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing (hereinafter referred to as the "notice of hearing"), issued November 21, 1983, and published in the **Federal Register** (48 FR 54032) on November 30, 1983; and Recommended Decision issued June 29, 1984, and published in the July 5, 1984, issue of the **Federal Register** (49 FR 27524). A correction to the Recommended Decision appeared in July 12, 1984, issue of the **Federal Register** (49 FR 28408).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291.

[1] Marketing Agreement filed with the original document.

Preliminary Statement

A public hearing was held upon proposed marketing agreement and Order No. 920 (proposed 7 CFR Part 920), regulating the handling of kiwifruit grown in California. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), in Sacramento, California, on February 6–15, 1984, pursuant to notice thereof.

Upon the basis of the eveidence introduced at the hearing and the record thereof, the Administrator, Agricultural Marketing Service, on June 29, 1984, filed with the Hearing Clerk, U.S. Department of Agriculture, the recommended decision containing the notice of the opportunity to file written exceptions thereto. Exceptions were received from the U.S. Small Business Administration, Washington, D.C., Kiwi Growers of California, Inc., Sacramento, California, Gary Pigg, Gridley, California, Richard M. and Barbara K. Peekema, Bros. and 20 other persons whose views were similar to those persons listed above and either opposed the proposal, or favored its adoptions in time to regulate the 1984 crop. Discussions and rulings regarding each exception are included in the discussion of the material issues. The material issues, findings and conclusions, rulings, and general findings of the recommended decision set forth in the July 5, 1984, issue of the **Federal Register** (49 FR 27524) are hereby approved and adopted and are set forth in full herein subject to modifications as hereinafter set forth.

On the basis of the exceptions filed by July 20, 1984, this decision makes a slight modification with respect to committee selection. In addition, a number of other minor changes are made in the decision for clarity and correction of grammatical and typographical errors.

Material Issues: The material issues of record addressed in this decision are as follows:

(1) Whether the marketing of kiwifruit grown in California is in interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

(2) Whether the production and marketing conditions affecting kiwifruit are such that they justify a need for a marketing order under the Agricultural Marketing Agreement Act of 1937, as amended;

(3) What definition of the commodity and the determination of the production area to be covered by the proposed order should be;

(4) What the identify of the persons and the marketing transactions to be regulated should be;

(5) What the specific terms and provisions of the proposed order should be, including, but not limited to:

(a) The definitions of terms used herein which are necessary and incidental to attain the declared policy and objectives of the act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of the Kiwifruit Administrative Committee (hereinafter referred to as the "committee") which shall be the local administrative agency for assisting the Secretary in the administration of the proposed order.

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The method of regulating the handling of kiwifruit grown in the production area;

(e) The authority for inspection and certification of shipments of regulated kiwifruit;

(f) The establishment of requirements for handler reporting and recordkeeping;

(g) The requirement of compliance with all provisions of the proposed order and with-regulations issued under it; and

(h) Additional terms and conditions as set forth in § 920.62 through § 920.71 of the Notice of Hearing published in the **Federal Register** of November 30, 1983 (48 FR 54032) which are common to all marketing agreements and marketing orders, and certain other terms as set forth in § 920.71 through § 920.73 which are common to marketing agreements only.

Background. This decision is based on the recommended decision and the exceptions filed to it. The recommended decision is based on the evidence of a February public hearing. During the hearing on the proposal, which lasted 9 days, a number of witnesses ranging from economists to a consumer representative, testified on the behalf of proponents in favor of a grade and

quality marketing order program for kiwifruit. Proponents emphasized that the young kiwifruit industry needs a marketing order with mandatory quality standards if it is to survive and grow. They offered substantial evidence in support of their position.

In summary, the proponents testified that at the time of the hearing there was fruit of poor quality, which was immature and small or misshapen in the marketplace, and such fruit has had the effect of undermining trade confidence with respect to both the level of purchases and the corresponding prices buyers are willing to pay. Off quality fruit brings down the price of all fruit and reduces demand. This is the case because consumers who have not purchased the fruit before are "turned off" by unattractive fruit and thus are less likely to try the new product. Repeat purchases may also be discouraged by fruit that is unappealing in appearance or taste. The proponents further testified that with a marketing order, the California kiwi industry would be able to provide consumers with consistently good quality kiwifruit which in turn would stimulate repeat purcahses. Also, standardized good quality would better lend itself to ongoing market promotion efforts, and thus, give the industry the opportunity to market increased supplies of kiwifruit.

The record also contains a great deal of material regarding the arguments and position of opponents to the proposed regulatory scheme contemplated by the order. They testified that the proponents' evidence was not clear and convincing, and that currently there is a market for all California kiwifruit. Also, U.S. Standards for Grades of Kiwifruit are currently in effect and may be used as needed on a voluntary basis. Thus, they contended that an orderly market for California kiwifruit currently exists and there is no need for a marketing order. In addition, a marketing order would, in their view, unnecessarily remove edible fruit from the market and adversely affect consumers. Opponents testified that it would also impact on growers, particularly small growers, in that they could not sell all the fruit they produce. They testified that an order would regulate growers in that they would be forced to engage in costly cultural practices intended to increase the amount of fruit which would meet marketing order requirements. Also, the order would discriminate against growers in parts of California with lower yields or higher costs. Finally, they testified that the order would be contrary to the Act, Secretary's Memorandum 1512-1, and the Regulatory Flexibility Act, and cannot be recommended in the absence of proper calculation of a parity price.

These and other issues raised by both proponents and opponents of the recommended order were considered in formulating the Recommended Decision and this Secretary's Decision. However, they were not considered to be of weight sufficient to counterbalance the potential benefits of an order, as set forth in this decision and in the record. It should be understood though, that the proposed order may not be used as a means of controlling the supply of kiwifruit sold. None of the provisions of the proposed order is so designed, or to be used to accomplish that end.

Small Businesses

As stated in this notice of hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business. Based on the record evidence, a sizeable majority of both kiwifruit handlers and kiwifruit growers could be considered small businesses for purposes of the Regulatory Flexibility Act (Pub. L. 96-354) (RFA). In that regard, considerable testimony was presented concerning the various operations with regard to kiwifruit such as packing, storing and shipping and their corresponding costs, and although such costs exhibited some variation, there was general agreement on the operations involved. However, no clear relationship could be drawn between the size of packers' and shippers' businesses and the corresponding costs.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Marketing orders and rules proposed thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Agricultural Marketing Agreement Act are usually compatible with respect to small business entities. This is especially true in this proceeding since it deals mostly with small business entities and since the regulatory scheme proposed herein is considered to be the minimum necessary to accomplish the purposes of both the proposed order and the Agricultural Marketing Agreement Act of 1937.

While the order recommended herein would impose some regulations on affected businesses and the number of such businesses may be substantial, any added burden should not be significant vis-a-vis the added benefit which should accrue to such businesses. The expected impact on persons acting in a handling capacity who could be classified as small businesses is discussed further in this recommended decision. In summary, the testimony is that the order should be operated in as efficient and economical a manner as will tend to effectuate the declared policy of the act. In this way all entities, small and large would be subject to minimal regulatory requirements as a result of the order. Also, the record evidence is that there is no practical means of exempting small businesses from the order and the regulations, and still carrying out the declared policy of the act. However, as discussed in the material issues, the proposed order would contain the authority to exempt from regulation special purpose shipments, and the order should be operated in a way that would incorporate sound business practices and efficiencies which minimize the burdens on all regulated business entities.

With respect to small businesses that are now kiwifruit growers or handlers, the impact of the proposed order would be different. Some such businesses, including vendors of fruit to the public or those who sell products containing kiwifruit to the public, would experience increased costs due to the marketing order because lower quality fruit that costs less would no longer be available to them. The magnitude of these added costs are difficult to quantify and are speculative. Moreover, they are counterbalanced by the advantages to small businesses that are kiwifruit growers who will benefit from the order and by the likelihood that small businesses that are not kiwifruit growers will benefit from the order due to increased public acceptance of and demand for kiwifruit and products containing kiwifruit encouraged by the order.

The act does not regulate the growing of commodities, but several witnesses testified that some growers—in their capacity as growers—might incur additional costs resulting from marketing order regulations. Under such regulations, those growers might choose to systematically prune their vines during the growing seasons, and possibly engage in other cultural practices, such as thinning, in order to produce fruit which is larger, better quality and more uniformly shaped. Application of such practices could result in added costs. The testimony is, however, that most growers presently

engage in some or all of those activities as a means of increasing the percentage of fruit which will be packed and shipped by handlers. This is necessary because of the very sizeable differential in prices received by growers for fruit which meets the currently voluntary U.S. Standards for Kiwifruit as compared with fruit which does not meet those or similar standards. The record indicates that a large percentage of the California Kiwifruit crop is currently packed and shipped according to such standards. Between 70 and 90 percent of the crop is presently covered by the voluntary standards. This program has been salutary but not as effective as possible or desirable. All fruit shipped or sold under the voluntary standards may not actually conform to those standards, thus undermined buyer and consumer confidence in the product. A mandatory program of the type envisioned by this order would insure that all kiwifruit sold is of higher quality and actually conforms to the standards. Also, the record evidence indicates that if such standards were required under an order they would promote sales of additional quantities of kiwifruit. This is because inferior quality fruit would no longer be sold. Such fruit discourages consumers from trying or purchasing the fruit and thus lessens demand for and price for all kiwifruit. In addition, demand for higher quality kiwifruit would be increased by the elimination from the market of alternative, lower quality product. Thus, it can be concluded that to the extent growers and handlers might incur some additional costs under the proposed program, they would also benefit from the more orderly marketing conditions likely to result. Although consumers would no longer have available to them cheaper, low quality fruit, on balance consumers would benefit from the more uniform and dependable quality of the fruit available for purchase.

There may be some growers who choose to minimize the use of pruning, thinning, and other cultural practices which result in a greater portion of substandard fruit. However, this fact does not offset the preponderance of evidence which supports the proposed program.

Exceptions filed on behalf of the U.S. Small Business Administration (SBA) state that the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*) applies to these formal rulemaking proceedings, and the analysis contained in the *"Small Businesses"* section of the recommended decision, did not in their opinion, satisfy the requirement for an initial and final regulatory flexibility analysis with respect to these proceedings. However, of those who filed exceptions to the recommended decision, only the SBA commented on the impact the proposal might have on small businesses, and the SBA's comments were largely procedural.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Agricultural Marketing Agreement Act, however, requires the application of a uniform rule to those regulated, and being the substantive statute, would prevail. The regulations proposed herein are the minimum necessary to accomplish the purposes of the Agricultural Marketing Agreement Act of 1937. Also, the proposed regulations are based on the hearing record, and subsequent recommended decision which contain evidence and discussion on the alternative to the proposal, e.g., no order.

Marketing orders and rules proposed thereunder, however, are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

While regulations issued under these orders impose some costs on affected handlers and the number of such handlers may be substantial, the added burden on small entities, if present at all, is not significant.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Commerce

Except for a very limited production elsewhere, the commercial crop of kiwifruit in the United States is produced within the State of California. Almost all such production is shipped in fresh market channels. An estimated 14,000 tons were produced in California in 1983. This amount is slightly below the 15,500 tons in 1982, but substantially above the 5,300 tons produced in 1980, the first year the U.S. Department of Agriculture (U.S.D.A.) issued kiwifruit crop reports.

In 1982, the latest year for which complete information is available, about 2.0 to 2.5 million flats (seven pounds of fruit each) including imports, were marketed in the U.S. The Federal-State Market News, on the basis of a handler survey, reported total shipments of California kiwifruit of 2,603,000 flats. This amount includes 1,110,000 flats shipped to domestic markets and 1,493,000 flats exported. The Market News data, however, exclude unreported additional quantities of kiwifruit understood to have been sold in domestic outlets, primarily in California. Based on the record evidence, it can be assumed that a significant portion of such unreported fruit was probably of lower grades and smaller sizes.

The record indicates that California kiwifruit is shipped to the major markets in U.S. primarily during the period November through April. Some of the California production is sold by packers directly to supermarket chains and independent retailers. However, the marketing of California kiwifruit, which is a relatively new commodity, relies heavily on brokers, wholesalers and firms specializing in a variety of fruits and vegetables. Many of these sales take place at the Los Angeles terminal market. Buyers nationwide are able to participate in one-stop shopping for as many as 25 to 60 produce items on one truck when buying in this manner, and in this way large quantities of California kiwifruit are shipped outside the state from Los Angeles. On the other hand, some California kiwifruit shipped to Los Angeles is in turn shipped to other markets within California. Thus, California packers who ship fruit often have no knowledge of the final destination of the fruit.

The prices received at Los Angeles (and other) terminal markets affect prices and sales throughout the U.S. This is particularly noticeable when one seller offers fruit at less than the prevailing prices. When this happens, other sellers often find it necessary to lower their own prices or lose sales. Proponent witnesses indicated the price changes were quickly reported and often immediately affected the very competitive wholesale market for kiwifruit.

The record evidence shows that any handling of California kiwifruit in fresh market channels exerts an influence on all other handling of such kiwifruit in fresh form. Sellers of kiwifruit, as of other commodities, endeavor to conduct their businesses so as to secure maximum returns for the kiwifruit they have for sale. Shippers and other sellers continually survey all accessible markets so that they may take advantage of the best possible opportunity to market the fruit, and as mentioned above, to price their fruit competitively. Markets within the State of California provide opportunities to dispose of kiwifruit in the same way as in other U.S. and export markets. The sale of a quantity of kiwifruit in California exerts an influence on all

other sales of kiwifruit in other states. To regulate only shipments of kiwifruit to markets outside California would cause lower quality fruit to be marketed within the State. This would likely depress California prices and possibly burden California markets with low quality fruit which would compete with and lower the price of higher quality fruit. This would have the resultant effect of depressing the prices for kiwifruit sold in interstate markets because it would be difficult to maintain higher prices for the rest of the market when on significanf segment of the market has lower prices.

Therefore, it is hereby found that all handling of kiwifruit grown in the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce. Hence, except as hereinafter otherwise provided, all handling of all kiwifruit grown in the production area should be subject to the proposed order.

(2) Need for a Marketing Order

Kiwifruit was first planted on a commercial basis in California in 1967. Currently, there are between 6,000 to 8,500 acres planted and at least 630 kiwifruit growers. In 1982, at least 2,579 acres were non-bearing. A proponent witness testified that the yields of some acreage which is classified as "bearing" will in fact continue to increase in the near future, since kiwifruit vines reach full production in about seven years. On average the vines live 25 to 30 years. Industry witnesses testified that commercial production in California has increased from packouts of 300,000 flats in 1977 to the current levels which exceed 3,000,000 flats annually. This level can be expected to double in the next several years when the current acreage becomes full bearing. Although the industry has been able to increase the domestic and international market for California kiwifruit, as demonstrated by these figures, the considerable likely increases in production in the near future may prove difficult to market and threaten to create disorderly marketing conditions. Such conditions would lower prices and grower returns and result in market fluctuations that could affect the availability to the consumer of the fruit. Moreover, although most kiwifruit growers have not yet experienced significant difficulty in marketing their product and the industry has not yet experienced chronic surplus problems and has thus far been generally profitable, this may well change in the future because of likely increases in production that will be greater than market requirements or not be marketable at profitable prices.

With respect to foreign production, New Zealand currently leads the world in commercial acreage with approximately 30,000 acres followed by Italy (6,400 acres) and France (2,500 acres). Kiwi production also occurs in Greece, Japan, Australia and Chile. New Zealand pioneered commercial kiwifruit production and marketing, and other countries have joined in the significant commercialization of kiwifruit only in recent years. In that regard, New Zealand has supplied virtually all of the kiwifruit which is marketed in the U.S. during the period May through October. A representative of New Zealand consulate in San Francisco testified that the New Zealand Kiwifruit Authority, a statutory body which represents the interests of New Zealand growers, sets quality standards, and conducts an advertising and promotion program for kiwifruit exported to the U.S. He said that the Authority believes that its standards, and any mandatory standards under a marketing order for U.S. kiwifruit, would help establish and expand the still largely untapped market for a relatively unknown fruit. The witness estimated annual U.S. per capita consumption for kiwifruit to be about 40 grams. This amount is far less than the annual per capita consumption for other fruits such as strawberries (1,300 grams) and avocados (600 grams). The witness predicted that New Zealand would continue to promote its kiwifruit in the U.S. and regulate quality and other factors. It was stated by various witnesses at the hearing that kiwifruit from New Zealand is consistently larger, more uniformly shaped and better quality than a significant portion of California kiwifruit.

The record indicates that both the expected increase in production in the U.S. and other countries, and the continued presence in U.S. markets of a large quantity of New Zealand kiwifruit which is consistently of a high quality and large size, influence the marketing of California kiwifruit. California growers received an average $920 per ton for their 1982 crop of kiwifruit. This is less than half of the average returns in 1981 ($2,000) and 1980 ($2,400). the proponents of the proposed order also testified that their gross returns per acre had dropped from $5,088 in 1980 to $4,057 in 1982. Although yields are expected to continue to increase in the next several years, the testimony is that it is unlikely under present marketing conditions that such receipts will increase markedly if at all over the 1981 and 1982 levels. On the other hand, kiwifruit production requires sizeable cash outlays, and some kiwifruit may have been sold below even the lowest stated production and harvesting costs.

Witnesses testified that shipments of low quality California kiwifruit have reduced the marketability for all California kiwifruit and have caused the recent decline in prices. Some kiwifruit in the market has been observed to be immature or to have serious quality defects which make it unfit for human consumption. Other fruit is misshapen or of small sizes. These characteristics are considered undesirable by many U.S. consumers, and are virtually absent from the competing New Zealand Kiwifruit.

Several witnesses noted that in a given year, the last shipments in October of New Zealand kiwifruit tend to command higher prices for a given size and grade than for similar early California kiwifruit for sale at the same time. This is because most buyers believe that New Zealand fruit is of considerably higher quality. For example in November 1982, New Zealand kiwifruit was sold in the U.S. for prices which were $3.00 or more per flat f.o.b. above those for California kiwifruit (a difference of approximately 30%). Also, during the same period large quantities of low grade California kiwifruit appeared on the Los Angeles terminal market. Poor quality fruit usually will not hold well in storage, and is shipped quickly to that market. The presence in the market of such fruit causes prices to decline. The record indicates that lower prices for such fruit also affect the prices of higher quality fruit which must compete with it. This is the case because some consumers will be discouraged from purchasing any kiwifruit because of the unappealing appearance or taste of the lower quality fruit, thus lowering overall demand and price for the product. In addition, those consumers who desire to buy the lower quality fruit because it costs less may not purchase the higher quality fruit, thus lowering demand for and price of the latter.

To counteract the depressed prices early in the season, some packers store their fruit in cold storage and ration their shipments to domestic markets through a period extending as far as April of the following year. Also, shippers may ship much of the highest quality and largest sized kiwifruit to foreign markets where they can command higher prices.

Given the expected increased competition for foreign markets, packers and others who sell California kiwifruit

believe they need to ship greater quantities to U.S. markets. To this end the California kiwi Commission was established in 1980 to promote California kiwifruit. However, those promotion efforts were probably made less effective by sales of low quality and unattractive fruit because such sales discouraged repeat purchases. In September 1982, at the request of the industry the USDA issued the U.S. Standards for Grades of Kiwifruit. Those standards were first used on a voluntary basis to market the 1982 crop. However, the record indicates there has been fruit marketed which in fact does not meet those standards. As discussed above, this is detrimental to the kiwifruit industry because it lowers the prices received for all kiwifruit. Also, some fruit inspected and certified at time of packing as U.S. No. 1 or No. 2 may not be shipped for several months and may deteriorate in quality during storage or subsequent handling. Thus, buyers receive fruit which does not meet the specified standards, and growers' returns may not even cover harvesting and packing costs, especially when the fruit is shipped on a consignment basis.

Taken together, these practices seem to undermine trade confidence. Several witnesses testified that often buyers are unwilling to pay prices appropriate for good quality kiwifruit and to increase purchases because of the inconsistent quality of the California fruit that is marketed. They indicated that they are "turned off" by the lower quality, unattractive fruit. It was testified that consumers who purchase kiwifruit in supermarkets and chain stores, and the food service trade (which sells food for consumption outside consumers' homes) generally demand a reliable supply of a uniform, high quality product. In response to this, the trade is demanding a continuity of supply of good quality kiwifruit with standardized characteristics as a condition of future sales. For the retail trade, such good quality, continuity, and standardization are also cost effective, since flawed fruit which does not sell must usually be discarded. The resulting losses are incorporated into a store's gross margin and translated as higher prices to the consumer. Thus, it is of primary importance for the retail trade to be quality conscious in its fresh fruit purchases.

Therefore, in order to maintain and expand the market for kiwifruit, it is necessary to authorize regulations with respect to minimum grade, size and quality which will facilitate orderly marketing conditions for California kiwifruit. The testimony is that while there may be a market for some fruit of lower quality, the presence of that fruit in the market place, except in certain outlets such as roadside stands and certified farmers markets as later discussed, contributes to disorderly marketing conditions because it lowers the price received for all kiwifruit and discourages growth in consumer acceptance of the product. Moreover, prices received for that fruit are substantially less than those received for higher quality fruit. Thus, it is unlikely that most growers could sustain themselves if a large portion of their returns were derived from the sale of low quality fruit. In addition, the testimony was that growers can improve the quality of their crop and increase the packout percentage through appropriate cultural practices, including pruning and thinning. The benefits to growers in the form of higher returns and the development of repeat sales from the marketing of fruit of good grade and size rather than off-grade and small sized fruit, is expected to offset the increased cost of the good cultural practices. Also, these growers would be better able to supply additional quantities of good quality and large sized fruit for consumption. For this reason, authorizing minimum grade, size, and quality regulations would tend to effectuate the declared policy of the act and would be in the interest of producers and consumers.

The exception filed by Richard M. and Barbara K. Peekema states that: (1) The recommended decision has been improperly influenced by ex parte communications, (2) the recommended decision improperly failed to rule individually of their proposed findings and conclusions; (3) the recommended decision failed to address or take into account the protested unfair and overly aggressive tactics used in the promotion of the proposed order; (4) the recommended decision failed to establish at the outset a parity price for kiwifruit as implicitly required by the Act (7 U.S.C. 602(1)); (5) the recommended decision failed to establish that kiwifruit growers have been or now are economically distressed, as required by the Act (7 U.S.C. 602(1)); and (6) the recommended decision erroneously concludes that lower quality edible fruit has poor consumer acceptance.

With respect to point (1) in the exception, the Department is unaware of any such exparte communications, and the excepter provided no basis to show that any alleged communication with the Department was violative of the exparte rule. With respect to point (2), the recommended decision contains a ruling upon each proposed finding or conclusion submitted by interested persons. With respect to point (3), as required by § 900.9, the recommended decision was based only upon the evidence presented in the hearing record, and all views presented at the hearing were fully considered before issuance of such decision. With respect to points (4) and (5), the act does not require, as a condition for the establishment of an order the finding that growers currently are economically distressed, or that, prior to establishment of any rule regarding pack or quality, grower prices must be below parity. With respect to point (6), as stated previously in this material issue (2), there is strong evidence to support the conclusion that some consumers do not purchase kiwifruit because of the unappealing appearance, size or taste. Shipments of low quality fruit inhibit overall sales and as discussed above, create disorderly marketing conditions. Thus, the above points are denied.

The exception filed by Gary L. Pigg stated in part that the recommended decision wrongly concluded that the lower California kiwifruit prices in October were entirely attributed to poor quality, instead of a recognition by buyers that California kiwifruit costs less to transport than New Zealand kiwifruit, and the fact that there are more handlers of the California fruit than for the New Zealand fruit. However, the hearing evidence reflects that the most significant factor causing the October price differential is the presence of California kiwifruit of low quality (e.g. fruit which may be lower grade or undersized). Mr. Pigg and other excepters also stated that the U.S. kiwifruit industry is not in an over-supply situation requiring the use of a Federal Marketing Order. However, for reasons previously stated, those exceptions are denied.

Other exceptions with respect to the justification for the proposed program were filed by R. C. Blanchard, Roger and Shirley Meyer, Don Riley, Eugene Tannimoto, Roland Whitehead, Jean Clough, Walter and Thelma Bristow, Howard and Rayette Riggs, Agness Dias, Ed Cheak, Victor D. Barnes, Modesto Kiwi Packers, Ernest Stafford, Robert J. Nash, James T. Crosby, Carol Hack and Richard J. Marshal. These exceptions either supported the proposed program or opposed it for reasons cited above by others. Thus, to the extent that any suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions set forth

herein, the requests to make such findings or to reach such conclusions are denied.

The containers used in the shipment of kiwifruit include such receptacles as boxes, bags, trays, and master containers, but new or modified containers continue to be developed and used. Evidence was offered that some shippers may use unsatisfactory techniques that bruise or injure kiwifruit in filling or transit. Also, they may mismark or partially fill containers or pack fruit not representative of the size or quality marked on the containers. Such practices are not only misleading to the buyers, but also tend to destroy trade confidence, reduce demand, and contribute to disorderly marketing conditions. Another problem results from shippers making small reductions in the dimensions of the tray, box, or other packing container. The resulting container might closely resemble the standard package, but the individual fruit could be one or more sizes smaller than fruit normally contained in a standard container. This practice also destroys trade confidence and leads to confusion in the marketplace. Specifications of the size, capacity, dimensions, markings, and pack of containers used in the marketing of California kiwifruit would provide a means of maintaining trade confidence, establishing orderly marketing, and improving returns to growers.

Exercise of the authority to regulate the quality of shipments and to establish uniform containers for such shipments could assure the availability of good quality fruit and encourage additional production of kiwifruit. Thus, to the extent that there may be some market for lower quality kiwifruit currently, and that prices for this fruit tend to be lower, consumers will benefit generally from quality control in the long run because additional kiwifruit of uniform quality will be available in the marketplace.

In view of the foregoing, it is concluded on balance, that the proposed order would tend to establish marketing conditions for kiwifruit which, consistent with the declared policy of the act, would be in the public interest, by stabilizing grower returns and insuring that only kiwifruit of an acceptable minimum quality reaches the marketplace.

(3) Definition of Commodity and Determination of Production Area

The term "Kiwifruit" should be defined in the order to identify the commodity to be regulated, and as used in the proposed order, refers to all varieties of the fruit classified botanically as *Actinidia chinensis*, Planch. The kiwifruit is a small fruit, about the size of a lemon. It is native to China, but New Zealand is the largest commercial producer. The plants are either male or female vines. Generally, growers plant eight vines which produce female flowers capable of producing fruit to every one male plant that provides the pollen for crosspollination.

The term "variety" should be defined in the order to mean and include all classifications or subdivisions of kiwifruit. The definition is necessary to provide authority for different regulations for different varieties of kiwifruit in the event such different regulations are deemed appropriate. The record indicates that the need for different regulations for different varieties of fruit did not appear to be required at the present time but the introduction of new varieties may, in the future, pose such a need. The Hayward variety is the dominant commercial variety at the present and accounts for almost all of the vines in California. Other varieties include Abbot, Allison and Monty, which are similar to the Hayward in shape, and Bruno which is long and finger-like.

The term "production area" should be defined in the order to mean the State of California. The record evidence indicates that kiwifruit is now produced in over 30 California countries, and that it could be grown throughout almost all of the State. Although the soil and environmental conditions, and thus yields, vary among counties, the kiwifruit grown in a given county cannot be readily distinguished from that grown in another part of the State. Moreover, for purposes of marketing, kiwifruit from all areas of the State are commingled and buyers do not customarily buy kiwifruit from one part of the State to the exclusion of kiwifruit grown in another part. Thus, the marketing of fruit from one part of California affects the marketing of fruit grown in another. Therefore, it is concluded that the State of California is the smallest regional production area that is practicable consistent with carrying out the declared policy of the act. It should be noted that although yields vary within the production area, the percentage of fruit which meets various grade and size standards does not differ significantly by location. The definition of "production area", as recommended herein, differs from that contained in the notice of hearing which also included the State of Oregon. Inclusion of Oregon in the production area was not supported by the proponents at the hearing. The record shows that while there is some kiwifruit production in Oregon and elsewhere production outside of California is minor and has little or no impact on the handling and marketing of fresh kiwifruit. There is no evidence to justify expanding the regulated production area, beyond California, and little possibility that such production would prevent a marketing order for kiwifruit grown in California from effectuating the declared policy of the act. The proponents indicated that at some future time, consideration of enlarging the area might be appropriate if production in another state became a significant factor in the marketplace. Any such change, however, would have to be accomplished through the formal rulemaking process, and would necessitate a referendum of growers in the manner prescribed in the act.

In an exception filed by Richard M. and Barbara K. Peekema, it was stated that the recommended decision erroneously concludes that the effect of the order on all kiwifruit growers in California will be substantially uniform, since production costs and quality of fruit can vary between localities. While there may be some variation in yields and possibly other factors, among growers, any regulations authorized by the order would be applied uniformly and only inclusion of all of the State of California would assure the effective operation of the order pursuant to the act. Moreover, such inclusion would provide all California growers with the anticipated benefits of the program. Thus, the exception is denied.

(4) Persons to be Regulated

The term "handler" is synonymous with "shipper" and should be defined to identify the persons who handle kiwifruit and thus would be subject to the order, including payment of assessments. Such term should apply to any person, except a common or contract carrier transporting kiwifruit owned by another person, who performs any of the activities within the scope of the term "handle", as hereinafter defined, and places kiwifruit in the channels of commerce.

The term "handle" should be defined to identify those activities which should be regulated in order to effectuate the declared policy of the act. Except as exempted, such activities include all phases of selling and transporting which place kiwifruit in the channels of commerce within the production area or from the production area to any point outside the production area. The handing of kiwifruit can begin as early as the time of picking from the vines and includes each of the successive selling and transporting activities until the fruit

reaches its final destination. The performance of one of more activity such as selling, consigning, delivering, or transporting by any person, either directly or through others, should constitute handling.

There are some sales of kiwifruit on the vine. However, it is usual after picking for the fruit to be transported to a packinghouse prior to sorting, grading and packing. The grower, in such instances, relies on the person (who may or not be a grower) who prepares the kiwifruit for market to see that the fruit meets all applicable requirements for marketing Such activities are, however, preliminary to placing the kiwifruit in marketing channels. The testimony was that it would not be practical, and would unnecessarily complicate the administration of the order, to require persons engaged in the preparation of kiwifruit for market to meet program requirements unless the fruit is placed in the current of commerce by such persons. The record evidence is that the transporting of field run kiwifruit from a vineyard to a packinghouse, to be prepared for sale, and the actual sorting, grading, packing or other preparation of kiwifruit for sale, do not constitute handling activities and thus, should be excluded from the definition of "handle". Similarly, neither the transporting of kiwifruit from the packing house to a cold storage facility nor the act of storage within the production area constitute a handling activity. However, the record suggested that the committee, with the approval of the Secretary, may require notification of such transporting in advance by the packing house operator unless the kiwifruit has been inspected and certified as conforming with the applicable regulations.

Kiwifruit may be sold after packing at the vineyard where grown, or at a packinghouse to others who transport the fruit from such points to markets within or without the production area. The sale or delivery of kiwifruit to such persons, and the subsequent movement to market, are handling activities.

The record evidence indicates that the primary responsibility for determining whether a particular lot of kiwifruit conforms to the applicable regulations should rest with the first person who ships or otherwise places such lot, or causes it to be placed, in the current of commerce. In most cases, that person would be the packer who was responsible for grading and preparing the kiwifruit for market. However, all subsequent handlers within the production area also should be responsible for meeting any regulation not previously satified when such persons handle the kiwifruit. This can be readily ascertained by determining whether kiwifruit have been inspected and certified as meeting such regulations or by having them inspected as discussed in material issue (5)(e). Several witnesses thought such requirements were vague and excessive. However, full compliance with marketing order regulations is necessary to effectuate the policy of the act. Each and every person involved in the handling activity should be able to assure that the partiacular requirments have been met. This has not proven to be an unreasonable burden on handlers of the other commodities regulated under existing marketing orders.

In any event, all order requirements must be met by a handler prior to shipment of kiwifruit from the production area to a point ouside the production area. The testimony was that inspection or compliance activities outside the production area would be difficult to carry out and administer. Kiwifruit may be stored by a purcheaser outside the production area for extended periods of time and might sustain some deterioration during such storage.

Thus, the marketing of low quality fruit could result even if the fruit met the order requirements when it was shipped outside the production area. However, this is an unlikely possibility because of the adverse economic incentive of such action to the handler. The inspection and certification requirement provides the assurance that fruit shipped out of the production area would meet minimum standards. Good commercial handling of the fruit thereafter would assure delivery of quality fruit to consumers.

(5) Specific Terms and Provisions of Proposed Order

(a) Certain terms and provisions of the proposed order should be defined and explained for the purposes of designating specifically their applicability and limitations whenever they are used. Many of the features of the order discussed below are ministerial, precedural or administrative in nature. Thus, they are based at least in part on the experience of the Department with respect to the most efficient and effective way in which such ministerial, procedural or administrative functions can best be performed in order to accomplish the objectives of the act and of the proposed order.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States or any other officer or employee of the United States Department of Agriculture who may now, or who may hereafter, be authorized to act for the Secretary. The inclusion of other employees and officers under the term is in recognition of the fact that it is physically impossible for the Secretary to attend personally to all matters over which the Secretary is given responsibility.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program is to be operative and avoids the need for referring to the citation throughout the order.

The definition of "person" should follow the definition of that term as set forth in the act. This will insure that the term will have the same meaning in the order as it has in the act.

The term "grower" should be synonymous with producer and should be defined in order to identify those who are eligible to vote for, and serve as, grower members or alternates on the committee and to vote in any referendum. The term should mean any person who produces kiwifruit for the fresh market within the production area and has a proprietary (financial) interest in the crop. Each business unit (such as a corporation, partnership, or community property arrangement) should be considered a single grower and should have a single vote in nomination proceedings and referenda. However, for purposes of serving on the committee, the notice of hearing contained a proposal which specified that the term "grower" should include only those who have a proprietary interest in the production of at least one bearing acre or 145 bearing kiwifruit vines. However, this is not recommended. Growers should have sufficient interest in the order to nominate appropriate members to the committee rather than rely on order provisions to exclude persons from serving. Futhermore, a proponent witness stated that he knew of few plantings of kiwifruit of less than one acre, and it was unlikely that there would be many in the future. Hence, there appears no need for such a qualification.

The term "fiscal period" should be synonymous with "fiscal year" and should be defined to mean the annual period for which financial records of the Kiwifruit Administrative Committee are maintained. The period should also be used in fixing the terms of office of committee members and alternates. The committee should establish this period as to allow sufficient time prior to the

time kiwifruit is shipped in order to give the committee an opportunity to organize and develop information necessary for its function during the ensuing year. However, it should minimize incurring expenses during a fiscal period prior to the time assessment income is available to defray such expenses. The testimony is that the fiscal period should be the 12 month period beginning August 1 of one year and ending the last day of July of the following year. However, if necessary to improve the committee's management or for other reasons, based on experience once the order is established, it may be desirable to establish a fiscal period other than one ending on the last day of July. Thus, authority should be included in the order to provide for such establishment of a different fiscal year if recommended by the committee and approved by the Secretary. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting seasons to permit the committee to formulate its marketing policy and perform other administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal year, such change could result in a transition year being more of less than 12 months. If the order is issued after August 1, 1984, but is made effective in time to regulate the 1984 crop, the initial fiscal year should end on July 31, 1985, so that the subsequent fiscal period would begin August 1, 1985.

The term "committee" should be defined to identify the administrative agency—the Kiwifruit Administrative Committee—established under the provisions of the order. Such a committee is authorized by the act, and this definition is merely to avoid the necessity of repeating the full name each time it is used.

"District" should be defined as set forth in the order to provide a basis for the nomination and selection of committee members. The districts (i.e., the geographical divisions of the production area as established and as set forth in the order) are the same as those proposed in the notice of hearing except for District 9, the State of Oregon, which as previously discussed, should not be included in the production area. The eight California districts are identical to those adopted by the California Kiwifruit Commission. The individual districts were devised on the basis of 1981–82 season production data. Although there is variation in production among the districts, the testimony was that the districts which currently have the lower production levels have the potential of producing more kiwifruit than the districts currently with greater production. However, the committee with approval of the Secretary may restructure the districts on the basis of current production. In addition, the order should also provide additional committee representation for the districts with the greatest production as discussed in material issue 5(b).

The term "pack" should be defined to mean the specific arrangement, size, weight, count, or grade of kiwifruit in a particular type and size of container, or combination of the above; for example, US No. 1 grade, a count of 36 fruit and packed in a flat or single tray-type container. Such a container if fitted with a plastic tray having individual compartments for each fruit. Other examples of packs currently in use are 20 one pound cello bags in a master container and a 20 pound container filled with loose fruit. Regulation of pack is discussed in material issue (5)(e).

"Container" should be defined to mean a box, bag, crate, lug, basket, carton, package or any other receptacle used in the packaging or handling of kiwifruit. The term would also include other unnamed receptacles such as trays, and master containers such as three-layer lugs. a definition of this term is needed to serve as a basis for differentiation among the various shipping receptacles in which kiwifruit are shipped to the fresh market which would be used in conjunction with the proposed authority to regulate containers as discussed in material issue (5)(e).

(b) Pursuant to the act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the act. The term "Kiwifruit Administrative Committee" is a proper identification of the agency and reflects the character thereof. It should be composed of 12 members. A committee of 12 members, of which one would be a public member, and the other growers, would be sufficiently large that adequate and equitable representations could be provided for all kiwifruit producing areas of California. At the same time, the expense involved in connection with meetings of a committee of this size would be reasonable. It was recognized that only handlers may be regulated under the provisions of the Act. However, kiwifruit are handled for the account of the grower, and in effect, the grower is the one most concerned with regulations. Thus, the record indicates that the growers should have the responsibility of deciding both the regulations to be recommended to the Secretary and other administrative activities to undertaken. One grower member and one alternate should represent each of the eight districts in California.

In addition, the record evidence is that three additional committee members and their alternates be selected from the three highest-production districts with a limit of two committee members per district. Such additional members would provide sufficient representation for the major producing areas and equal representation throughout the State of California to the extent possible. Based upon the 1981–82 season production, the total volume of kiwifruit produced in California was 10,714,397 pounds. The three districts which produced the highest volume, and would be entitled to one additional member, are District 2, which produced 1,805,111 pounds of kiwifruit; District 1, which produced 1,598,300 pounds; and District 8, which produced 1,394,570 pounds. However, the testimony is that the 1982–83 production, if known at the time when the initial committee nominations are made, should be used for the purpose of allocating the three additional member positions. The testimony indicated that major growing areas will become more distinctive with the development of new vineyards being planted in the more desirable areas. Ultimately the difference in district production will likely become much greater. Also, industry statistics are expected to become more accurate when various county and state agencies include kiwifruit production in their records and annual reports.

The exception filed by Gary L. Pigg opposed the method of allocating the three additional member and alternate positions on the committee. The recommended decision indicates that Districts 1, 2, and 8 are currently the three leading production districts accounting for approximately 45 percent of the total production of kiwifruit. Therefore, these districts would each be allocated one additional member position each. However, the order expressly provides for reallocation of membership among districts and redefinition of district boundaries to reflect shifts in production among districts to assure equitable representation on the committee. Thus, the exception is denied. An exception filed by Helen Klein, President, Kiwi Growers of California, Inc., asserts that § 920.20 should be changed from that proposed in the recommended decision to clarify that the three additional member positions shall be assigned to

the districts with the highest production based on the production in the prior crop year. Such a change would eliminate any confusion as to how to determine those districts. Thus, this exception is granted and the order provision is revised accordingly. So that there is sufficient time prior to the July 15 date for grower nomination meetings for any necessary preparations, the committee shall calculate such prior production based on shipment receipts or other data for the period August 1–1 April 30, or such other period as the committee may deem appropriate.

The record evidence is that the members and alternate members should be growers, and a particular grower should be eligible for only one position on the committee so that it would not be possible for more than one representative of one growing operation or entity to serve on the committee. It was recognized that some growers are shippers as well, but they should not be excluded from serving on the committee.

Alternate members should be authorized to act in the place and stead of the member for whom that individual is an alternate, or, in the case of districts with two grower positions, the other member from the same district. For example, for a given district with two members and an alternate for each position, if neither that member nor the alternate for the member is present at a committee meeting, but both the other member and his or her alternate from the same district attend the meeting, then the alternate attending the meeting shall serve for the other member. However, no alternate shall serve for a member from another district, and only the alternate for the public member may serve in the absence of the public member.

The term of office of committee members and alternates should be two years beginning on August 1 of the year of their selection and ending on July 31 of the second succeeding year, or at the same time their successors have been selected. However, the record evidence is that the terms of those of the initial members of the committee should be different than contained in the notice of hearing. One-half shall serve for one year, and one-half shall serve for two years, with the determination of the terms of each member to be made by lot. Except as otherwise provided in this Order, however, the terms shall begin August 1 and end on the last day of July. Thus, the terms of office would be staggered. Although the testimony was that the determination of which six members and their respective alternates would serve one year terms would likely be made by lot at the first meeting of the committee, the respective terms of office need to be determined before the persons are selected by the Secretary. Thus, nomination meetings may be a more appropriate time for such determination. Also, it was noted that all member positions, including that of the public member, should be subject to such a determination. There was some limited discussion in the record of the number of consecutive terms that members and alternates should be permitted to serve. In order to promote wider industry participation and involvement in the administration of the proposed marketing order, it is advisable to limit the number of consecutive terms a member or alternate may serve. Six consecutive years, or three two-year terms is the maximum that an individual should serve. This period allows sufficient time for a member to become familiar with the operations, role and functions of the committee in order to allow administrative continuity. At the same time, a maximum of six years of consecutive service will readily promote member turnover and achieve greater diversity and industry participation in committee activity. Thus it is concluded that members and alternates may serve up to three consecutive two year terms on the committee. Following three consecutive terms, however, a person should not be eligible to serve either as a member or alternate member for a period of two years.

In order to provide the kiwifruit growers with an opportunity to express their wishes, the record evidence is that initial grower members and alternates should be nominated with the use of mail balloting or district meetings. The nominations should be conducted by the proponents immediately after issuance of a referedum order on a kiwifruit marketing order. For the purposes of such nominations the Secretary should obtain names of growers from handlers. In this way, a complete list of growers may be compiled so that all may be notified of the nomination proceedings. Also, this list can be used by the Secretary to conduct any referendum on a recommended marketing order.

An exception filed by Gary L. Pigg stated that the nomination procedure disenfranchises growers because some growers may have to travel long distances to attend nomination meetings and a mail ballot is important to a fair election. Also, he said the voting procedure does not allow sufficient time for willing nominees to campaign for the nominations. Under procedures outlined in § 920.22(b)(2) for nomination of successor members, the time and manner of nominating members to the committee would be announced well in advance of the meeting and any person should have ample opportunity to campaign for a position on the committee. It is anticipated that the committee would choose nomination meeting sites that best accommodate growers in each district, and given that the production area is divided into eight districts, it should not be difficult for growers in each district to attend their respective meetings. Finally, the committee should take appropriate steps to assure that all nominations are determined by secret ballot. For those reasons, the exception is denied.

If nominations are not completed as prescribed or by July 15, the Secretary may select members on the basis of representation provided in §—.20 of the recommended order. Successors to the initial members and alternate members of the committee should also be nominated through mail ballot or at meetings of growers in each of the districts, at the discretion of the committee. Mail balloting and grower meetings should be supervised by the Kiwifruit Administrative Committee, or at its direction. The testimony was that the committee, because of its knowledge of the industry, will be in the best position to select the most advantageous times to conduct such nominations. However, the nominations should be completed by July 15 or each year so that the nominations may be submitted to the Secretary before the expiration of the term of office of the existing committee members. The committee should also be authorized to prescribe procedures for conducting nominations in order to ensure fairness to all participating growers.

Each grower, or the grower's duly authorized employee, should be limited to casting one vote for each position to be filled on the committee from the district in which he or she produces kiwifruit. The grower or employee of such grower must be present in order to cast a vote, if the vote is taken at a district meeting. There can be no proxy voting. Any growers who have kiwifruit vineyards in two or more districts must choose the district in which they wish to cast their vote and so notify the committee. They should not be permitted to vote in more than one district annually. However, a multidistrict grower should be permitted to change voting districts from year to year. To do so, the grower should notify the district committee member of the district where the grower wishes to cast a vote on or before July 15, of each year.

Also, it is recommended that proposed order provide that the Secretary select and appoint the public member and alternate from qualified persons. Historically, for orders currently in effect, the Secretary has selected the non-industry member from those persons recommended to him by the administrative committee. However, the Secretary may appoint a public member, and respective alternate from any of a number of sources. The public and industry at large, as well as the committee, are encouraged to submit nominees for consideration and action by the Secretary. The public member is to be a full participant in the affairs of the committee, and is expected to vote at all committee meetings.

The order should provide that the members of the committee shall be selected by the Secretary from persons nominated or from among other qualified persons. Also, it should provide that in the event nominations are not made within the time and in the manner hereinafter specified in the recommended order, the Secretary may select members and alternates without regard to nominations. Such selection should be from qualified persons as provided in the order. Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he or she agrees to serve in the position for wich nominated.

The order should provide a method for promptly filling any vacancies on the commitee for the unexpired term. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. Nominations and selections to fill vacancies should be made in the same manner as providing for nominating and selecting all other members and alternates. Any nomination meetings for the purpose of filling vacancies should be held within a reasonable amount of time after the vacancy occurs rather than requiring they be held within a specific number of days. For example, a vacancy may occur on May 1 but a regular nomination meeting has been scheduled for such district on July 15. If no meeting was scheduled by the committee during this period, which is an inactive time of year, the committee may wish to wait to secure a nomination to fill the vacancy at the regular scheduled meeting. In any event, the alternate member would serve in place of the member as provided in §—.27 of the order until the vacancy is filled.

The order should provide that an alternate member shall be selected for each member of the committee. Each alternate should have the same qualifications for membership as the member. There could be occasions when a committee member is unable to attend a meeting or meetings. Provisions for alternates would help permit the committee to conduct business when members are absent. Moreover, in the event of death, removal, resignation, or disqualification of a member, the alternate should act until a new member is nominated and selected, or in the case of the public member and alternate, is selected by the Secretary. The record evidence is that §—.27 of the order should differ slightly from the language proposed in the notice of hearing to provide that, in the event a grower member and that member's alternate are both absent from a committee meeting, only an alternate member from the same district may act in the member's place. This change would provide flexibility with respect to representation from a given district. However, an alternate should not serve in the absence of a member from another district, and only the public member's alternate should serve in the absence of the public member.

The committee should be given those specific powers which are set forth in section 8c(7)(C) of the act. Such powers are necessary to enable an administrative agency of this character to function.

The committee's duties, as set forth in the recommended order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this character. They pertain both to specific activities authorized under the order, such as investigating marketing conditions, and to the general operation of the order. Also, the committee investigates compliance with the order, and it acts as an intermediary between the Secretary and any grower or handler. The committee with the approval of the Secretary may redefine the districts into which the production area is divided, and it may reapportion the representation of any district on the committee. Any such changes shall reflect, insofar as practicable, shifts in kiwifruit production between districts and within the production area. The committee should cause its books to be audited by a public accountant of its choosing. The word "competent" describing the account as contained in the notice of hearing, should be deleted as it is unnecesary. However, the record indicates that the committee would most likely engage a certified public accountant to perform the audits. Finally, it should be recognized that these specified duties are not necessarily all inclusive, and it may develop that there are other appropriate duties the committee may need to perform. For example, under that authority the committee could undertake a study to find an improved method of measuring maturity, if that were necessary to carry out its responsibilities under the order. The order should provide that eight members of the committee or alternates acting for members, are necessary to constitute a quorum, and any action by the committee shall require the concurring vote of a majority of the members present. However, given their importance to the industry any committee actions relative to expenses and assessments or recommendations to the Secretary concerning marketing policy and order regulations (§§—.50 through —.55 of the order) should require at least eight concurring votes. At any assembled meeting, all votes must be cast in person. However, in order to take timely actions at a minimum of expense, the committee may vote by telephone, telegraph, or other means of communications. Any votes so cast shall be confirmed promptly in writing.

The order should provide that members of the committee, and alternates when acting as members, shall be reimbursed for out-of-pocket expenses necessarily incurred in performing committee business, but that, except for the public member and alternate, members and alternates will serve without compensation. It is fair and appropriate to authorize such reimbursement rather than to expect members to personally cover such expenses incurred on behalf of the industry. Primarily, most expenses would be incurred in attending committee meetings, but there may be instances when a member or alternate would be assigned specific duties by the committee, and incur expenses in performance of such duties. In any such case, the member or alternate should be reimbursed for any reasonable expenses involved in performing such duties. However, there should not be any per diem stipend (except expenses) for members or alternates who attend a meeting, except for the public member and alternate.

With respect to the public member and alternate, a different approach is appropriate. Unlike the other members and alternates, the public member and alternate are not participants in the kiwifruit industry. They would not have

the same personal financial interest in the functioning of the proposed order as the other members and alternates. Therefore, in order to attract more easily high quality and well-qualified individuals to serve as public member and alternate, they should receive payment over and above reimbursement for expenses. The public member and alternate thus should receive a per diem payment for each day or part thereof spent in performing duties under the order. The rate shall be established by the committee.

The order should include a provision whereby the committee shall prepare and submit to the Secretary an annual report as soon as practicable after the end of each marketing season. Any such report should be made available to any grower or handler who requests a copy. The report should be a review of the administrative, financial, and regulatory activities of the committee. It should also include sufficient information to provide a good historical record of committee operations. Some witnesses stated that this report should also include a marketing analysis which demonstrates the economic effectiveness of the order. The order should not preclude the committee from providing for such analysis as the committee or the Secretary deems necessary, but does not require that it be done.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee and should include the funding of any committee activities as the Secretary may determine to be appropriate. Necessary expenses include, but are not limited to such items as: Personnel salaries and benefits; establishment of an office and equipping such office; buying office products such as paper and supplies; telephone; and transportation for committee field staff managers or other employees. Another major category would be the cost of reimbursing committee members and alternates for expenses incurred in attending meetings. Such expenses would be incurred on an ongoing basis without regard to quality and other regulations in effect. The testimony was that in order to minimize expenses, most likely the committee would enter into an agreement to share management and facilities with the commission. This could include shared office space and equipment, and the joint employment of a manager and possibly other employees such as secretaries. Such a manager should report directly to the committee and be responsible for the functions that are required under the order. The proponent witness indicated that by the third year of operation the committee's administrative costs would be expected to approximate $100,000 annually. This estimate was based on the experience of the commission in its first three years of operation. The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the order during a fiscal year. The budget, including an analysis of its components, should be submitted to the Secretary for approval prior to or as near to the beginning of each fiscal year as possible. Also, the budget should include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year. The order should provide for the assessment of handlers for maintenance and functioning of the committee throughout the time when the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative. The act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and requires the order to contain provisions requiring handlers to pay their pro rata shares of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation, and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay the approved expenses, the Secretary should be authorized to increase such assessment rate in order to secure sufficient funds, or, the committee may borrow money for such purposes. Any such assessment increase should be applicable to all kiwifruit handled during the applicable fiscal year. In addition, the committee should be authorized to accept advance payment of assessments or to borrow money to pay expenses due before assessment income is received. This would give the committee more flexibility particularly in the first part of a fiscal year before assessment funds are received. If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to an interest charge at a rate set by the committee with the approval of the Secretary. This interest charge would represent good normal business practice. This authority is intended to encourage prompt payments by handlers, and to compensate the committee for the loss of the money when the assessments are not paid on time.

The record evidence indicates that § —.41(b) of the order should be changed from that contained in the notice to establish a maximum assessment rate of three and one-half cents per flat, or the equivalent. This limitation would apply to administrative costs only. It is not intended to include costs for any required inspection, or to imply a minimum assessment rate. The Secretary would have the authority to change the maximum rate of assessment after the initial year of order operation by an amount corresponding to any change in the Consumer Price Index (cost of living) for California as published by the Bureau of Labor Statistics. The proponent witness estimated that there will be approximately five million flats of kiwifruit produced in the 1984–85 marketing season, which at the maximum assessment would result in revenue collections of $175,000. As previously noted this amount is expected to substantially exceed budget requirements. Further, inclusion of the reference to the Consumer Price Index would allow this maximum assessment to be increased, as indicated, on an annual basis. The establishment of a maximum assessment level should provide kiwifruit handlers and growers with a clear understanding of their financial obligation under the marketing order. Also, based on the experience of the commission, the use of the Index would likely give the committee the same flexibility in the future. The testimony was that the handler would be obligated to pay assessments, even though most handler transactions are for the grower's account. This requirement on handlers is in accordance with the act.

The testimony was that the handler should pay the corresponding assessments within 30 days after a report is made for kiwifruit shipped, or otherwise placed into the current of commerce. However, the committee could modify that requirement. For example, the proponents suggested that handlers might not be required to pay assessments in advance of collections on the sale of those shipments. In such an event, handlers could be required to maintain a record of both the shipment date and the date of receipt of payment. The maximum assessment rate should apply on the basis of a "flat" or its equivalent. Thus, since a flat contains

about seven pounds of kiwifruit, it would follow that, for example, the assessment on a 28 pound box should be computed on a per-pound basis rather than a per tray.

At the discretion of the Secretary, the committee should be authorized to carry over any excess assessment funds into the subsequent fiscal year as a reserve. If excess assessment funds collected from handlers during a fiscal year are not carried over as a reserve, handlers should be entitled to a proportionate refund of any such excess funds. Such refund may be made by direct payment to a handler or by crediting such amount against such handler's assessment in the subsequent fiscal year. However, the order should provide that any such refund can be applied to offset any outstanding obligation due the committee from such handler. Funds carried over in a reserve should not be allowed to exceed approximately one fiscal year's expense.

According to the testimony the purpose of this reserve fund primarily is to provide stability in the administration of the order in case of a low crop year, by enabling the committee to maintain a qualified and trained staff in years of poor production. In addition, it might be more economical to retain a small excess in assessment funds than to refund them to handlers. It is anticipated that the reserve fund would be accumulated over a period of time, perhaps five years, in order to spread the cost of building this reserve fund. Also, establishing a reserve fund should give the committee the stability to both preclude borrowing or to raise the assessment during a fiscal period.

Reserve funds could also be used to cover necessary liquidation expenses of the committee in the event the order is terminated. Upon termination of the order handlers would be entitled to a refund of their equities. However, should the order be terminated after a number of years of operation, it may be difficult to determine handler equities with precision. Therefore, the order should provide that in such event, the funds may be disposed of in such manner as the Secretary determines to be appropriate, but to the extent practicable any such funds shall be returned pro rata to the handlers from whom such funds were collected. In addition, to provide control over committee funds, the order should provide that upon the removal or expiration of the term of office of any member of the committee, that member shall account for all receipts and disbursements and deliver all committee property and funds in his or her possession to the committee. In addition, such member shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member.

(d) The declared policy of the act is to establish and maintain such orderly marketing conditions for kiwifruit, among the other commodities, as will tend to establish parity prices to growers and be in the public interest. The proposed regulation of the handling of kiwifruit would provide a means for carrying out such policy.

To facilitate the operation of the program each year the committee should submit a marketing policy report to the Secretary. The report should be for the ensuing season and should be submitted by the committee prior to making any recommendations relative to regulations for such season. It should include information relative to the type of regulations expected to be recommended during the marketing season. In developing its marketing policy, the committee should give consideration to factors which affect the production and marketing of kiwifruit. Any such policy should be announced prior to the beginning of the packing period, or, if possible as early as May, so that growers and handlers will be prepared for and informed about the regulations that could be in effect for the upcoming season. The testimony was that the committee should be able to set any date that meet those criteria, but that a May announcement of the marketing policy is desirable in order to allow growers the opportunity to make any necessary adjustments in their cultural practices and, thus, improve the size and quality of their fruit. For example, the testimony was that such early announcement, barring unforeseen weather conditions, would provide growers an opportunity to thin misshapen or other fruit that might not meet order requirements. This would likely have the effect of improving both the quality and size of the remaining fruit and the percentage of packout of the fruit harvested. However, it is recognized that the committee would not be able to meet such a timetable the first year of the operation if the marketing order were made effective in time to regulate the 1984 crop.

The committee should consider the factors as hereinafter set forth in developing its marketing policy which will provide for a comprehensive evaluation of the overall supply and market outlook. In considering its marketing policy, the committee should appraise the expected quality and quantity of the forthcoming crop. In some years there may be large crops with smaller fruit or small crops with large fruit, or fruit with heat, frost, or wind damage. All of these circumstances may influence any committee recommendation for regulation. The committee should consider expected demand conditions for kiwifruit in different market outlets because kiwifruit are marketed heavily in many different foreign markets and information relative to the demand there may vary significantly from demand in domestic markets and from one year to the next. Kiwifruit may be used in markets other than fresh fruit, such as juice, jam, ice cream topping and wine, and the demand in these markets should be considered. In addition, the committee should consider the kiwifruit from all other production areas, since California kiwifruit would be in competition with such fruit. The committee should evaluate supplies of competing commodities such as southern hemisphere summer fruits. Also, since the fruit requires specialized packaging and storage, and thus the cost to the consumer per fruit or per pound is relatively high, the marketing policy should discuss consumer income levels and the impact thereof on the demand for kiwifruit. Finally, in order to provide flexibility the committee should include in its marketing policy other factors which have a bearing on the marketing of kiwifruit. The committee should insure that its policies and regulations are not designed to limit or affect the supply of kiwifruit made available to the market. Its policies and regulations may affect supply, but their purposes should not be to affect supply or quantity.

The Kiwifruit Administrative Committee, as the local administrative agency under the proposed order and a representative body of the industry, should be authorized to recommend regulations designed to effectuate the declared policy of the act and the order. As previously mentioned, authority for regulations should include grade, size, quality, maturity, or any combination thereof, for kiwifruit grown in the production area but not quantity or supply. The committee should also be authorized to recommend regulations relative to the size, capacity weight, dimension, markings, or pack of any container or containers used in the handling of such kiwifruit. In making its recommendations, the committee shall give consideration to current information with respect to factors affecting the supply and demand for kiwifruit during the period or periods

when it is proposed that such regulation be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicted and such other information as the Secretary may request. Any formal recommendation for regulation should be made as close to the harvest and packing season as possible so as to minimize changes which may be needed due to any abnormalities which might occur late in the growing season, but still afford sufficient time for the Secretary to implement any such recommendation by means of informal rulemaking.

This proposed rule should not be used in order to control supply or quantity. The evidence supports quality controls for California kiwifruit which would stimulate buyer demand and confidence, but not quantity or supply controls. The Secretary would evaluate the annual marketing policy submitted by the committee to determine that all current and proposed regulations are not designed to affect quantity or supply.

The proposed marketing order itself does not establish minimum standards. It would simply provide the authority for such actions to be implemented through regulations recommended by the committee and approved by the Secretary. Unless and until issuance of regulations pursuant of such authority, any person may market any kiwifruit he or she chooses to market without regard to grade, size, quality, pack or container requirements. Prior to issuance of any such regulations, the committee would meet (in public sessions) to recommend to the Secretary that requirements be issued. Any regulations issued would be initiated through informal rulemaking in the **Federal Register.**

The regulation of the grade, size, quality (including color), and maturity of kiwifruit is a major function of the proposed marketing order. The shipment of low grade, small size, and otherwise poor quality kiwifruit affects detrimentally consumer confidence and will be likely to depress financial returns to growers and would not be in the public interest. The regulation of such shipments would in the long run provide an assured supply of improved quality and larger size fruit.

In addition to the points previously discussed, the exception filed by Richard M. and Barbara K. Peekema contended that the conclusion in the recommended decision, that no supply controls were to be utilized by the committee, is inconsistent with perceived supply control provisions in § 920.52(a) (1) and (2). However, these provisions would only provide for regulation of shipments of kiwifruit by grade, size, quality, maturity, and pack as authorized in the act. As previously stated, such regulations do not have as their purpose the control of the quantity of fruit reaching the market. Thus, there is no inconsistency and the exception is denied. Also, the exception by Gary L. Pigg stated that there should be no grade and size regulation when prices exceed parity. However, the act authorizes such minimum standards of quality and maturity and such grading and inspection requirements as will effectuate such orderly marketing as will be in the public interest. Thus, the exception is denied.

With respect to references in the record to parity price, it is the responsibility of the U.S. Department of Agriculture (specifically the Statistical Reporting Service) to determine such price for agricultural commodities. Parity price is an official government figure and is computed pursuant to provisions of the Agricultural Adjustment Act of 1938, as amended, Title III Subtitle A.

The record evidence is that it is in the public interest and is consistent with the purposes of the act to have properly matured fruit available that will reach the desired sugar level when ripe. The testimony is that generally a soluble solids content of 8.5 to 7.0 percent represents the currently used minimum acceptable level of maturity at time of harvest or packing. With additional ripening, which may be brought about by exposure to ethylene gas, the kiwifruit can be expected to reach 13 to 15 percent at time of consumption, the apparent optimum level for consumer satisfaction.

The testimony was that the Committee, with the approval of the Secretary, may adopt U.S. Standards for Grades of Kiwifruit, namely U.S. No. 1 or U.S. No. 2, or the committee may recommend another standard which may or may not include some of the specifications of the U.S. Standards. There was considerable testimony as to what factors were most significant in any grade quality standard. However, several witnesses questioned whether external defects (also included in the U.S. Standards) such as minor blemishes or shapes which detract from the appearance of the kiwifruit, should be included in any marketing order requirement. The record indicates, however, that those surface factors can effect the marketability of kiwifruit in much the same way as does serious damage such as decay or other internal damage. Thus, it is appropriate for the marketing order regulations to contain any or all of the factors contained in the U.S. Standards. Similarly, size is also an important marketing factor. The testimony is that while some consumers buy small sized (for example 49 per flat or smaller) fruit, most others who shop at supermarkets and chain stores generally buy larger and more uniform fruit. In addition, handlers may incur some additional costs with small fruit because it does not store as well, and any resulting losses may effect grower returns.

Section 608c(6)(H) of the act authorizes inclusion in a marketing order of terms and conditions to fix size, capacity, weight, dimensions, markings or pack of the container or containers used in the packaging or the handling of kiwifruit. Such terms and conditions promote orderly marketing conditions and are in the public interest. The testimony was that such occurrences as improper packaging techniques that bruise or injure kiwifruit in transit, mismarking of containers, and partially filled containers or fruit not representative of the size or quality marked on the containers, are not only misleading to the buyers, but also tend to destroy confidence, reduce demand and contribute to disorderly marketing conditions. For example, one way to increase returns would be to ship size 42 kiwifruit (that is fruit which would normally take 42 pieces to make a 6.8 pound tray) in a 36 count tray and offer it to buyers at a slight discount. The buyer would receive 36 pieces of fruit, but the fruit weight per tray would only weight about six pounds. Such a practice would be unfair to the initial buyers consumers and other handlers if sales are based on such misrepresented information.

A variation of the above practices is the slight reduction of the dimensions of the tray, box, or other packing container down from the standard size. The resulting container might resemble the standard package closely but the individual fruit could be one or more sizes smaller than in the standard package. These are commonly known as "cheater boxes" and may be so similar to the standard container as to frequently pass unnoticed by the buyer. This practice destroys trade confidence and leads to confusion in the marketplace. On the other hand, the regulations should not be permitted to discourage the experimenting with, or commercially using, new containers of superior design, construction or materials, such as the one-pound cello bag. Rather, the regulations should be used to standarize containers in order to prevent abuse through deceptive practices such as the use of "cheater

boxes". Therefore, authority should be included to regulate containers to the extent necessary to maintain trade confidence, establish orderly marketing and improve returns to growers.

The order should provide for modification, suspension, or termination of any regulation whenever such action would tend to advance the objectives of the act and the order. The order should authorize such action based upon a recommendation of the committee, or other information available to the Secretary. This authority would provide flexibility for times when due to changes in circumstances, a given regulation is no longer appropriate for prevailing market conditions, and thus, should be modified, suspended, or terminated, as applicable. The testimony was that the committee should first carefully consider any such recommended action in the light that it could cause inequities to certain packers who may or may not have completed their packing operations. The potential for such inequities would seem greatest if a regulation were made more restrictive, because that action could have the effect of reducing the amount of fruit available to the market that might otherwise be available. Thus, while the order should contain the authority to tighten regulations (e.g. upgrade the quality of the fruit), the committee should consider any change in view of the possible inequities and obtain a comprehensive view of industry sentiment before making such recommendations.

The record evidence indicates that the order should exempt kiwifruit for certain uses from payment of assessments, quality, and container regulations, and inspection and certification requirements. It is found that shipments of kiwifruit for consumption by charitable institutions, for distribution by relief agencies or for commercial processing into products do not affect the marketing of kiwifruit in commercial fresh fruit market channels. Thus, such shipments should be exempt from order requirements. At the present time, small quantities of kiwifruit are used in the production of wine, and to a minor extent in other products such as jams and jellies. However, a proponent witness testified that with an assured supply, the market for processed kiwifruit could increase substantially and thereby increase grower returns.

Similarly, exemptions from regulations for the handling of kiwifruit to designated markets or other outlets could be used by the committee as a vehicle for developing markets that are not now available to the industry. Thus, the committee should have the flexibility to exempt shipments to such markets (e.g. flea markets) from any or all regulations markets. To prevent possible abuse of the exemption provisions, the committee should have authority at the discretion of the Secretary to prescribe appropriate rules, regulations, and safeguards to prevent kiwifruit handled under exemption from entering the channels of commerce for fresh kiwifruit or for some purpose other then the specific purpose authorized, if such action is necessary. Such safeguards could include, but are not limited to, a certification as to use by the intended purchaser or receiver that the kiwifruit will not be used for any unauthorized purpose.

(e) The record evidence is that inspection and certification of shipments are necessary, and are the most practicable way to assure that the handling of kiwifruit complies with the regulations to be effective under the proposed order. The Federal-State Inspection Service has inspectors in the production area and inspected about 16,000,000 pounds of kiwifruit in the 1982–83 season. At the hearing, a representative of that agency indicated that it is in a position to provide any necessary mandatory inspection and certification under a marketing order. Thus, any inspections required under the marketing order would be required to be conducted by the Inspection Service.

Promptly after inspection and certification, each such handler would submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such kiwifruit. The certificate would verify that the fruit meets the order requirements. The testimony is that it is the handler's responsibility to see that the certificate is submitted to the committee. However, the handler may arrange with the Inspection Service for it to send in the cerificates on behalf of the handler.

Kiwifruit may be stored reasonably well for up to six months. This allows the shipper more time to market the fruit as compared with many other crops that must be marketed soon after harvest. However, lot inspections at the packinghouse during the packing season may not provide an accurate appraisal of the quality of that same lot 60 to 90 days later, due to the expected condition changes in the fruit. Thus, the proper time for the required inspection under the proposed order is just prior to shipment when a true appraisal of a lot can be obtained. Since kiwifruit are perishable and may deteriorate over time, the order should authorize establishment of a maximum time for which an inspection certificate is valid. Such authority could be used as necessary to require that kiwifruit be inspected within a specified time prior to the time it moves into the channels of commerce, including transportation out of the production area. It follows that if the kiwifruit are not shipped within such time they would be subject to reinspection. The committee should submit to the Secretary a recommendation concerning the length of time the certificate is valid.

Responsibility for obtaining inspection would fall on the person who handles the kiwifruit, and all fruit should be inspected prior to such handling. However, there could be some occasions when inspectors are not available within a reasonable time before handling to perform the required inspection. For example, there could be possible hardships on a small isolated handler for whom it may be difficult to provide timely inspection. Thus, the order should provide that in such cases the inspection requirement may be waived. Subject to approval of the Secretary, the committee would prescribe rules and regulations governing the issuance of waivers of inspection to prevent the abuse of such provision. Moreover, any such waiver would not release the handler from complying fully with any other order requirements.

The order should authorize the committee to enter into an agreement with the Federal-State Inspection Service for the required inspection and collect from handlers their respective pro rata share of inspection costs. The inspection service representative testified that currently the agency charges a $20 per hour fee, but that under a marketing order for kiwifruit, it would be appropriate that a container fee should be established to apply to all kiwifruit inspected for marketing order purposes, instead of charging on an hourly basis. Such a system would primarily benefit small handlers in outlying areas who otherwise would pay a disproportionately higher rate per container for any required inspection and certification. While no specific rate was offered, the testimony indicates that the fee might approximate two cents per seven pound flat. Proponents also indicated that inspection on a container fee basis would be desirable. However, they indicated that it might not be in place for the 1984 season.

Another cost incurred by handlers would be any required application of a lot stamp on individual containers as

supervised by the inspection service. Such a stamp is anticipated and could be applied either by an automatic in-line stamping device or manually. In either event, the testimony does not indicate that the associated costs to handlers would be significant on a per flat basis.

(f) The committee should have authority, with the approval of the Secretary, to require that handlers submit to the committee such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. The record evidence is that in the normal course of business, handlers have the necessary information in their possession and based on the experience of similar orders now in effect, the requirement that they furnish it to the committee in the form of reports should not constitute an undue burden. Reports are needed by the committee for such purposes as: Collecting assessments; collecting statistical data for use in marketing policy development and recommendations for regulations; and determining whether handlers are complying with order requirements. The evidence is that normally a handler or an employee can complete any required reports under the proposed order.

The record evidence is that to the extent necessary for the committee to perform its functions, handlers should provide certain information, as herein specified by the committee on each shipment of kiwifruit. This information would include such items as: The name of the handler and the shipping point; the identification of the carrier, whether it is a truck identification or car license number, the date and time of departure; the number and type of containers in the shipment; the quantities shipped by variety, size and grade; the lot destination; and the identification number of the inspection ceretificate or waiver. The record indicates that generally handlers maintain all or almost all of this data in the normal course of business operations. The foregoing, however, should not be construed as a complete list of information the committee might require, nor, should it be assumed that all of the above will necessarily be required of handlers if the committee believes it is not necessary to carry out its functions. There may be other reports of kinds of information which the committee may find necessary for the proper conduct of operations under the order. For example, the committee may wish information on domestic and export shipments, including shipments of kiwifruit to U.S. locations for subsequent exportation. Also, it may be desirable for the committee to collect information on kiwifruit in inventory and the length of storage. Therefore, the order should authorize the committee, with the approval of the Secretary, to require each handler to furnish such information as it finds necessary to perform its duties under the order.

The order should require each handler to maintain such records of the kiwifruit received and disposed of as may be necessary to verify the reports the handler submits to the committee. All records should be maintained for two fiscal years after the fiscal year in which the transactions occurred.

The testimony was that this was a shorter time requirement than that imposed by the commission, however, two years should provide ample opportunity for the committee to undertake any audit of a handler's records. Those records should be sufficient to demonstrate compliance with the order and should include any document necessary to validate a handler's reports.

All reports and records submitted by handlers would be required to be kept confidential and the contents disclosed to no person other than the Secretary and persons designated by the Secretary. Under certain circumstances, release of information compiled from reports may be helpful to the committee and to the industry generally in planning operations under the order. However, any information released should be on a composite basis, and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position of business operations of individual handlers.

(g) Except as provided in the recommended order, no handler should be permitted to handle kiwifruit, the handling of which is prohibited by such order or prohibited by any regulations issued under such order. If the program is to operate effectively, compliance with its requirements is essential and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler could be demoralizing to those handlers who are in compliance and could impair the effective operation of the program. The record evidence is that the proposed marketing agreement and order is so constructed to permit the committee to effectively carry out its compliance function in a comprehensive, but equitable manner.

(h) The provisions of §§ —.62 through —.70 of the order as contained in the notice of hearing and hereinafter set forth in the recommended order, are common to marketing agreements and orders now operating. All such provisions are incidential to and not inconsistent with the act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the act. The record evidence supports inclusion of each such provision as proposed in the notice of hearing. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § —.62 Right of the Secretary; § —.63 Termination; § —.64 Proceedings after termination; § —.65 Effect of termination or amendment; § —.66 Duration of immunities; § —.67 Agents; § —.68 Derogation; § —.69 Personal liability; and § —.70 Separability. Those provisions applicable to the marketing agreement only are: § —.71 Counterparts; § —.72 Additional parties; and § —.73 Order with marketing agreement. The order should prove that the Secretary conduct a periodic referendum every six years, beginning in 1990. The proponents testified that such a provision is consistent with the commission's referendum requirement and will allow sufficient opportunity for growers to express their views. In any referendum conducted pursuant to § —.63 the Secretary shall terminate the program when termination is favored by a majority of the growers who, during the current marketing season, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. The criteria for termination is identical to that contained in the Act and should be adopted.

Rulings on Briefs of Interested Persons. At the conclusion of the hearing, the Administrative Law Judge fixed April 13, 1984, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing. On March 26, 1984, the Judge extended that final date to April 23, 1984. The following persons and organizations submitted documents: Marting D. Hamilton, Stanislaus Growers and Packers; Richard M. and Barbara K. Peekema, Peekema Bros.; Carl A. Pescosolido, Jr., Cal Ranch, and James A. Moody, Capital Legal Foundation;

Fred M. Shanks, James Mills Growers Service Company and North State Kiwi Packers; and George H. Soares for Kiwi Growers of California, Inc.

These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth herein. To the extent that any suggested findings or conclusions filed by interested persons are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or to reach such conclusions are denied. In addition to the issues already discussed, it was agreed that the proposed marketing order would violate both the "taking" and the "equal protection clause" of the Constitution. Such constitutional challenges have long been put to rest by the courts, and at present there are a number of Federal District Court, Circuit Court, as well as Supreme Court decisions upholding the validity of the act and marketing orders promulgated thereunder.

Marketing Agreement and orders. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, Regulating the Handling of Kiwifruit Grown in California," and "Order Regulating the Handling of Kiwifruit Grown in California". These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision, except the annexed marketing agreement, be published in the **Federal Register**. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed.

Referendum order. It is hereby directed that a referendum be conducted for the marketing order in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order regulating the handling of kiwifruit grown in California is approved or favored by the producers as defined under the terms of the order, who during the representative period were engaged in the production of kiwifruit in the aforesaid production area.

The representative period is hereby determined to be August 1, 1983, through July 30, 1984.

The agents of the Secretary to conduct such referenda are hereby designated to be William B. Blackburn and Gilbert P. Muck, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 214287, Sacramento, California 95821. The referenda shall be conducted between August 31 and September 10, 1984.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit, California.

Signed at Washington, D.C. on August 21, 1984.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order [1] Regulating the Handling of Kiwifruit Grown in California
Finding and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held in Sacramento, California, on February 6–15, 1984, upon the proposed marketing agreement, and proposed marketing order regulating the handling of kiwifruit grown in California. Upon the basis of the record, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said marketing agreement and order regulate the handling of kiwifruit grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of kiwifruit grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of kiwifruit grown in the production area, as defined in said marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

It is, therefore, ordered, That, on and after the effective date thereof, all handling of kiwifruit grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order and agreement as follows (Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.):

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and orders have been met.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Definitions

§ 920.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated.

§ 920.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 920.3 Person.

"Person" means an individual, partnership, corporation, association or any other business unit.

§ 920.4 Production area.

"Production area" means the State of California.

§ 920.5 Kiwifruit.

'Kiwifruit" means all varieties of *Actinidia chinensis,* Planch, commonly called kiwifruit, or kiwi, grown in the production area.

§ 920.6 Varieties.

"Varieties" means and includes all classifications or subdivisions of kiwifruit.

§ 920.7 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the 12-month period beginning on August 1 of one year and ending on the last day of July of the following year or such other period as the committee, with the approval of the Secretary, may prescribe.

§ 920.8 Committee.

"Committee" means the Kiwifruit Administrative Committee established pursuant to § 920.20.

§ 920.9 Grower.

"Grower" is synonymous with producer and means any person who produces kiwifruit for the fresh market

and who has a proprietary interest therein.

§ 920.10 Handler.

"Handler" is synonymous with shipper and means any person (except a common or contract carrier transporting kiwifruit owned by another person) who handles kiwifruit.

§ 920.11 Handle.

"Handle" and ship are synonymous and mean to sell, consign, deliver, or transport kiwifruit, or to cause kiwifruit to be sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the sale of kiwifruit on the vine, the transportation within the production area of kiwifruit from the vineyard where grown to a packing facility located within such area for preparation for market, or the delivery of such kiwifruit to such packing facility for such preparation.

§ 920.12 District.

"District" means the applicable one of the following described subdivisions of the production area or such other subdivision as may be prescribed pursuant to § 920.31:

(a) "District 1" shall include the counties of Siskiyou, Modoc, Shasta, Lassen, Tehama, Plumas, and Butte (with the exception of that area set aside as "District 2").

(b) "District 1" shall include the 95948 postal zip code area known as Gridley (and the surrounding area), incorporating the area located within the following boundaries: The area west of the Feather River; north of the Butte/Sutter county line; east of Pennington and Riley Roads; and south of Farris Road, Ord Ranch Road and Gridley Avenue.

(c) "District 3" shall include the counties of Yuba, Sutter, Sierra, Nevada, and Placer.

(d) "District 4" shall include the counties Del Norte, Humboldt, Trinity, Mendocino, Lake, Sonoma, Marin, Napa, Solano, Yolo, Colusa and Glenn.

(e) "District 5" shall include the counties of San Joaquin, Calaveras, Tuolumne, Merced, Stanislaus, Contra Costa, El Dorado, Amador, Sacramento, Alpine, San Francisco, Alameda, San Mateo, Santa Clara, Santa Cruz, San Benito and Monterey.

(f) "District 6" shall include the counties of Mono, Mariposa, Madera, Fresno and Kings.

(g) "District 7" shall include the counties of Tulare and Inyo.

(h) "District 8" shall include the counties of San Luis Obispo, Santa Barbara, San Bernardino, Kern, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial.

§ 920.13 Pack.

"Pack" means the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container, or any combination thereof.

§ 920.14 Container.

"Container" means a box, bag, crate, lug, basket, carton, package, or any other type of receptacle used in the packaging or handling of kiwifruit.

Administrative Body

§ 920.20 Establishment and membership.

There is hereby established a Kiwifruit Administrative Committee consisting of 12 members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he or she is an alternate. The 12 member committee shall be made up of the following: One public member (and alternate); One member (and alternate) from each of the eight California districts; three additional committee members and their alternates to be selected from the three districts with three highest productions based on the production in the prior fiscal period: *Provided,* That no more than a total of two members and their alternates shall represent any one district. With the exception of the public member and alternate, all members and their respective alternates shall be growers or employees of growers.

§ 920.21 Term of office.

The term of office of each member and alternate member of the committee shall be two years from the date of their selection and until their successor has qualified; provided, however, that of the first members of the committee, one-half shall serve for one year, and one-half shall serve for two years, with the determination of term of each member to be made by lot at the time of selection. Except as otherwise provided in this Order, the terms shall begin August 1 and end on the last day of July. Members and alternates may serve up to four consecutive two year terms on the committee.

§ 920.22 Nomination.

(a) *Initial members.* Nominations for each of the initial members, with the exception of the public member and alternate, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the committee responsible for promulgation of this part. Such nominations may be made by means of group meetings of the growers concerned in each district. Such nominations, if made, shall be filed with the Secretary no later than the effective date of this part. In the event nominations for initial members and alternate members of the committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 920.20.

(b) *Successor members.* (1) The committee shall hold or cause to be held, not later than July 15 of each year, a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. These meetings shall be supervised by the committee which shall prescribe such procedure as shall be reasonable and fair to all persons concerned.

(2) Only growers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the nomination and election of nominees for members and their alternates.

(3) A particular grower shall be eligible for membership as member or alternate member to fill only one position on the committee.

(c) The public member and alternate member shall be selected by the Secretary in his discretion.

§ 920.23 Selection.

From the nominations made pursuant to § 920.22, or from other qualified persons, the Secretary shall select the 12 members of the committee and an alternate for each such member, with the exception of the public member and alternate member, who shall be selected by the Secretary in his discretion.

§ 920.24 Failure to nominate.

If nominations are not made within the time and in the manner prescribed in §920.22, the Secretary may, without regard to nominations, select the members and alternate members of the committee on the basis of the representation provided for in §920.20.

§ 920.25 Acceptance.

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by

advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 920.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected, or, in the case of the public member and alternate, selected by the Secretary in his discretion, in the manner specified in §§ 920.22 and 920.23. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of representation provided for in § 920.20.

§ 920.27 Alternate members.

An alternate member of the committee, during the absence of either the member for whom that individual is an alternate, or, in the case of districts with two grower positions on the committee, the other member and that member's alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, the alternate of such member shall act for him or her until a successor for such member is selected and has qualified.

§ 920.30 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;

(c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 920.31 Duties.

The committee shall have, among others, the following duties:

(a) To select a chairperson and such other officers as may be necessary, and to define the duties of such officers;

(b) To appoint such employees, agents and representatives as it may deem necessary, and to determine compensation and to define the duties of each;

(c) To submit to the Secretary as soon as practicable after the beginning of each fiscal period a budget for such fiscal period, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such period;

(d) To keep minutes, books and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To cause its books to be audited by a public accountant at least once each fiscal year and at such times as the Secretary may request;

(g) To act as intermediary between the Secretary and any grower or handler;

(h) To investigate and assemble data on the growing, handling and marketing conditions with respect to kiwifruit;

(i) To submit to the Secretary the same notice of meetings of the committee as is given to its members;

(j) To submit to the Secretary such available information as may be requested;

(k) To investigate compliance with the provisions of this part;

(l) With the approval of the Secretary, to redefine the districts into which the production area is divided and to reapportion the representation of any district on the committee: *Provided,* That any such changes shall reflect, insofar as practicable, shifts in kiwifruit production within the districts and the production area.

§ 920.32 Procedure.

(a) Eight members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided,* That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ 920.50 through 920.55, of this part shall require at least eight concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, and any votes so cast shall be confirmed promptly in writing: *Provided,* That if an assembled meeting is held, all votes shall be cast in person.

§ 920.33 Expenses and compensation.

(a) Except for the public member and alternate, the members of the committee, and alternates when acting as members, shall serve without compensation but shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part: *Provided,* That the committee at its descretion may request the attendance of one or more alternates, including the public alternate, at any or all meetings notwithstanding the expected or actual presence of the respective members and may pay expenses as aforesaid.

(b) The public member and alternate shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part, and shall receive per diem compensation established by the committee.

§ 920.34 Annual report.

The committee shall, as soon as is practicable after the close of each marketing season, prepare and mail an annual report to the Secretary and make a copy available to each grower and handler who requests a copy of the report.

Expenses and Assessments

§ 920.40 Expenses

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired in the manner prescribed in § 920.41.

§ 920.41 Assessments.

(a) As his or her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles kiwifruit during such period shall pay to the committee, upon demand, assessments on all kiwifruit so handled. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative. If a handler does not pay any assessment within the time prescribed by the committee, the assessment may be subject to an interest charge at a rate prescribed by the committee with the approval of the Secretary.

(b) The Secretary shall fix the rate of assessment to be paid by each such

person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred: *Provided,* That any assessment, excluding any amount collected pursuant to § 920.55(c), must be limited to a maximum assessment rate of three and one-half cents per flat, or the equivalent thereof. The Secretary may increase this maximum rate in each succeeding year after the initial year of order operation by the Consumer Price Index (cost of living) for California as published by the Bureau of Labor Statistics. Such increase shall be applied to all kiwifruit handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operting income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes.

§ 920.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected: *Provided,* That any sum paid by a person in excess of his or her pro rata share of the expenses during any fiscal period may be applied by the committee at the end of such fiscal period to any outstanding obligations due the committee from such person.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That funds already in the reserve do not equal approximately one fiscal period's expenses. Such reserve funds may be used: (i) To defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal year when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any or all provisions of this part are suspended or are inoperative; and, (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) all funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his or her possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

Regulations

§ 920.50 Marketing policy.

(a) Each season prior to making any recommendations pursuant to 920.51, the committee shall submit the Secretary a report setting forth its marketing policy for the ensuing marketing season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of kiwifruit within the production area;

(2) The expected general quality and size of kiwifruit in the production area and in other areas;

(3) The expected demand conditions for kiwifruit in different market outlets;

(4) The expected shipments of kiwifruit produced in the production area and in areas outside the production area;

(5) Supplies of competing commodities;

(6) Trend and level of consumer income;

(7) Other factors having a bearing on the marketing of kiwifruit; and

(8) The type of regulations expected to be recommended during the marketing season.

§ 920.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of any variety or varieties of kiwifruit in the manner provided in § 920.52 it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for kiwifruit during the period or periods when it is proposed that such regulations should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 920.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of kiwifruit whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of kiwifruit grown in the production area;

(2) Limit the shipment of kiwifruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of kiwifruit.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

§ 920.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 920.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of kiwifruit in order to effectuate the declared policy of

the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 920.54 Special purpose shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 920.41, 920.52, 920.53 and 920.55 and the regulations issued thereunder, handle kiwifruit: (1) For consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements, under or established pursuant to §§ 920.41, 920.52, 920.53 or 920.55, the handling of kiwifruit: (1) To designated market areas; (2) for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects); or, (3) in such minimum quantities or types of shipments, as may be prescribed.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it may deem necessary to prevent kiwifruit handled under the provisions of this section from entering the channels of trade for other than the specific purposes authorized by this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle kiwifruit pursuant to this section, and that such applications be accompanied by a certification by the intended purchaser or receiver that the kiwifruit will not be used for any purpose not authorized by this section.

§ 920.55 Inspection and certification.

(a) Whenever the handling of any variety of kiwifruit is regulated pursuant to § 920.52 or § 920.53, each handler who handles kiwifruit shall, prior thereto, cause such kiwifruit to be inspected by the Federal or Federal-State Inspection Service and certified as meeting the applicable requirements of such regulation: *Provided,* That inspection and certification shall not be required for kiwifruit which previously have been so inspected and certified if such prior inspection was performed within such period as may be established pursuant to paragraph (b) of this section. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such kiwifruit. The committee may, with the approval of the Secretary, prescribe rules and regulations waiving the inspection requirements of this section where it is determined that inspection is not available: *Provided,* That all shipments made under such waiver shall comply with all regulations in effect.

(b) The committee may, with the approval of the Secretary, establish a period prior to shipment during which the inspection required by this section must be performed.

(c) The committee may enter into an agreement with the Federal and Federal-State Inspection Services with respect to the costs of the inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Reports

§ 920.60 Reports.

(a) Each handler shall furnish to the committee, at such times and for such periods as the committee may designate, certified reports covering, to the extent necessary for the committee to perform its functions, each shipment of kiwifruit as follows:

(1) The name of the shipper and the shipping point;

(2) The car or truck license number (or name of the trucker), and identification of the carrier;

(3) The date and time of departure;

(4) The number and type of containers in the shipment;

(5) The quantities shipped, showing separately the variety, size and grade of the fruit;

(6) The destination;

(7) Identification of the inspection certificate or waiver pursuant to which the fruit was handled.

(b) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such times as it may prescribe, such other information as may be necessary to enable the committee to perform its duties under this part.

(c) Each handler shall maintain for at least two succeeding fiscal years, such records of the kiwifruit received and disposed of by such handler as may be necessary to verify the reports submitted to the committee pursuant to this section.

(d) All reports and records submitted by handlers pursuant to the provisions of this section shall be received by, and at all times be in custody of, one or more designated employees of the committee. No such employee shall disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available to any person, in the form of general reports in which the identities of the individual handler furnishing the information is not disclosed but may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous Provisions

§ 920.61 Compliance.

(a) Except as provided in this part, no person shall handle kiwifruit, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle kiwifruit except in conformity with the provisions of this part and the regulations issued under this part.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives shall have access to any handler's premises during regular business hours, and shall be permitted at any such times to inspect such premises and any kiwifruit held by such handler, and any and all records of the handler with respect to his or her acquisition, sales, uses and shipments of kiwifruit. Each handler shall furnish all labor and equipment necessary to make such inspections.

§ 920.62 Right of the Secretary.

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 920.63 Termination.

(a) The Secretary may at any time terminate the provisions of this part by giving at least one day's notice by means of a press release or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided,* That such majority has, during the current marketing season, produced more than 50 percent of the volume of the kiwifruit which were produced within the production area for shipment in fresh form. Such termination shall become effective on the first day of August subsequent to the announcement thereof by the Secretary.

(d) The committee shall consider all petitions from growers submitted to it for termination of this part provided such petitions are received by the committee prior to February 1 of the then current fiscal period. Upon recommendation of the committee received not later than April 1 of the then current fiscal period, the Secretary shall conduct a referendum among the growers prior to July 15 of such fiscal period to ascertain whether continuance of this part is favored by producers.

(e) The Secretary shall conduct a referendum within the period beginning May 15, 1990, and ending July 15, 1990, to ascertain whether continuance of this part is favored by the growers as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum within the same period of every sixth fiscal period thereafter.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 920.64 Proceeding after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee of the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

§ 920.65 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violation.

§ 920.66 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 920.67 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 920.68 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 920.69 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 920.70 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

***§ 920.71 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 920.72 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 920.73 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of kiwifruit in the same manner as is provided for in this agreement.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 332 and 337

Proposed Exemption From Provisions Prohibiting a Bank From Guaranteeing or Acting as Surety for the Obligations of Others

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") proposes to amend its regulations which

prohibit an insured nonmember bank from guaranteeing the obligations of third parties. The amendments are in the form of an exemption and are designed to allow banks to do two things: (1) To issue check guaranty cards, and (2) to sponsor customers in credit card agreements with other banks. A number of banks have asked that the present restrictions exclude check guaranty cards and customer-sponsored credit card accounts.

The proposed amendments would allow banks to enter into such undertakings as long as they meet certain criteria pertaining to safety and soundness. The language of the proposed amendments is broad enough to include arrangements that have similar characteristics, but have been termed differently.

DATE: Comments must be submitted on or before October 23, 1984.

ADDRESS: Comments may be mailed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Fredric H. Karr, Attorney, Legal Division, Federal Deposit Insurance Corporation, 550 17th St., NW., Washington, D.C. 20429, (202) 389–4171.

SUPPLEMENTARY INFORMATION: The purpose of these amendments is to allow insured nonmember banks to engage in certain practices which are technically in violation of the FDIC's regulations. The FDIC has in mind two specific practices, although the exemption is broad enough to include other arrangements of a similar nature.

The first practice involves so-called check guaranty card programs. These programs can be created by banks, or else the banks can purchase the program through a marketing agreement with an independent company. Regardless of which program the bank chooses, its characteristics are basically the same. The customer must fill out an application for the card. If the applicant wants to obtain an overdraft option together with the card, he/she must fill our a credit application. This is an option, however, and is not a feature of the check guaranty program itself. In some programs, the card can also be used to operate automatic teller machines which allow the customer to withdraw and/or deposit cash in his/her account.

Although various programs have been developed by different banks, these programs have similar characteristics. The card may or may not have a photograph of the customer. The agreements usually require, however, that the guaranteed check be personalized with the cardholder's name. The check must be from the bank that issues the card. The customer's signature, any date of expiration, any verification instructions, and any dollar amount limit for the checks are printed on the card.

The banks that use the system contend that the card serves only as a form of customer identification. The retailer to whom the card is presented, however, has a legal right to rely on the bank's assurance that the customer has sufficient funds to cover his/her check.

The FDIC is of the opinion that these "guarantees" of customer credit are either prohibited outright by 12 CFR 332.1(d) which enjoins a bank from guaranteeing or becoming a surety upon the obligation of others or, at the very least, are similar in nature to standby letters of credit and are subject to the restrictions of 12 CFR 337.2. These "guarantees", however, represent small risk to the safety and soundness of the bank. The low maximum limits typically imposed by banks on the card make it fairly difficult for a cardholder to write enough checks to amass large amounts of debt. Also, the verification procedure banks elect to impose should minimize the banks' exposure.

The second practice is the sponsorship of a customer in the credit card program offered by another bank. In this type of arrangement, a bank issues a credit card to a customer of the sponsoring bank. The sponsoring bank in turn assumes all the responsibility in case of a default by the cardholder. The sponsoring bank lends its credit rating to its customers while the correspondent bank does the billing and receives the interest. This practice violates 12 CFR 332.1(d).

One of the problems with customer-sponsored credit card accounts is that neither the sponsoring bank nor the issuing bank may have performed a credit investigation of the applicants. Failure to screen an applicant before issuing a card could expose the sponsoring bank to an unnecessarily high degree of risk. The exemption attempts to minimize this exposure by requiring credit checks on each applicant by the sponsoring bank prior to issuance of the guarantee of the card-issuing bank.

The FDIC is aware that both types of practices are in limited use throughout the country, but has not been able to assess what, if any, industry standards apply to their operation. Although the criteria in the exemption are believed necessary for safety and soundness reasons, they may add to the costs of compliance in the case of banks which do not already have similar standards for their programs. While the FDIC believes that most banks with check guaranty or customer-sponsored credit card programs do have similiar standards, the question of compliance cost is one of which public comment is desirable. There may be alternate less costly criteria which would be just as effective. There may be no need for certain criteria. The FDIC, therefore, invites comments on these issues.

The FDIC certifies that these amendments will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory-flexibility analysis is not required. Currently, banks that offer these programs must comply with the disclosure requirements of § 337.2(d). The amendment would exempt banks from these disclosures, thus reducing their costs. Banks that already offer these programs are not required to make or keep new disclosures or records. Banks that decide to offer these services may set up the accounting systems best suited to their needs.

The effects of this amendment on competition will be positive. Small banks which do not have the resources to offer credit cards to their customers will be able to do so through the customer-sponsored credit card account. This will enable them to compete with larger banks that can and do issue credit cards.

Consumers should benefit from the proposed amendment because check guaranty card arrangements will make it easier for them to purchase goods with their checks. The customer-sponsored credit card accounts will allow some bank customers access to credit cards without forcing them to change their other banking relationships.

The FDIC believes that the regulation will not have a significant adverse effect on a substantial number of small entities. This view, however, is based on the nature of the amendment, the assumption that most banks have standards for their programs that are similar to those proposed by the FDIC, and, the limited amount of information available on programs conducted by small banks.

Alternatives to the amendments are (1) to enforce the regulations and force insured nonmember banks to either modify or dismantle their existing programs; (2) to maintain the status quo, allowing at least some nonmember banks to continue practices that do not conform to FDIC regulations; or (3) to revoke Part 332 in its entirety.

The first alternative is costly and impractical in view of the widespread

use of these arrangements and the limited risks involved. The second alternative is not acceptable because both types of undertakings fall within the regulatory prohibitions.

The third alternative on which the FDIC solicits public comment is whether Part 332 is necessary at all and hence whether it should be revoked. If this particular proposal is adopted without revoking Part 332, it will mean that there will be other exceptions added to Part 332, and the issue is then raised as to whether the exceptions are really encompassing the rule. Another reason supporting reexamination of Part 332 is the general atmosphere in the 1980s of the deregulation of banking. Part 332 generally prohibits State nonmember insured banks from engaging in a surety business, insuring the fidelity of others, engaging in insuring, guaranteeing or certifying titles to real estate, or guaranteeing or becoming surety upon the obligations of others. The Board specifically invites comment on whether the prohibition of activities of this kind would best be left to the State laws that prescribe the powers of State-chartered banks. Additionally, comment is invited on why or why not the enumerated powers should be found to be inconsistent with the purposes of the Federal Deposit Insurance Act.

List of Subjects

12 CFR Part 332

Banks, banking, Credit, Federal Deposit Insurance Corporation, State nonmember banks.

12 CFR Part 337

Banks, banking, Credit, Federal Deposit Insurance Corporation, Securities, State nonmember banks.

PART 332—POWERS INCONSISTENT WITH PURPOSES OF FEDERAL DEPOSIT INSURANCE LAW

12 CFR Part 332 is amended as follows:

1. The authority citation for Part 332 reads as follows:

Authority: Secs. 6, 9, 64 Stat. 876, 881; 12 U.S.C. 1816, 1819.

2. A new § 332.3 is added to read as follows:

§ 332.3 Exemption.

Check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are retail banking deposit customers are exempted from § 332.1 of this subchapter: *Provided, however,* that the bank performs a credit check on the individuals before undertaking to guarantee his/her obligations and that any such arrangement to which a bank's principal shareholders, directors, or executive officers are a party be in compliance with Federal Reserve Regulation O (12 CFR Part 215).

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

12 CFR Part 337 is amended as follows:

3. The authority citation for Part 337 reads as follows:

Authority: Sec. 9, 64 Stat. 881–882, 12 U.S.C. 1819; Sec. 18(j)(2), 92 Stat. 3664, 12 U.S.C. 1828(j)(2); Sec. 442, 96 Stat. 1469, Pub. L. 97–320.

4. A new § 337.5 is added to read as follows:

§ 337.5 Exemption.

Check guaranty card programs, customer-sponsored credit card programs, and similar arrangements in which a bank undertakes to guarantee the obligations of individuals who are retail banking deposit customers are exempted from § 337.2 *Provided, however,* that the bank performs a credit check of the individual before undertaking to guarantee his/her obligations and that any such arrangement to which a bank's prinicipal shareholdres, directors, or executive officers are a party be in compliance with Federal Reserve Regulation O (12 CFR Part 215).

§§ 337.6—337.9 [Removed]

By Order of the Board of Directors, August 13, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-22572 Filed 8-23-84; 8:45 am]

BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 116

Policies of General Application; Coastal Barrier Resources

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This subpart is established by the SBA to advise the public of the Agency's responsibilities under Section 5 of the Coastal Barrier Resources Act of 1982, which prohibits direct or indirect Federal financial assistance under authority of any Federal law within the Coastal Barrier Resources System, including, but not limited to the construction or purchase of any structure, appurtenance, facility or related infrastructure as well as the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, or erosion prevention of, any system unit. The following programs are subject to the legislation: All financial assistance under Subsections 7 (a) and (b) of the Small Business Act, and Titles III, IV, and V of the Small Business Investment Act, as amended, including lease, surety bond and pollution control guarantees, small business investment companies, and development companies.

Since this subpart merely advises the public of the applicability of Pub. L. 97–348, 16 U.S.C. 3501 *et seq.* to SBA's programs it is subject neither to the requirements of the Regulatory Flexibility Act nor of Executive Order 12291.

There are no reporting or recordkeeping requirements subject to OMB approval in this rule.

DATE: Comments must be received on or before September 24, 1984.

ADDRESS: Written comments should be addressed to the Associate Administrator for Finance and Investment, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Edward J. Myerson, Deputy Associate Administrator for Finance and Investment, Small Business Administration 1441 L Street, NW., Washington, D.C. 20416, (202) 653–6470

List of Subjects in 13 CFR Part 116

Flood insurance, Flood plains, Lead poisoning, Small Business Administration, Small businesses, Veterans, Coastal barrier system.

Accordingly, pursuant to 16 U.S.C. 3501 *et seq.* and 15 U.S.C. 634(b)(6), it is proposed to add a new Subpart E to Part 116, as follows:

Subpart E—Coastal Barrier Resources Act

§ 116.40 Purpose and scope.

This subpart describes the application of the Coastal Barrier Resources Act of 1982 (Act), to SBA financial assistance programs. The Act prohibits direct or indirect Federal financial assistance under authority of any Federal law within the Coastal Barrier Resources System, including, but not limited to the construction or purchase of any structure, appurtenance, facility or related infrastructure as well as the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, or

erosion prevention of, any system unit. The following programs are subject to the legislation: All financial assistance under Subsections 7 (a) and (b) of the Small Business Act, and Titles III, IV, and V of the Small Business Investment Act, as amended, including lease, surety bond and pollution control guarantees, small business investment companies, and development companies.

§ 116.41 Definition of Coastal Barrier Resources System.

Coastal Barrier Resources System. "Coastal Barrier Resources System" means those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on maps entitled "Coastal Barrier Resources System," enacted by Congress, and on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, Department of the Interior.

(Catalog of Federal Domestic Assistance Programs, Nos. 59.001 through 3, 59.008, 59.010 through 14, 59.016 through 18, 59.020 through 25, 59.027 through 31)

Dated: August 2, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84-22482 Filed 8-23-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-ASW-31]

Airworthiness Directives; Sikorsky S-61 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revision to notice of proposed rulemaking (NPRM).

SUMMARY: This action revises a previously issued NPRM published April 5, 1984 (49 FR 13543), by extending the calendar date compliance time limit proposed in that notice to accomplish modification on the main transmission used in Sikorsky S-61 helicopters.

DATE: Comments must be received on or before September 28, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, or delivered in duplicate to: 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas 76106. Comments must be marked: Docket No. 83-ASW-31.

The manufacturer's overhaul and maintenance instructions pertaining to the gearshaft alignment procedures referenced in this proposed AD may be obtained from Sikorsky Aircraft, North Main Street, Stratford, Connecticut 06602.

A copy of this document is contained in the Rules Docket in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Building 3B, Room 158, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Wayne E. Gaulzetti, ANE-153, FAA, New England Region, Boston Aircraft Certification Branch, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7332.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the revised proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the revised proposed rule. The revised proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule as revised. All comments submitted will be available, both before and after the closing date for comments, in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 83-ASW-31." The postcard will be date/time stamped and returned to the commenter.

On August 15, 1983 (48 FR 36806), the FAA published airworthiness directive (AD) 83-17-04, applicable to all Sikorsky Model S-61 helicopters, which prescribed repetitive 10-hour inspections of the oil screen and the magnetic chip detector in the transmission in these helicopters. These inspections were required to intercept impending failure of the spur gear in the power input section of the transmission. Subsequently, alternative inspection procedures have been developed and an improved replacement spur gear and a transmission case modification procedure became available to alleviate the need for the repetitive inspections. These items are the subject of an NPRM published April 5, 1984 (49 FR 13543), which also proposes to establish June 30, 1985, as the date after which no further flight may be conducted without installation of the improved spur gear and modification of the transmission case. After publication of this NPRM, Sikorsky Aircraft advised the FAA that an additional 18 months beyond the June 30, 1985, date set by the NPRM would be needed to accomplish fleet-wide installation of the new spur gear and the transmission case modification. Therefore, by this revision to the NPRM, the compliance date for these activities would be extended to December 30, 1986.

Note.—The FAA has determined that this revision to a proposed regulation provides only for extension of the time allotted for compliance with a modification requirement proposed for this helicopter. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation because the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Revision

Accordingly, paragraph (e) of the NPRM published April 5, 1984 (49 FR 13543), Docket No. 83-ASW-31, pertaining to Sikorsky Model S-61 helicopters is revised as follows:

* * * * *

(e) Replace spur gear P/N S6135-20608-1 with spur gear P/N S6135-20608-3 and comply with Sikorsky Overhaul and Repair Instruction 6135-342, Revision A, or later revision or FAA-approved equivalent before further flight after December 30, 1986. The inspections of paragraphs (a), (b), and (c) may be discontinued for helicopters modified as required by this paragraph.

* * * * *

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) [Revised, Pub. L. 97-449, January 12, 1983]; 14 CFR 11.85)

Issued in Fort Worth, Texas, on August 6, 1984.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 84-22487 Filed 8-23-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-ANE-6]

Airworthiness Directive; Facet (Marvel-Schebler) All Model Carburetors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD) that would require all carburetor composite floats to be replaced with metal floats by January 1, 1986, on all Facet (Marvel-Schebler) model carburetors. The proposed AD will affect most operators of small general aviation aircraft using reciprocating engines. The proposed AD is needed to prevent fuel absorption of the composite floats that causes an unsafe weight increase affecting fuel flow which could result in engine start fires or inflight engine stoppage.

DATE: Comments must be received on or before November 30, 1984.

ADDRESSES: Comments on the proposal may be mailed in duplicate to Office of Regional Counsel, Attn: Rules Docket No. 84-ANE-6, FAA, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments may be inspected weekdays, except federal holidays, between 8:00 a.m. and 4:30 p.m.

The applicable service bulletins may be obtained from Facet Filter Products Division, Facet Enterprises Incorporated, 434 West Twelve Mile Road, P. O. Box 135, Madison Heights, Michigan 48071-2498.

Copies of the service bulletins are contained in the Rules Docket at the above FAA address.

FOR FURTHER INFORMATION CONTACT: Mr. Doral Miner, Chicago Aircraft Certification Office, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone 312-694-7031.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All comunications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rules. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket No. 84-ANE-6." The post card will be date/time stamped and returned to the commenter.

The FAA has determined that composite carburetor floats are absorbing fuel and becoming less buoyant, thus adversely affecting the carburetor's ability to control fuel level, leading eventually to carburetor flooding. Although the early stages may be detected by certain signs, such as, a rough engine at low throttle settings, inconsistent engine shutdown or evidence of fuel leakage, too often the problem is not detected until serious carburetor flooding occurs. In addition to several carburetors returned from the field by GADO/FSDO offices, a five year M or D computer run shows that 66% of the approximately 200 service difficulties reported were related to fuel saturated composite floats.

Facet Enterprises, Incorporated, recent purchase of the Marvel-Schebler carburetor type design, has obtained a type design change to reintroduce brass pontoon floats with new improved detailed design and quality control. This change will provide a float compatible with the chemistry of current blends of aviation gasoline or autogas. The proposed AD would require a retrofit to the metal floats by January 1, 1986.

Facet is supplying a low cost kit in sufficient quantity to prevent any grounding of aircraft. The proposed AD will make this change mandatory for safety reasons on some 120,000 carburetors. It is estimated that an average of four hours of labor will be required to comply with this AD. The economic impact will therefore, be approximately, $57/kit + $35/hr × 4 hrs labor = $197 per engine or $23,640,000 for the general aviation community. Considering first an operator of single engine aircraft, the above cost would require a fleet of 17 aircraft to have a significant economic impact on small entities. An operator of all twin engine aircraft would need a fleet of 9 aircraft for this AD to have a significant economic impact on small entities. While 9 aircraft or less is the size threshold to be considered a small entity, it is unlikely an operator with 9 twin engine aircraft would qualify for such a classification. Additionally, compliance with this AD is a one-time cost and any additional cost associated with the carburetor float would be part of normal maintenance.

Therefore, the FAA has determined that this proposed AD will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Safety, General Aviation.

The Proposed Amendment

Accordingly, the FAA proposes to amend Paragraph 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Facet (Marvel-Schebler): Applies to all model carburetors with composite floats.

Compliance required by January 1, 1986.

To prevent unsafe operation of affected carburetors due to adverse fuel flow and/or leakage caused by fuel absorption of the composite floats, accomplish the following:

Modify and reidentify affected carburetors by installing metal floats kits 666-915, 666-916, or 666-917, as applicable, in accordance with Facet Service Manual Instructions. Facet Service Bulletin No A1-84A dated May 19, 1984, applies to this retrofit requirement.

AD 66-05-04, effective February 1, 1966, is cancelled.

Special flight permits may be issued to operate aircraft to a base where compliance with this AD can be accomplished.

Upon request of the operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, Central Region.

The FAA will request the permission of the Federal Register to incorporate by reference the manufacturer's specifications and procedures identified and described in this document.

The Manufacturer's specifications and procedures are available upon request to Facet Products Division, Facet Enterprises, Incorporated, 434 West Twelve Mile Road, P.O. Box 135, Madison Heights, Michigan 48071-2498. These documents may also be examined at the New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts 01803. A historical file on this AD is maintained by the FAA at the New England Regional Office.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.85)

Note.—The FAA has determined for the reasons stated in the "SUPPLEMENTARY INFORMATION" section that this document involves a proposed regulation which is not considered to be major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and the FAA certifies if promulgated, that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation proposed for the action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Issued in Burlington, Massachusetts, on June 22, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-22489 Filed 8-23-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Extension of comment period.

SUMMARY: This notice extends the period of comment on the proposed rule regarding claims for medical benefits under the Federal Employees' Compensation Act published in the Federal Register on June 7, 1984 (49 FR 23658). The proposed rule would clarify the procedures for submitting bills for medical services provided to injured Federal employees and would establish a schedule designed to contain the fees charged for such services. The comment period is being extended from August 6, 1984, to October 5, 1984, in response to a request from the American Medical Association that additional time was needed to prepare comment.

DATE: Comments must be submitted on or before October 5, 1984.

ADDRESS: Send written comments to Thomas M. Markey, Deputy Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Deputy Associate Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S-3229, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone (202) 523-7552.

Signed at Washington, DC, this 17th day of August 1984.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 84-22558 Filed 8-23-84; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[OAR-FRL-2659-6]

National Emission Standards for Hazardous Air Pollutants; Standards for Radionuclides

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of New Technical Information.

SUMMARY: The Environmental Protection Agency (EPA) has received additional information which will be considered in developing final national emission standards for radionuclides under Section 112 of the Clean Air Act. This new information includes the transcripts of the meetings of EPA's Science Advisory Board Subcommittee on Risk Assessment for Radionuclides, the final report of the Subcommittee, and new technical data and information pertaining to the source categories for which the Agency has proposed standards. A complete list of available information is provided in the Supplementary Information section of this notice. Those desiring to comment on these documents should follow the instructions given below.

DATE: Comments on information in Section IV of Docket A-79-11 should be received on or before September 21, 1984.

ADDRESS: Comments should be submitted (in duplicate, if possible) to: Central Docket Section (LE-130) Attn: Docket No. A-79-11, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Docket No. A-79-11, which contains all the comments received on the proposed rule and the transcripts of the public hearings and the Science Advisory Board meetings, is located in the West Tower Lobby, Gallery 1, Central Docket Section, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. The docket may be inspected between 8:00 A.M. and 4:30 P.M. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terrence A. McLaughlin, (703) 557-8977, Chief, Environmental Standards Branch (ANR-460), Criteria and Standards Division, U.S. Environmental Protection Agency, Office of Radiation Programs, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: In 1977, Congress amended the Clear Air Act and required EPA to study airborne emissions of radionuclides and decide whether or not they should be regulated under the Clean Air Act. In December 1979, the Agency listed radionuclides as a hazardous air pollutant. On April 6, 1983, (48 FR 15076) the Agency proposed national emission standards for radionuclides under Section 112 of the Act in the following source categories: (1) DOE facilities, (2) NRC-licensed facilities and non-DOE Federal facilities, (3) underground uranium mines, and (4) elemental phosphorus plants. In addition, the Agency proposed not to regulate the following source categories: (1) Coal-fired boilers, (2) phosphate industry, (3) other extraction industries, (4) uranium fuel cycle facilities, uranium mill tailings, and management of high level waste, and (5) low energy accelerators.

In February of this year, the Sierra Club filed suit in the U.S. District Court for the Northern District of California (Sierra Club v. Ruckelshaus, No. C-84-0656-WHO). The suit alleged that EPA was required to promulgate final standards within 180 days of issuing the proposed rules. On July 25, 1984, the Court found in favor of the Sierra Club and directed the Agency to take final action on the proposed rules within 90 days of the date of that order.

Since the time of proposal, several key events have occured which will contribute to the Agency's decisions on the final rules. In December 1983, the Administrator of the Agency formed a Science Advisory Board Subcommittee on Risk Assessment for Radionuclides. The Subcommittee should send it final report to the Administrator by the end of August. This report is expected to offer recommendations which will be considered in the development of the final rules.

Additional new technical data has been gathered which includes the results of radionuclide emission testing at calciners at three elemental phosphorus plants: The FMC plant in Pocatello, Idaho; the Monsanto Plant in Soda Springs, Idaho; and the Stauffer plant in Silver Bow, Montana. These tests provide important new information on the particle size distribution of the radionuclides in the calciner off-gas streams and provide the basis for a new analysis of the cost and effectiveness of control equipment in reducing radionuclide emissions from calciners at elemental phosphorus plants. New information is also available on the cost and effectiveness of methods for reducing radon emissions from underground uranium mines.

The public is requested to comment on all new information found in Section IV of Docket No. A–79–11. The time limitations imposed by the Court order necessitate a short review period for this material. Because some of the technical analyses are still being completed, all reports are not immediately available. Therefore, the following is a list of what the Agency considers to be the most relevant new information and the dates of its availability for public review:

Science Advisory Board Subcommittee

The following material is currently in the docket: (1) Transcripts of all public meetings of the Subcommittee; (2) prepared statements and briefings presented to the Subcommittee; (3) draft report of the Subcommittee and Agency comments; and (4) other associated information. The final report of the Subcommittee and the Agency response will be placed in the docket by September 7, 1984.

Elemental Phosphorus Plant

The following technical reports are currently in the docket: (1) Source Test Plan for Radionuclide Emission Testing of Phosphate Industry Calciners; (2) Emission Testing of Calciner Off-Gases at FMC Elemental Phosphorus Plant, Pocatello, Idaho; (3) Emissions of Lead-210 and Polonium-210 from Calciners at Elemental Phosphorus Plants: FMC Plant, Pocatello, Idaho; (4) Emissions Testing of Calciner Off-Gases at Stauffer Elemental Phosphorus Plant, Silver Bow, Montana; (5) Emissions of Lead-210 and Polonium-210 from Calciners at Elemental Phosphorus Plants: Stauffer Plant, Silver Bow, Montana, (6) Analysis of Achievable Po-210 Emission Reductions and Associated Costs for FMC's Pocatello, Idaho Plant; and (7) Lung Clearance Classification of Radionuclides in Calcined Phosphate Rock Dust.

By September 7, 1984 the docket will contain the following additional reports: (1) Emission Testing of Calciner Off-Gases at Monsanto Elemental Phosphorus Plant, Soda Springs, Idaho; (2) Emissions of Lead-210 and Polonium-210 from Calciners at Elemental Phosphorus Plants: Monsanto Plant, Soda Springs, Idaho; and (10) Analysis of Achievable Po-210 Emission Reductions and Associated Costs for Monsanto's Soda Springs, Idaho Plant.

Underground Uranium Mines

The following technical reports are currently in the docket: (1) Cumulative Ore Production and Radon Release Information for Underground Uranium Mines; (2) Cost Survey for Radon Daughter Control by Ventilation and Other Control Technologies; (3) U.S. Uranium Mining Industry; Background Information on Economics and Emissions; (4) Radon Emissions from Underground Uranium Mines; and (5) Evaluation of Bulkheads for Radon Control.

The following additional reports will be placed in the docket by September 7, 1984: (1) Procedures for Mine Vent Sampling and (2) Model for Emission from Uranium Mine Vents.

Dated: August 20, 1984.

John C. Topping, Jr.,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 84–22536 Filed 8–23–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

46 CFR Part 508

[Docket No. 83–45]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Republic of the Philippines Trade

AGENCY: Federal Maritime Commission.

ACTION: Notice of discontinuance.

SUMMARY: The Federal Maritime Commission discontinues this rulemaking proceeding without prejudice to institute a new rulemaking proceeding, should there be indication of unfavorable conditions in this trade.

DATE: This discontinuance is effective August 24, 1984.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (202) 523–5725.

SUPPLEMENTARY INFORMATION: By a "Notice of Proposed Rulemaking" (Proposed Rule) published on October 7, 1983 (48 FR 45,800), the Commission instituted this proceeding under section 19 of the Merchant Marine Act, 1920 (46 U.S.C. 876) in response to allegations by shippers, third-flag carriers and others that government enforcement of the cargo reservation laws of the Republic of the Philippines had created unfavorable conditions in the foreign oceanborne trade between the United States and the Philippines. The Philippine laws in question require that all government cargo be reserved for transport by Philippine flag carriers, and that 80% of non-government cargo be reserved for flag carriers of the Philippines and of the bilateral trading partner with cross traders limited to the remaining unreserved 20% of non-government cargo.

The Proposed Rule set forth two options as remedies under section 19. Option A would suspend the tariffs of Philippine carriers operating in the United States/Republic of the Philippines trade. Option B would allow Philippine carriers to avoid tariff suspension by obtaining "authorized" status from the Commission. The effect of the Proposed Rule would be to adjust or meet any unfavorable trade conditions by imposing burdens on Philippine carriers equal to those imposed on non-Philippine carriers by Philippine laws and regulations.

A total of 13 comments were received in response to the Proposed Rule. Comments alleging the existence of unfavorable trade conditions or supporting some action under section 19 were received from the following persons: Maersk Line (Maersk); Barber Blue Sea Lines (BBSL); Port of Portland (Portland); Virginia Port Authority (VPA); The Port Authority of New York and New Jersey (New York); Philadelphia Port Corporation (Philadelphia); Maryland Port Administration (Baltimore); the Council of European & Japanese National Shipowners' Associations (CENSA); the Chemical Manufacturers Association (CMA); P.L. Thomas Paper Co., Inc. (P.L. Thomas); and the New York Chamber of Commerce and Industry. Comments challenging the allegations of unfavorable trade conditions and opposing any action under section 19 were received from the following persons: National Galleon Shipping Corporation (Galleon) and the Maritime Company of the Philippines (MCP); and the U.S.-Flag Far East Discussion Agreement (Agreement No. 10050).

The Commission published on March 30, 1984 (49 FR 12,720) a "Notice of Request for Further Comment" (Request for Further Comment). The Request for Further Comment addressed the various legal, procedural and policy arguments raised in the comments on the Proposed Rule and invited additional comment limited to factual matters. The Request for Further Comment provided parties who might be adversely affected by the Proposed Rule with an oportunity to address factual allegations in other comments that were filed simultaneously with theirs. The Request for Further Comment also specifically invited the Executive Branch to file comment and indicated that information concerning the amount of cargo in the U.S./Philippines trade subject to U.S. cargo preference laws would be helpful to the Commission in its deliberations.

Eleven comments were received in response to the Request for Further Comment. Section 19 action continued to be supported in comments filed by Maersk, BBSL, CENSA, CMA, and P.L. Thomas, all of whom had previously filed comment. Additional comments supporting section 19 action were filed for the first time by: the United States Departments of Transportation, State, Justice, and Commerce and the Office of the United States Trade Representative (Executive Branch); the National Industrial Transportation League (League); Sta-Rite Industries Overseas Corporation (Sta-Rite); and Westinghouse Electric Corporation (Westinghouse). The Philippine-flag carriers (Galleon and MCP) and the U.S.-flag carrier members of Agreement No. 10050 filed further comments continuing their opposition to section 19 action.

Subsequently, by letter dated June 1, 1984, counsel for the Philippine-flag carriers informed the Commission that the Philippine Maritime Industry Authority (MARINA) had issued Memorandum Order No. 5 which revoked Memorandum Orders Nos. 3 and 4.[1] Memorandum Order No. 3 had implemented E.O. 769 by establishing a waiver program which applied to commercial export and import cargoes in the U.S./Philippines trades. Counsel for the Philippine carriers contends that this action by the Philippine government moots the controversy in this proceeding and requests that the proceeding be terminated and the rule withdrawn.

In response to the Philippine flag carriers' request, CMA, by letter of June 15, 1984, submits that it is too early to evaluate the impact of the revocation of Memorandum Order No. 3 on the Philippine waiver program with respect to non-government cargo (*i.e.*, cargo subject to E.O. 769). In addition, CMA states that some of its members report that waivers may still be required for government cargo (*i.e.*, cargo subject to P.D. 1466). CMA notes that "government cargo" is broadly defined under P.D. 1466 and that a significant amount of cargo may still be subject to anticompetitive conditions. CMA therefore believes that termination of this proceeding at this time would be premature.

The principal focus of the comments submitted in this proceeding urging action under section 19 was on the Philippine waiver program for commercial cargoes.[2] The various allegations of burden on access to the trade, inadequate service, non-competitive rates, and cargo diversion were, for the most part, related to the enforcement of the Philippine cargo reservation law through the waiver program. The revocation of Memorandum Order No. 3, on its face, removes the waiver program as it applied to commercial cargo. This action of the Philippine government would appear to eliminate the principal implementing mechanism of E.O. 769 in the U.S./Philippines trades.

Moreover, there is some confirmation from the shipper community that the revocation of the waiver program has, for the moment, removed the burden of the Philippine cargo reservation laws with regard to commercial cargoes.[3] There is also information in the record that the impact of the waiver program has, at the present time, been lifted from third-flag carriers. For example, trade data submitted in the second round of comments would appear to indicate that competitive conditions are returning to the trade.[4] Moreover, although all parties of record have been informed of the withdrawal of the waiver program, only CMA has suggested that this proceeding should be continued. Although the CMA letter raises certain concerns about Philippine cargo reservation laws, it does not present factual information that would indicate the presence of unfavorable trade conditions. With the removal of the specific gravamen of the various complaints (*i.e.*, the waiver program) and the apparent resumption of normal trade conditions, the Commission believes that the fundamental purpose in instituting this proceeding, namely removing unfair burdens on shippers and preserving competitive access for non-national flag carriers, has been substantially accomplished. There does not therefore appear to be any need for further action or the imposition of sanctions at this time. The Commission therefore shall discontinue this proceeding.

In taking this action, however, the Commission wishes to make it clear that it continues to be concerned about shipping conditions in this trade. The revocation of Memorandum Order No. 3 withdraws only one element, albeit a critical one, from the panoply of Philippine cargo reservation laws and regulations. The basic laws and decrees, including E.O. 769 with respect to non-government cargo and P.D. 1466 with respect to government cargo, apparently remain in effect.[5] These laws reserve substantial portions of both commercial and government cargo to Philippine-flag carriers and their enforcement could create conditions unfavorable to shipping.

The Commission therefore intends to closely monitor this trade for any indication of renewed application of a waiver program or other means of enforcement of E.O. 769, or greater enforcement of P.D. 1466, and to act swiftly to protect the trade if the need arises.

Therefore, it is ordered, That this proceeding is discontinued.

[1] Memorandum Order No. 4, which excluded transshipped cargo from the coverage of E.O. 769, was not at any time in issue in this proceeding. The June 1, 1984 letter attached a photocopy of a telex from the Philippine Minister of Transportation and Communications to the Philippine Embassy in Washington which quoted in full the text of Memorandum Order No. 5. The Order was signed by the Administrator of MARINA and the Minister of Transportation and Communications. Previously, the Department of State in a letter dated May 29, 1984 had advised the Commission that Memorandum Order No. 3 was rescinded. Further communications confirming this fact were received in the form of letters from the State Department dated June 6, 1984 and June 28, 1984.

[2] Memorandum Order No. 3 was put into effect by the Philippine government on July 22, 1982. It provided for a waiver of the requirement that non-government cargo be carried on Philippine or U.S.-flag carriers, provided that a proper application was submitted to Philippine authorities.

[3] By letter dated May 31, 1984, Pier 1 Imports commended the Commission for its successful efforts in this proceeding with regard to Philippine cargo sharing regulations.

[4] The record shows that, in the first quarter of 1984, third-flag carriers appear to be regaining their historical average share of the trade over the past six years.

[5] There is nothing in the record to indicate the current status of the Central Bank Memorandum which further implemented the waiver program with respect to non-government cargo.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-22554 Filed 8-23-84; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

[GSAR Notice No. 5-73]

Contractor Qualifications; Debarment, Suspension and Ineligibility

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) Chapter 5, which revises the regulation to add procedures on accessing the Automated Consolidated List of Debarred, Suspended, and Ineligible Contractors. Miscellaneous other changes are made throughout Part 509 to implement and supplement the FAR.

DATES: Comments are due in writing not later than September 24, 1984.

ADDRESS: Requests for a copy of the proposal and your comments should be addressed to Ms. Carol A. Farrell, Office of GSA Acquisition Policy and Regulations, (VP), Room 4027, 18th & F Sts., NW., Washington, D.C. 20405 (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Carol A. Farrell, (202) 523-3822.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 509

Government procurement.

Dated: August 15, 1984.

Ida Ustad,

Acting Director, GSA Acquisition Policy and Regulations.

[FR Doc. 84-22526 Filed 8-23-84; 8:45 am]

BILLING CODE 6820-61-M

Notices

Federal Register
Vol. 49, No. 166
Friday, August 24, 1984

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.

CIVIL RIGHTS COMMISSION

Indiana Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on September 20, 1984, at the City-County Building, Room 1161, 200 East Washington Street, Indianapolis, Indiana 46206. The purpose of the meeting is to discuss the status of current programs and plans for future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 20, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–22493 Filed 8–23–84; 8:45 am]

BILLING CODE 6335–01–M

Iowa Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 6:00 p.m. on October 2, 1984 and will end at 1:00 p.m. on October 3, 1984, at the Stanford Center, 1700 Geneva Street, Sioux City, Iowa 51103. The purpose of the meeting is to discuss future program plans for fiscal year 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Central States Regional Office at (816) 374–5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 20, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–22494 Filed 8–23–84; 8:45 am]

BILLING CODE 6335–01–M

Massachusetts Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Massachusetts Advisory Committee to the Commission will convene at 4:00 p.m. and will end at 6:00 p.m., on September 24, 1984, at the U.S. Commission on Civil Rights, New England Regional Office, 8th Floor, 55 Summer Street, Boston, Massachusetts 02210. The purpose of the meeting is to discuss information presented at the September 13–14 Chairs' Conference and FY 85 project plans, including potential sites for community forum programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 20, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–22495 Filed 8–23–84; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 7:30 p.m. and will end at 9:30 p.m., on September 19, 1984, at the District Court, Court Room 2, City Hall Annex, Market Street Entrance, Manchester, New Hampshire 03101. The purpose of the meeting is to discuss information presented at the September 13–14 Chairs' Conference and FY 85 project plans, including possible sites for community forum programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact the New England Regional Office at (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 20, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–22496 Filed 8–23–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and the South Atlantic Fishery Management Councils, established by section 302 of the Magnuson Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), will meet during a joint and two separate sessions. All meetings will be held at the Le Pavillon Hotel, Baronne at Poydras, New Orleans, Louisiana 70157.

The Gulf Council will discuss final action on a Shrimp/Stone Crab Conflict Rule and Amendment to the Mackerel FMP. The Gulf Council will convene its separate session, on September 11, 1984, at 1:30 p.m., recess at approximately 5:00 p.m., and reconvene on September 12, at 8:30 a.m., and adjourn at approximately 4:00 p.m.

The South Atlantic Council will discuss king and spanish mackerel, swordfish (snapper/grouper), spiny lobster, finance, and personnel. The Council will convene its separate session, on September 12, at 8:30 a.m., and adjourn at approximately 5:00 p.m.

The Joint Council meeting will convene, on September 13, 1984, at 8:30 a.m., and adjourn at approximately 12:00 noon, to discuss Amendment to the Mackerel FMP and Status of the Swordfish FMP. For further information

contact Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa FL 33609, telephone: (813) 228–2815.

Dated: August 21, 1984.

Roland Finch,

Director, Office of Fishery Management, National Marine Fisheries Service.

[FR Doc. 84–22543 Filed 8–23–84; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will meet, September 13 and 14, 1984 at the Ramada Inn, 76 Industrial Highway, Essington, PA 19029, to discuss the Atlantic Surf Clam and Ocean Quahog, Fishery Management Plan (FMP), the proposed FMP for striped bass, Atlantic Demersal Finfish Fishery FMP, joint venture policy and other fishery management and administrative matters.

The meeting may be lengthened or shortened depending upon progress of the agenda. The Council may go into closed session to discuss personnel and/or national security matters. A detailed agenda will be made available to the public about August 31, 1984. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, Delaware 19901, telephone: (302) 674–2331.

Dated: August 21, 1984.

Roland Finch,

Director, Office of Fishery Management, National Marine Fisheries Service.

[FR Doc. 84–22544 Filed 8–23–84; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Systems of Records: Amended Systems

ACTION: Amendment of a notice for a system of records.

SUMMARY: The Office of the Secretary of Defense (OSD) proposes to amend the notice for a system of records subject to the Privacy Act of 1974. The system notice as amended is set forth below, followed by the amended system notice in its entirety.

DATES: This notice shall be effective without further notice on September 24, 1984 unless comments are received which result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the System Notice.

FOR FURTHER INFORMATION CONTACT: Norma Cook, Privacy Act Officer, ODASD(A), Room: 5C–315, Pentagon, Washington, DC 20301. Telephone: 202/695–0970.

SUPPLEMENTARY INFORMATION: The notices for the Office of the Secretary of Defense systems of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a have been previously published in the **Federal Register.**

These proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of an altered system report.

Dated: August 21, 1984.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

AMENDMENTS

DOCHA 07

System Name:

Medical Claim History Files (48 FR 25827, June 6, 1983)

Changes:

Add the following heading *"Purpose(s)"* before the heading *"Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses."*

Add the following paragraph under the above heading.

"Used by the Office of the Civilian Health and Medical Program of the Uniformed Services and CHAMPUS Fiscal Intermediaries to control and process medical claims for payment; for control and approval of treatments and interface with providers of health care; to control and accomplish reviews of utilization; for review of claims related to possible third party liability cases and initiation of recovery actions; for referral to Peer Review Committees or similar professional review organizations to control and review providers of health care; for disclosure to their party contacts without the consent of the individual to whom the information pertains in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning the individual's entitlement to benefits under CHAMPUS/CHAMPVA, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal; for the issuance of deductible certificates, to respond to inquiries from Congressional offices made at the request of the individual covered by the system to conduct audits of fiscal intermediary processed claims to determine payment and occurrence accuracy of the fiscal intermediary's adjudication process; implementation of a prepaid health benefit demonstration to assess the relative advantages and disadvantages of offering a choice of health benefit plans to persons currently eligible for "CHAMPUS".

Delete the heading *"Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses."*

Delete the heading *"Internal Users, Uses, and Purposes."*

Delete the Paragraph under the above heading.

Delete the heading *"External Users, Uses and Purposes."* And add the heading *"Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses."*

Delete the paragraphs under the above heading and add the following:

"In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law whether civilian or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system or record may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto. Information may be disclosed to the Secretary of the Department of Health and Human Services and/or Administrator of the Veterans' Administration consistent with their statutory administrative responsibilities under CHAMPUS-CHAMPVA pursuant to Title 10, United States Code, Chapter 55, and Title 38, United States Code, section 613; to U.S. Department of Justice/U.S. Attorneys: For legal action and/or final disposition of the debt claims. The litigation briefs (comprehensive, written referral recommendations) will restructure the entire scope of the collection cases; and Internal Revenue Service: To obtain locator status for delinquent accounts receivables; (Automated controls exist to preclude redisclosure of solicited IRS

address date;) and/or to report writeoff amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age.

Private Collections Agencies: For collection action when OCHAMPUS has exhausted its internal collection efforts.

Disclosure to Consumer Reporting Agencies:

Disclosure Pursuant to 5 U.S.C. 552a(b)(12), may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 168a(f) on the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)."

DOCHA 07

SYSTEM NAME:

Medical Claim History Files.

SYSTEM LOCATION:

Primary System—Information Systems Division (IS), OCHAMPUS, DoD, Aurora, Colorado 80045.

Decentralized Segment—Office of Appeals and Hearings (H), OCHAMPUS, DoD, Aurora, Colorado 80045; Office of Civilian Health and Medical Program of the Uniformed Services—Europe (OCHAMPUSEUR), APO New York 09102; Fiscal Intermediaries/Contractors under contract to OCHAMPUS. Each company listed below maintains claim files on beneficiaries in their respective geographical areas.

Mutual of Omaha Insurance Company, Mutual of Omaha Plaza, Omaha, NE 68175.

Blue Shield of California, P.O. Box 85240, 5353 Mission Center Road, San Diego, CA 92108 (Dental).

Hawaii Medical Service Association, P.O. Box 860, Honolulu, HI 96808.

Blue Cross of Washington-Alaska, P.O. Box 77084, Seattle, WA 98177.

Blue Cross of Rhode Island, One Weybosset Hill, Providence, RI 02901.

Blue Cross/Blue Shield of Tennessee, 730 Chestnut Street, Chattanooga, TN 37402.

Blue Cross/Blue Shield of South Carolina, P.O. Box 6119, Columbia, SC 29260.

Wisconsin Physicians Service, P.O. Box 7927, Madison, WI 53707.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible beneficiaries of the Civilian Health and Medical Program of the Uniformed Services (dependents of active duty members of the Uniformed Services, retired members of the Uniformed Services and dependents of retired or deceased members of the Uniformed Services), eligible beneficiaries of the Civilian Health and Medical Program of the Veterans' Administration (spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability or surviving spouse or child of a veteran who has died as a result of a service-connected disability) who received benefits under the provisions of the program.

All individuals who seek health care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) and the Civilian Health and Medical Program-Veterans' Administration (CHAMPVA).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains sponsor's Social Security Number, branch of service, status (active duty, retired or deceased), beneficiary's last name, initials, age, sex, relationship to sponsor, type of costs and date of medical care provided, provider of care identification, any record of claims, billings for medical, hospital or related services, application or approval forms which reflect diagnosis, treatment or medical conditions, family history files, or any other correspondence, memorandum or report reflecting these data with respect to any individual, which are acquired or utilized in the development and processing of CHAMPUS/CHAMPVA claims, and appeals and hearing case files consisting of hearing transcripts and/or other documentation pertaining to reconsiderations or appeals of adverse determinations of benefits under CHAMPUS/CHAMPVA, enrollment forms and screening cards required to conduct a demonstration of the cost effectiveness of prepaid health benefits plans as an alternative to the existing CHAMPUS program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 44, United States Code, Section 3101; Title 41, Code of Federal Regulations, Parts 101–11.000 *et. seq.*; Chapter 55, Title 10, United States Code; Section 613, Chapter 17, Title 38, United States Code; Title 32, Code of Federal Regulations, Part 199.

PURPOSE(S):

Used by Office of the Civilian Health and Medical Program of the Uniformed Services and CHAMPUS Fiscal Intermediaries to control and process medical claims for payment; for control and approval of medical treatments and interface with providers of health care; to control and accomplish reviews of utilization for review of claims related to possible thrid party liability cases and initiation of recovery actions; for referral to Peer Review Committees or similar professional review organizations to control and review providers of health care; for disclosure to third party contacts without the consent of the individual to whom the information pertains in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning the individual's entitlement to benefits under CHAMPUS/CHAMPVA, the amount of benefit payments, and review of suspected abuse or fraud, or any concern for program integrity or quality appraisal; for the issuance of deductible certificates, to respond to inquiries from Congressional offices made at the request of the individual covered by the system to conduct audits of fiscal intermediary processed claims to determine payment and occurrence accuracy of the fiscal intermediary's adjudication process; implementation of a prepaid health benefit demonstration to assess the relative advantages and disadvantages of offering a choice of health benefit plans to persons currently eligible of CHAMPUS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event that a system of records maintained by this component to carry out its functions indicates a violation or potential violation of law, whether civilian or regulatory in nature, and whether arising by general statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of record may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

Information may be disclosed to the Secretary of the Department of Health and Human Services and/or Administrator of the Veterans' Administration consistent with their statutory administrative responsibilities under CHAMPUS/CHAMPVA pursuant to Title 10, United States Code, Chapter 55, and Title 38, United States Code, Section 613; to U.S. Department of Justice/U.S. Attorneys: For legal action and/or final disposition of the debt claims. The litigation briefs (comprehensive, written referral recommendations) wil restructure the entire scope of the collection cases; and

Internal Revenue Service: To obtain locator status for delinquent accounts receivables; (Automated controls exist to preclude redisclosure of solicited IRS address date;) and/or to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age.

Private Collection Agencies: For collection action when OCHAMPUS has exhausted its internal collection efforts.

DISCLOUSURE TO CONSUMER REPORTING AGENCIES:

Disclosures Pursuant to 5 U.S.C. 552a(b)(12), may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) on the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated claim records are maintained on magnetic tape and disc. Manual claim support records (paper or microfiche) are maintained in files.

RETRIEVABILITY:

Information is retrieved by sponsor's Social Security Number (SSN), beneficiary's last name, classification of medical diagnosis or precedure codes or georgraphical location of care provided and selected utilization limits.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within Fiscal Intermediary operations are accessible on time only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through the medium of OCHAMPUS prepared computer programs resulting in a printout of the data. OCHAMPUS buildings are protected by military police security force.

RETENTION AND DISPOSAL:

Records maintained on magnetic tape are individual annual files and are permanent. Paper records comprising the decentralized segment of the files are closed out at the calendar year end in which paid, or voided, as applicable, held for 1 additional year and transferred to the Federal Records Center. Federal Records Centers will destroy after an additional 4 years retention.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Systems Division (IS), OCHAMPUS, DoD Aurora, Colorado 80045. Telephone: 303–361–8088.

NOTIFICATION PROCEDURES:

Requests should be addressed to the System Manager.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, current address and telephone number. Should it be determined that the release of medical information to the requestor could have an adverse effect upon the individual's physical or mental health, the requestor will be required to provide the name and address of a physician who would be willing to receive the medical record and, at the physician's discretion, inform the individual covered by the system of the contents of that record.

For personal visits to examine records, the individual should provide some acceptable identification such as driver's license or other form of picture identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b, and OSD administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

CHAMPUS Medical Claims Forms, private physicians, hospitals, and other sources of care, individual beneficiaries, third party contacts verifying claims information, and consultants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISION OF THE ACT:

None.

[FR Doc. 84–22569 Filed 8–23–84; 8:45 am]

BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Supplement to Cancellation of Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS); Proposed Water Storage Contract for the ETSI Coal Slurry Pipeline Project

AGENCY: U.S. Army Corps of Engineers, Omaha District, DOD.

ACTION: Supplement to Cancellation of Earlier Notice of Intent.

SUMMARY: As published in 49 FR 32097–32098, August 10, 1984, the Omaha District of the Corps of Engineers does not presently intend to prepare a Draft Supplemental EIS for the ETSI project. However, the State of South Dakota has not withdrawn its application for water storage for the ETSI project. Should the State pursue a water storage contract, the Corps will conduct an appropriate environmental review.

ADDRESSES: Questions can be forwarded to Mr. Richard Buse, Chief, Plan Formulation Branch, Planning Division, U.S. Army Corps of Engineers, Omaha District, 6014 U.S. Post Office and Courthouse, Omaha, Nebraska 68102. Phone (402) 221–4472 or FTS 864–4472.

Steven Whitfield,

LTC, Corps of Engineers, Deputy District Engineer for Military Construction.

[FR Doc. 84–22530 Filed 8–23–84; 8:45 am]

BILLING CODE 3710–62–M

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Small Navigation Project at Sturgeon Point Marina, Erie County, NY

AGENCY: U.S. Army Engineer District, Buffalo, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

Proposed Action: The proposed action would involve improving the condition of the existing marina breakwater, increasing the marina's capacity, and reducing shoaling at the entrance.

Alternatives Considered: Five alternatives will be evaluated. These five are:

a. *Plan 1 (125–150 Boat Capacity)*—This plan would involve: (1) Removal of a deteriorated 150-foot long rubblemound jetty; (2) construction of a 550-foot long rubblemound facing along the lakeward perimeter of the existing breakwater; (3) construction of a 400-foot long L-shaped rubblemound breakwater extension on the lakeward end of the existing breakwater; (4) shoreward expansion and deepening of the marina to a depth of 6 feet below low water datum; (5) construction of an oblique 400-foot long rubblemound jetty on the east side of the marina basin; and (6) land-based sand-by-passing.

b. *Plan 2 (175–200 Boat Capacity)*—This plan would involve the same features as Plan 1 except that the east jetty would be constructed perpendicular to the shoreline to provide a larger marina basin.

c. *Plan 3 (250–300 Boat Capacity)*—This plan would involve the same features as Plan 2 except that the shorearm of the existing breakwater

would be extended 250 feet lakeward from which a 400-foot long breakwater section would be constructed parallel to the shore.

d. *Plan 4 (250–300 Boat Capacity)*—This plan would involve the same features as Plan 2 except that the existing breakwater would be extended 150 feet further eastward, from which the L-shaped section would be constructed, and the east jetty would be constructed 150 feet further eastward.

e. *No Action Plan*—This alternative would mean no Federal involvement in marina modifications.

Scoping Process: Agency coordination has been initiated and an Initial Appraisal Report was completed in August 1983. A public meeting was held in June 1984. The town of Evans is currently preparing an Environmental Impact Statement under the New York State Environmental Quality Review Act which will assess the impacts of the upland portion of the marina development. Scoping of the Corps of Engineers' DEIS will include continued coordination with interested local, State, and Federal agencies, as well as other interested parties. All interested parties are urged to participate actively in the scoping process by submitting their concerns to the Buffalo District.

Significant issues to be addressed in the DEIS include, but are not limited to: Recreation; water quality; fish and wildlife resources; community growth; community cohesion; and project-induced traffic.

Availability: The DEIS is expected to be available for public and agency review in November 1984.

Address: Questions about the proposed action and DEIS can be answered by Mr. William E. Butler, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, New York, 14207.

Dated: August 16, 1984.

Robert R. Hardiman,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 84-22522 Filed 8-23-84; 8:45 am]

BILLING CODE 3710-GP-M

Completion of Draft Environmental Impact Statement Supplement, Yatesville Lake Project, Blaine Creek, Lawrence County, KY

Background

The Huntington District initiated a study of the Big Sandy Basin in 1954. As a part of the study, the District prepared a report entitled "Interim Survey Report on Big Sandy River, Tug and Levisa Forks, Kentucky, West Virginia, and Virginia, for Flood Control and Allied Purposes." That report, dated December 1957, was published as House Document No. 184, 86th Congress, 1st Session. It recommended the construction of a system of four major reservoirs, namely: Fishtrap Lake, John W. Flannagan Reservoir, North Fork of Pound River Lake, and Haysi Lake. In October 1964, that Interim Report was supplemented by the "Big Sandy River Basin Survey Report," which included recommendations for Paintsville Lake, Panther Creek Lake, Yatesville Lake, and a channel improvement project on Beaver Creek at Martin, Kentucky. These projects, including the Yatesville Lake, were subsequently authorized by Congress in the Flood Control Act of 1965.

Thus, Yatesville Lake was formulated as part of a system of multi-purpose reservoirs and local protection projects to meet water resources development needs of the Big Sandy River basin. Authorized purposes are flood control, water quality control, general recreation, fish and wildlife enhancement, and redevelopment.

The dam site and entire reservoir of the Yatesville Lake will be located in Lawrence County, Kentucky, on Blaine Creek, 18.1 miles upstream from its mouth and 4.0 miles south of Yatesville, Kentucky. See Exhibit No. 1. Blaine Creek is a tributary of the Big Sandy River entering at river mile 19.6, which is 6.6 miles below Louisa, Kentucky.

The lake will be formed by a 104 feet high earth and rock dam which would control runoff from a drainage area of 208 square miles. At maximum capacity, pool elevation 645, the reservoir would contain about 83,300 acre-feet of water, having a lake area of approximately 3,805 acres. For a summer recreation pool, elevation 630, the impoundment will have an area of about 2,240 acres and will impound water over 20.6 miles of streambed in the main channel of Blaine Creek.

In November 1966, the Huntington District received initial advanced engineering and design (AE&D) funds for the Yatesville project. These funds were used for preparation of a General Design Memorandum (GDM). The GDM for Yatesville Lake was approved 19 December 1973. An Environmental Impact Statement (EIS) for Yatesville Lake was prepared and filed with the Council on Environmental Quality on 12 April 1972.

Land acquisition was initiated in November 1973 and of the estimated 19,930 acres of land required for the project, 13,259 acres have been acquired. In addition, 110 of 181 residences, 5 of 6 churches, 1 of 3 schools and 2 of 6 commercial structures have been acquired.

The initial construction contract, an access road to the spillway, was awarded in January 1974. Construction of the road was completed 20 June 1974. A contract for construction of the dam and appurtenant works was awarded 7 January 1977. As a result of 1977 Presidential water projects review, funds for the Yatesville project were not requested or appropriated for FY 78. Consequently, the dam and appurtenant works contract was terminated in August 1977. During the interval between January and August, the contractor started clearing the dam site area and began work on the tunnel for the outlet works. Land acquisition was also halted with the exception of hardship cases where a landowner had been placed in an economically untenable position.

Since initiation of General Design Memorandum studies in 1966 the Huntington District has recognized and acknowledged that pollution of Blaine Creek is generated by oil extraction activities in the Martha Oil Field. Discharges of crude oil and brines from the Martha Field, immediately upstream of the limits for Government acquisition, are significant sources of contaminants that reduce the quality of ground and surface waters. The Huntington District believed that pollution would diminish over time; however, periodic sampling and analysis show that conditions have not improved and have in fact worsened.

In April 1983 it was decided that, as a result of oil extraction activities in the Martha Oil Field, it was necessary to supplement the Environmental Impact Statement for Yatesville Lake to more fully address water quality conditions in the Blaine Creek Basin and Yatesville Lake. As a result of that decision, additional investigations and analyses were initiated to more fully define the existing and most probable future quality of ground and surface waters in the drainage basin and in the lake. Sufficient investigations and analyses are now complete and the findings and conclusion therefrom are contained in the Draft Environmental Impact Statement Supplement.

In July 1983 both the FY 83 Supplemental and FY 84 Appropriations Bills, Pub. L. 98–63 and 98–50, were enacted. Each contained special language concerning Yatesville Lake. These bills directed the Corps to place the Yatesville Lake project under construction immediately,

"* * * notwithstanding any other provisions of law * * *." Following review of legal and policy aspects of these legislative actions, a decision was made in December 1983 to reinitiate construction on project features that would not be impacted by the water quality issues then under investigation. It was also decided that efforts to prepare a Supplement to the 1972 EIS would continue simultaneously with project construction.

In January 1984, the Huntington District advertised for bids for construction of the dam and appurtenant works, Phase I. This work consists of a 13-foot diameter outlet works tunnel 900 feet in length, a concrete stilling basin, and a service road. A contract was awarded in March 1984 and construction of the Yatesville Lake project was reinitiated in April 1984. This work should be completed by April 1986. A contract for Phase II dam construction is scheduled to be awarded in January 1986 and the project is scheduled for completion in September 1989.

Findings and Conclusions

Findings and conclusions of completed investigation and analysis indicate that recent and expected near term future actions by the Commonwealth of Kentucky, geared toward strengthening and stronger enforcement of Kentucky water pollution laws, will be adequate to address potential future water quality problems at Yatesville Lake. The oil and gas industry will not be allowed to continue current practices for handling and disposal of brines. Thus, water quality conditions at Yatesville Lake will be manageable, and no additional Federal action in this regard is required.

Draft EIS Supplement

The Draft EIS Supplement addresses existing water quality conditions in the Blaine Creek Basin as well as probable future conditions in both the Basin and Yatesville Lake, and presents findings and conclusions of completed investigations and analysis. The document, consisting of four (4) volumes, is composed of the main supplement and thirteen (13) separate technical appendices as noted below:

Volume 1: Environmental Impact Statement Supplement
Volume 2: Oil Production/Pollution Studies
Appendix A: Present and Future Oil Well Production in the Blaine Creek Area of the Yatesville Lake Project
Appendix B: Inventory of Point Sources of Pollution for the Yatesville Lake Project
Appendix C: Analysis of Regulations Affecting Oil Production in Kentucky and Bordering States
Volume 3: Biological Studies
Appendix D: Mussel Survey of Blaine Creek and Its Tributaries, Including Tissue Analysis
Appendix E: A Survey of the Freshwater Mussels of the Lower Big Sandy River Basin
Appendix F: Control Streams (Big Sandy Drainage and Tygarts Creek) Fish and Mussel Tissue Analysis
Appendix G: Four Season Fishery Survey
Appendix H: Fish Tissue Analysis, Blaine Creek
Appendix I: Benthic Analysis Report
Appendix J: Rare and Endangered Species Survey
Volume 4: Water Quality Studies
Appendix K: Groundwater Modeling Report
Appendix L: Yatesville Reservoir Project Area Subsurface Investigations Testing Analysis
Appendix M: Yatesville Lake Project Water Quality Report

Copies of the entire document are available for public review at the Huntington District Office, 502 Eighth Street, Huntington, West Virginia or at the following public libraries: (1) Ashland Public Library, Ashland, Kentucky; (2) Lawrence County Library, Louisa, Kentucky; (3) Johnson County Public Library, Paintsville, Kentucky; (4) Magoffin County Library, Salyersville, Kentucky; (5) Martin County Public Library, Lovely, Kentucky; and (6) J.F.K. Memorial Library, West Liberty, Kentucky. In addition, copies of the document may be purchased from the Huntington District at the cost of reproduction. Inquiries in this regard should be mailed to the Huntington District, ATTN: ORHPD-Y.

Views and comments on the Draft Supplement are requested. Comments should be mailed to the U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, West Virginia 25701, ATTN: ORHPD-Y. Statements should include some clear indication that they are being submitted in response to this notice and should be received by the Huntington District no later than 15 October 1984.

John W. Devens,

Colonel, Corps of Engineers, District Engineer, Huntington District.

[FR Doc. 84-22564 Filed 8-23-84; 8:45 am]
BILLING CODE 3710-GM-M

Chief of Engineers Environmental Advisory Board Meeting

AGENCY: Corps of Engineers, Department of the Army, DOD.

ACTION: Notice of Open Meeting.

SUMMARY: Under section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) this notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Chief of Engineers Environmental Advisory Board (EAB). The meeting is to be jointly chaired by Dr. Laurence R. Jahn, Chairman, EAB, and Lieutenant General E.R. Heiberg III, Chief of Engineers, U.S. Army. The meeting is open to the public.

DATE: The meeting will be held from 8:00 a.m., Tuesday, September 18, 1984 to 11:15 a.m., Thursday, September 20, 1984.

Place: The meeting will be held at the Humphreys Engineer Center, Kingman Building (Hearing Room), Fort Belvoir, Virginia 22060.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Ronald G. Kelsey, Assistant Director of Civil Works for Environmental Programs, or Captain Glen J. Lozier, Office of the Chief of Engineers, Washington, D.C. 20314-1000, (202) 272-0103.

SUPPLEMENTARY INFORMATION: The schedule and proposed agenda of the Environmental Advisory Board meeting is:

18 September—Tuesday-A.M. Session

8:00—Meeting convened-opening remarks
8:55—The Corps and the Environment overview
9:30—Old business

P.M. Session

1:15—Old business (continued)
2:00—Evaluation of Fish and Wildlife Planning at Corps Projects
2:30—SFI Conduct of the Study
3:15—Major Findings in SFI Final Report
4:00—Review of SFI Case Studies on Three Project Reports
5:00—Meeting recessed

19 September—Wednesday-A.M. Session

8:00—Status of the Environmental and Water Quality Operational Study
8:45—Review of Water Quality and Fisheries at Clark Hill Reservoir and Richard B. Russell Reservoir
10:00—Review of Water Quality and Fisheries at West Point Reservoir

10:45—Status of the Preparation of a Fish and Wildlife Management Handbook for Corps Projects
11:30—Current Objective for Fish and Wildlife at Operating Projects

P.M. Session

1:15—Current Planning Guidance for Fish and Wildlife
2:00—Panel on Risk Assessment as Applied to Fish and Wildlife Planning and other Matters
- Risk Assessment Overview
- Relevance to Planning
- EPA Perspectives
- NAS Perspectives
- Dam Safety

4:00—Meeting recessed

20 September—Thursday—A.M. Session

8:00—EAB Report to the Deputy Chief of Engineers
10:15—Deputy Chief of Engineers response
10:45—Public Comments
11:15—Meeting adjourned

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 84-22570 Filed 8-23-84; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 12, 13, and 14, 1984.

ADDRESS: Hyatt Regency Hotel—Washington, D.C., 400 New Jersey Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C. 20004, Telephone: (202) 376-8888.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:.

(a) An examiniation of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procdures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Council meeting will begin on September 12 with a dinner meeting from 7:00 P.M. to 9:00 P.M., and continue from 8:30 A.M. to 5:00 P.M. on September 13, and from 8:30 A.M. to 12:00 Noon on September 14, 1984.

The proposed agenda includes:

—Chairman's Report
—Installation of members
—Approval of minutes
—Approval of agenda
—Review/approval of Annual Report
—Review of S. 2919
—Executive Director's Report
—Legislative Update
—Staff papers: Federal program review, International study proposal
—Election of officers
—Future meetings

Records are kept of all Council proceedings and are available for public inspection at the Office of the National Advisory Council on Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C.

Signed at Washington, D.C. on August 17, 1984.

William G. Shannon,

Executive Director.

[FR Doc. 84-22498 Filed 8-23-84; 8:45 am]

BILLING CODE 4000-01-M

Education Appeal Board; Designation of Jurisdiction; California

AGENCY: Department of Education.

ACTION: Notice of Designation of Jurisdiction to Education Appeal Board.

SUMMARY: The Secretary of Education has designated the Education Appeal Baord as the forum that will review appeals filed by the State of California regarding the appropriate size of its migrant education program allocations for Fiscal Year 1984 under Chapter 1 of the Education Consolidation and Improvement Act of 1981, and the Fiscal Years 1980–1982 under Title I of the Elementary and Secondary Education Act of 1965, as amended.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 1065, FOB-6), Washington, D.C. 20202. Telephone: (202) 245-7835.

SUPPLEMENTARY INFORMATION:

Background

Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234–1234c), the Education Appeal Board of the Department of Education has jurisdiction to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary. Such review is specifically available in cases that concern the use of funds provided under Title I of the Elementary and Secondary Education Act of 1965, as amended, and the use of funds also provided under Chapter 1 of the Education Consolidation and Improvement Act of 1981. Final regulations implementing the statutory provisions in sections 451–454 of the General Education Provisions Act were published in the **Federal Register** at 46 FR 27305 on May 18, 1981 (34 CFR Part 78). Section 78.2 of those regulations contains the present jurisdiction of the Education Appeal Board, which includes the authority to review proceedings as designated by the Secretary of Education in the **Federal Register.**

On November 19, 1982, final regulations for the Chapter 1, local educational agency programs (34 CFR Part 200) were published in the **Federal Register** at 47 FR 52343. Subpart F of those regulations (34 CFR 200.80–200.106) contains due process provisions applicable to determinations affecting Chapter 1, local educational agency program recipients, including those for Education Appeal Board review that supersede those published in 34 CFR Part 78. Those regulations also amended § 78.42 of the Board's regulations to provide that in conducting hearings concerning expenditures under a Chapter 1 program, the Board applies the regulations in 34 CFR 200.90–200.106. When final regulations for all Chapter 1 funded programs are published, provisions regarding Education Appeal Board review of final determinations

concerning the use of funds under all Chapter 1 programs will be found in Subpart E of 34 CFR Part 204.

The State of California has appealed a recent determination of the Assistant Secretary for Elementary and Secondary Education in which the Assistant Secretary had awarded the California Department of Education a migrant education program grant under Chapter 1 of the Education Consolidation and Improvement Act of 1981 for Fiscal Year (FY) 1984 that was $3,529,994 lower than the Department's previously announced estimated allocation. California has also appealed a second determination in which the Assistant Secretary had concluded that, for each of the FYs 1980–1982, the State of California had received a migrant education program grant under Title I of the Elementary and Secondary Education Act of 1965, as amended, in excess of what its allocation should have been. This second determination letter directed the California Department of Education to refund $10,432,500 to the U.S. Department of Education. Neither of these determinations regarding the amount of California's migrant program allocation concerns the State's expenditures or use of Chapter 1 or Title I funds. They rather concern the amount of Chapter 1 or Title I funds it could receive and obligate.

Under the Chapter 1 and Title I migrant education programs, each State educational agency annually receives a Federal program grant that is based in part on the number of eligible migrant children that the State educational agency identifies as residing in the State. In both of the California cases under review, the Assistant Secretary found that the California Department of Education's entries in the migrant student record transfer system had overstated the number of eligible and verifiable migrant children residing in the State, and that this overinclusion resulted in either larger allocations (FYs 1980–1982) or a larger proposed allocation (FY 1984) than was allowable. Both of the Assistant Secretary's determinations offered California an opportunity to obtain administrative review upon application to the Department.

Designation of Jurisdiction

Under the authority in section 451 (a)(4), (20 U.S.C. 1234(a)(4)) of the General Education Provisions Act and 34 CFR 78.2(a)(5) of the regulations of the Education Appeal Board, the Secretary announces that on March 9, 1984, the Secretary designated the Education Appeal Board as the forum to review both of the Assistant Secretary's allocation determinations. With regard, in particular, to the proceeding to review the correct amount of the State's FY 1984 allocation, the Education Appeal Board is to take such measures as may be appropriate and necessary to assure the matter's prompt review and disposition. The Education Appeal Board is to review both allocation proceedings under the rules of procedure governing final audit determinations, and those general rules governing the Education Appeal Board's conduct of proceedings in 34 CFR 78.41–78.84. Because of the need for expedited review and final decision, in the proceeding regarding California's FY 1984 allocation, for that proceeding the time periods provided in 34 CFR 78.82 for the parties' submission of comments and responsive comments on the EAB decision may not apply.

Any questions should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 1065, FOB–6), Washington D.C. 20202. Telephone: (202) 245–7835.

(Catalog of Federal Domestic Assistance No. not applicable)

(20 U.S.C. 1234)

Dated: August 17, 1984.

T. H. Bell,

Secretary of Education.

[FR Doc. 84–22531 Filed 8–23–84; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Announcement of Availability of Draft Environmental Impact Statement, Long-Term Management of Existing Radioactive Wastes and Residues at the Niagara Falls Storage Site; and Intent To Conduct Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of Availability of Draft Environmental Impact Statement and of Intent to Conduct Public Hearings.

SUMMARY: The Department of Energy has published a draft Environmental Impact Statement (DOE/EIS–0109D), Long-Term Management of Existing Radioactive Wastes and Residues at the Niagara Falls Storage Site, Lewiston, New York. Written comments are invited and three public hearings will be held with respect to the DEIS.

DATES: Written comments should be received at DOE by October 9, 1984, in order to insure consideration in preparation of the final environmental impact statement. The public hearings are scheduled on September 19, 1984, at Lewiston, New York; on September 20, 1984, at Oak Ridge, Tennessee; and on September 24, 1984, at Richland, Washington. Requests to speak and preferred times should be received at DOE by September 14, 1984.

ADDRESS: Written comments on the DEIS and requests to speak at a hearing should be addressed to: Mr. L.F. Campbell, Deputy Director, Technical Services Division, Oak Ridge Operation Office, U.S. Department of Energy, P.O. Box E, Oak Ridge, TN 37830, Phone: (615) 576–1052.

FOR FURTHER INFORMATION CONTACT:

1. Mr. L.F. Campbell, at the address above.
2. Dr. Robert J. Stern, Director, Office of Environmental Compliance, Office of the Assistant Secretary for Policy, Safety, and Environment, U.S. Department of Energy, Washington, DC 20585, Phone: (202) 252–4600.
3. Mr. Henry Garson, Esq., Assistant General Counsel for Environment, U.S. Department of Energy, Washington, DC 20585, Phone: (202) 252–6947.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The Department of Energy published a Notice of Intent (48 FR 4522) on February 1, 1983, regarding the preparation of an EIS and conduct of public scoping meetings for the long-term management of existing radioactive wastes and residues at the Niagara Falls Storage Site.

II. Scope of the DEIS

The DEIS is issued by the U.S. Department of Energy (DOE). It assesses the environmental impacts of various alternatives for the long-term management of existing radioactive wastes (primarily contaminated soils) and residues (from processing of uranium ore) stored at the Niagara Falls Storage Site (NFSS) near Lewiston, New York. These wastes and residues resulted from the processing of uranium ores. About 11,000 m^3 (15,000 yd^3) of residues and 180,000 m^3 (240,000 yd^3) of wastes are stored within a diked containment area at NFSS. The alternatives include: (1) No action (continued interim storage at NFSS within a diked and capped containment area), (2) long-term management at NFSS (improved containment, with or without modified form of the residues), (3) long-term management at other DOE sites (Hanford, Washington, or Oak Ridge, Tennessee), and (4) offsite management of the residues at Hanford or Oak Ridge and either leaving the wates at NFSS or removing them for

disposal in the ocean. In addition to alternatives analyzed in depth, several options are also considered, including: Other modifications of residue form, modifications of the basic conceptual designs, other containment design options, transportation routes, and transportation modes.

III. Summary of Impacts

The radiological health effects (primarily increased risk of cancer) associated with long-term management of the wastes and residues are expected to be smaller than the nonradiological risks of occupational and transportation-related injuries and deaths. During the action period, the risk is highest for workers if all wastes and residues are moved to Hanford. The risk is highest for the general public if the residues are moved to Hanford and the wastes are moved to the ocean. Dispersal of the slightly contaminated wastes in the ocean is not expected to result in any significant impacts on the ocean environment or pose any significant radiological risk to humans.

For all alternatives, if controls ceased, there would be eventual dispersion of the radioactive materials to the environment. If it is assumed that all controls cease, predicted time for loss of covers over the buried materials ranges from several hundred years to more than two million years, depending on the use of the land surface. Groundwater will eventually be contaminated in all alternatives; however, the groundwater pathway is relatively insignificant with respect to radiological risks to the general population. Additionally, if controls cease, there will be a risk of human intrusion into the contaminated materials. Therefore, near-surface burial of the contaminated materials will commit the Federal Government (or its successor) to perpetual care of the burial sites because the residues and wastes will remain hazardous for thousands of years.

IV. Comment procedures

A. Availability of Draft EIS

Copies of the DEIS have been distributed to Federal, state, and local agencies, organizations, and to individuals known to be interested in the Nargara Falls Storage Site remedial action project. Additional copies may be obtained from Mr. L.F. Campbell at the address given above.

Copies of the DEIS are available for public inspection at the following locations:

Freedom of Information Reading Room, Room 1E-190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585
Oak Ridge Operations Office, Public Reading Room, Federal Building, Oak Ridge, TN 37830
Oak Ridge Public Library, Civic Center, OR Turnpike, Oak Ridge, TN 37830
Clinton Public Library, 118 S. Hicks Street, Clinton, TN 37916
Kingston Public Library, Cumberland St., Municipal Bldg., Kinston, TN 37763
Lewiston Town Hall, 1375 Ridge Road, Lewiston, NY 14092
Richland Operations Office, Public Reading Room, Hanford Science Center, Richland, WA 99352
Richland Public Library, Swift and Northgate, Richland, WA 99352

B. Written Comments

Interested parties are invited to provide written comments on the DEIS to Mr. L. F. Campbell, at the address given above. Comments should be identified on the outside of the envelope with the designation "Draft EIS on Niagara Falls Storage Site." All comments and related information should be received by DOE by October 9, 1984, in order to insure consideration in preparing the final statement.

Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

C. Public Hearing

1. Participating Procedure

Public hearings on the draft statement will be held on September 19, 1984, at 7:30 p.m. in the Lewiston-Porter Senior High School auditorium on Creek Road (Highway 18) Lewiston, New York; on September 20, 1984, at 7:30 p.m. in the auditorium of the American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee; and on September 24, 1984, at 7:30 p.m. in the Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington.

A DOE official will designate a presiding officer to chair the hearing. This will not be a judicial or evidentiary-type hearing.

Any person who desires to speak at the hearing should notify Mr. L. F. Campbell by September 14, 1984, so that time can be scheduled. Although not required, persons who intend to speak are encouraged to provide a brief summary of the presentation.

Individuals who did not make an advance arrangement to speak may register to speak at the hearing. After all scheduled speakers, an opportunity will be provided for these individuals to speak. Time for each participant will be limited depending on time available and the number of responses.

2. Conduct of Hearing

DOE will arrange the schedule of presentations to be heard and will establish basis rules and procedures for conducting the hearing. The length of each presentation may be limited, depending on the number of persons desiring the speak.

Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the same locations as listed above the review of the DEIS (Section IV A). Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C., August 17, 1984.

Jan W. Mares,

Assistant Secretary for Policy, Safety, and Environment.

[FR Doc. 84-22512 Filed 8-23-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Civilian Radioactive Waste Management

Advisory Panel on Alternative Means of Financing and Managing (AMFM) Radioactive Waste Facilities; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Advisory Panel on Alternative Means of Financing and Managing (AMFM) Radioactive Waste Facilities.

Date and time: September 25—8:30 a.m.—5:00 p.m., September 26—8:30 a.m.—4:00 p.m.

Place: U.S. Department of Energy, Forrestal Building Room 1E-245, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Contract: Harold H. Brandt, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone: (202) 252-1652.

Purpose of the Panel

To study and report to the Department of Energy on alternative approaches to managing the construction and operation of civilian radioactive waste facilities, pursuant to section 303 of the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425). The Panel's report will include a thorough and objective analysis of the advantages and disadvantages of each alternative approach, but will not address the specific siting of radioactive waste facilities.

Tentative Agenda

September 25

- Review of Draft Report Text
- Financing Implications
- Organizational Transition(s)
- Public Comment (10 Minute Rule)

September 26

- Review of Draft Report Text
- Financing Implications
- Organizational Transition(s)
- Public Comment (10 Minute Rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Harold Brandt at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:30 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on August 21, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–22575 File 8–23–84; 8:45 am]
BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Remedial Order to Clark Oil & Refining Corp. and Apex Oil Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of issuance of proposed remedial order to Clark Oil & Refining Corporation and Apex Oil Company.

I. Introduction

On August 1, 1984 the Economic Regulatory Administration ("ERA") of the Department of Energy ("DOE") moved to lift the stay of a Proposed Remedial order ("PRO") proceeding concerning the Clark Oil & Refining Corporation. The case had been stayed in accordance with the decision in *Clark Oil & Ref. Corp.*, 4 DOE ¶82,041 (1979). On August 1, 1984 ERA also filed a revised version of the PRO, pursuant to 10 CFR 205.192(e), in order to join an additional party (Apex Oil Company ("Apex")), to update the PRO, to include additional information, to revise the proposed remedy and to reflect the apparent continuing nature of the violation.

On August 8, 1984 the Office of Hearings and Appeals ("OHA") of DOE rescinded the stay order and determined that the revised PRO would be treated as a new PRO proceeding. Slip op. in Case No. HRX–0105. Clark and Apex were directed to file Notices of Objection within 30 days of their receipt of OHA's decision (August 8, 1984) if they desire the opportunity to contest the findings of fact and conclusions of law in the PRO.

OHA further directed ERA to "publish Notice in the **Federal Register** to apprise the public of its renewed enforcement effort against Clark and Apex." Slip op. at 2.

II. Issuance of Proposed Remedial Order

The PRO alleges that Clark violated the Mandatory Petroleum Price and Allocation Regulations and the preceding regulations of the Cost of Living Council. Clark was subject to these regulations because, during the regulated period from 1973 to early 1981, Clark was a major refiner engaged in the production and refining of crude oil and the marketing of petroleum products.

The PRO was originally issued to Clark on April 30, 1979, but proceedings were thereafter stayed. On August 1, 1984 ERA issued an amended version of the PRO. (As used hereafter in this Notice, "PRO" refers to the PRO as amended on August 1, 1984).

Pursuant to 10 CFR 205.192(c), ERA hereby gives notice of the issuance of the PRO and of the opportunity for objection thereto. A copy of the PRO with confidential information deleted may be obtained from DOE as provided in Part IV of this Notice.

III. Clark Proposed Remedial Order

Clark is a Wisconsin corporation which conducts business at 8530 West National Avenue, Milwaukee, Wisconsin 53201. In 1981 Apex acquired Clark. Apex is a Missouri corporation which conducts business at 7930 Clayton Road, Richmond Heights, Missouri 63117.

Accordingly, both Clark and Apex are designated as respondents to reflect the fact that they share joint and several liability for the violations alleged in the PRO. *Economic Regulatory Administration*, 11 DOE ¶84,038 (1983). (As used hereafter in this Notice, references to "Clark" include Apex).

The Clark PRO (ERA Case No. RCKH00300) alleges that Clark failed to reduce its claimed crude oil costs by the amount of compensation which it received for the sale or exchange of fee-free licenses. Specifically, the PRO states that Clark admitted that it did not treat $82,500 which it received pursuant to an exchange agreement with Texaco, Inc., for use of fee-free licenses during the period October 1973 through December 1973, as crude oil costs for reporting on the refiner's monthly reports or as consideration which required a corresponding reduction in crude costs. The PRO alleges that this conduct violated 6 CFR 150.355 and 150.356 and 10 CFR 212.83. The PRO further alleges that there is a strong likelihood that Clark's failure to report or to reduce its crude oil costs to reflect compensation for use of its fee-free licenses by other firms continued subsequent to December 1973. The PRO alleges that any such failure by Clark during the period January 1974 through December 1980 would have resulted in a violation of 10 CFR 212.83 and the overstatement of Clark's crude costs for the relevant month(s) of measurement.

The PRO states that Clark's unlawful overstatement of its crude costs could result in overcharges to the refiner's customers.

The PRO proposes a three-stage remedial process. First, Clark would be required to revise its monthly reports for the period October 1973 through December 1980: (a) To delete the $82,500 in overstated crude costs for the months of October 1973 through December 1973, and (b) to delete from its claimed crude costs all compensation received for the sale or exchange of Clark's fee-free licenses in the period January 1974 through December 1980. All

computations and revisions would be subject to review by ERA and approval by OHA. Second, Clark would use the approved computations and revisions as the basis for a recalculation of the total costs available for recovery and a calculation of any overcharge which might result. All calculations would be subject to review by ERA and approval by OHA. Third, OHA would determine the total amount of any overcharge for the period October 1973 through December 1980 which resulted from the alleged violation(s) and assess an appropriate rate of interest. Any overcharges, plus interest, would be deposited in an interest bearing account and ultimately would be disbursed pursuant to such procedures as OHA determines to be appropriate.

IV. Notice of Objection

In accordance with 10 CFR 205.193, any aggrieved person may file a Notice of Objection to the PRO with OHA within 15 days after the date of this publication. A person who fails to file a timely Notice of Objection shall be deemed to not contest the findings of fact and conclusions of law as stated in the PRO. If a Notice of Objection is not filed in accordance with § 205.193, the PRO may be issued as a final Remedial Order.

Any Notice of Objection, Statement of Objections, Response, Reply, Motion or any other document submitted in this proceeding shall be filed with OHA at the following address: Ofice of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Room 6F-055, Washington, D.C. 20585.

Copies of all Notices of Objection, Statements of Objections and all other documents filed by an aggrieved person or other participant in this proceeding shall be served on: David L. Anderson, Deputy Solicitor, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Room 3H-17, Mailcode RG-30, Washington, D.C. 20585.

No confidential information should be included in the Notice of Objection.

Requests for copies of the PRO, with confidential information deleted, shall be in writing, identified by ERA Case No. RCKH00300 and submitted to: Freedom of Information Reading Room, Department of Energy, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585.

Issued in Washington, D.C. this 15th day of August, 1984.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration, Department of Energy.

[FR Doc. 84-22514 Filed 8-23-84; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Proposed New Data Collection Form RW-859

AGENCY: Energy Information Administration, DOE.

ACTION: Proposed mandatory new data collection Form RW-859, "Spent Nuclear Fuel Data"; extension of the comment period.

SUMMARY: On July 20, 1984, the Energy Information Administration (EIA) of the Department of Energy (DOE) published for public comment, a notice of the proposed new data collection Form RW-859 (49 FR 29442). The comment period on the proposed form was to close on August 19, 1984. In response to requests that the comment period be extended to provide additional time to review the proposed new form, and to develop comments for submission to the EIA, the EIA is extending the comment period until September 12, 1984

DATE: Comments in connection with the proposed rule must be received on or before September 12, 1984

Comment Procedures: Interested persons are invited to participate by submitting information, views, or proposed changes. Comments should be submitted to the address indicated below in the "For Further Information Contact" section of this notice and should be identified on the outside envelope and on the document with the designation: "Proposed Data Collection Form RW-859."

FOR FURTHER INFORMATION CONTACT: James S. Finucane, Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration, Department of Energy, Mail Stop 2F-021, Washington, D.C. 20585, (202) 252-2398.

Issued in Washington, D.C. August 17, 1984.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 84-22513 Filed 8-23-84; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Monday, September 17, 1984, 9:00 a.m.-6:00 p.m., Tuesday, September 18, 1984, 9:00 a.m.-5:00 p.m.

Place: Stanford Linear Accelerator Center, Central Laboratory Building, Orange Room, 2575 Sand Hill Road, Menlo Park, CA.

Contact: Dr. P.K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, Washington, DC 20545, Telephone: 301/353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, September 17, 1984

—Discussion of Department of Energy High Energy Physics and National Science Foundation Elementary Particle Physics fiscal year 1985 Budgets and Scenarios for fiscal year 1986
—Impact on Laboratories of fiscal year 1985 Budget Distributions
—Status of the Superconducting Super Collider
—Report of the Subpanel on Theoretical Computing
—Review of the Stanford Linear Accelerator Center Program
—Public Comment (10 minute rule)

Tuesday, September 18, 1984

—Discussion of a possible Subpanel on Program Priorities and Guidelines for the period fiscal year 1985-1989
—Status of the Subpanel on High Energy Physics Computing Needs
—Status of the Subpanel on Non-Accelerator Physics
—Discussion of the possibility of a Laser Accelerator Center
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or

telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on August 21, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84–22574 Filed 8–23–84; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 2146–038]

Alabama Power Co.; Application for Change in Land Rights

August 21, 1984.

Take notice that Alabama Power Company, Licensee for the Coosa River Project, FERC No. 2146, on March 13, 1984, filed an application for authorization to lease project lands at the Weiss development of the project. The Licensee proposes to lease an additional 78 acres of project lands to enable American Nursery Products, Inc. to expand its existing containerized nursery facility at its Alabama Container Farm. The Weiss development is located in Cherokee County, Alabama.

Correspondence with the Licensee should be directed to: Mr. F. L. Clayton, Jr., Senior Vice President, Alabama Power Company, P.O. Box 2641, Birmingham, Alabama 35291.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Licensee). If any agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protest, or Motion Intervene—Anyone may file comments, a protest, or motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–26 (1983). In determing the appropriate action take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before October 1, 1984.

Filing and Service of Responsible Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–22585 Filed 8–23–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER84–348–001]

American Electric Power Service Corp.; Order Accepting for Filing and Suspending Intercompany Agreement, Granting Interventions, Denying Motions for Rejection or Summary Disposition, Denying Waiver of Notice, and Establishing Procedures

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

Issued August 21, 1984.

On March 29, 1984, as completed on June 22, 1984,[1] American Electric Power Service Corporation (AEPSC) tendered for filling a transmission equalization agreement [2] on behalf of the five operating companies of the American Electric Power System (AEP).[3] The proposed agreement provides for a sharing among the AEP members of the cost of ownership and operation of the AEP Extra High Voltage (EHV) transmission system [4] through monthly equalization payments to be made in proportion to each company's respective demand ratio. AEPSC states that the agreement has become necessary because the disparity between the amount of investment made by each memeber in the EHV system and the usage of the system by each member has grown in recent years and is expected to continue to grow. In order to moderate the impact of such equalization payments on individual AEP members, the agreement provides for a phasing-in of payments over a period of five years.[5] AEPSC requests waiver of the notice requirements and a June 1, 1984 effective date.

Issued August 21, 1984).

Notice of the original filing was published in the Federal Register, with responses due on or before April 23, 1984. A second notice, providing for comments by July 12, 1984, was published when the filing was completed.

The Attorney General of Kentucky, the Kentucky Public Service Commission, and Kentucky Industrial Utility Customers [6] filed timely interventions which raised no substantive issues. The Consumer Advocate of the West Virginia Public Service Commission and the West Virginia Public Service Commission filed motions to intervene on April 26 and May 15, respectively, which also identified no particular objections to the filing. On April 25, 1984, the Division of Consumer Counsel, Office of the Attorney General of Virginia and the Virginia State Corporation Commission filed motions to intervene which required a five month suspension.

The Office of the Consumer's Counsel of the State of Ohio filed a timely motion to intervene, requesting that a hearing be convened and that waiver of notice be denied. The Consumer's Counsel alleges that the proposed agreement will result in an inequitable sharing of costs by C&S and OPCO. The Public Utilities Commission of Ohio separately filed a motion to intervene and a protest. In seeking a hearing on the proposed agreement, the Ohio Commission states that the filing provides no basis for determining the reasonableness of the allocations, that there is no explanation for a sizeable

[1] By letter dated May 23, 1984, the Director of the Commission's Office of Electric Power Regulation advised the filing parties that their submittal was deficient. The letter order terminated the "000" subdocket in ER84–348 and indicated that a new subdocket would be assigned upon completion of the filing.

[2] *See* Attachment for rate schedule designations.

[3] The five compaies are: Appalachian Power Company (APCO), Columbus and Southern Ohio Electric Company (C&S), Indiana & Michigan Electric Company (I&M), Kentucky Power Company (KP), and Ohio Power Company (OPCO).

[4] The EHV transmission system consists of 345 kV, 500 kV, and 765 kV transmission lines and associated transformation, switching, and other terminal equipment.

[5] The equalization agreement also terminates the Special Facilities Agreement, dated April 24, 1958, among APCO, I&M, KP, and OP.

[6] The members of the Kentucky Industrial Utility Customers are Air Products and Chemicals, Inc., Armco Inc., Ashland Oil, Inc., Huntington Alloys, Inc., and Kentucky Electric Steel Company.

increase in I&M's transmission investment, and that the carrying costs used should be developed based on a consolidated capital structure.

On April 23, 1984, the Municipal Wholesale Electric Customers of OPCO (Municipals) [7] filed an intervention and protest. Municipals request that the Commission suspend the proposed agreement for one day. In support of their request, Municipals state that the proposed agreement does not fully recognize OPCO's investment in transmission facilities which benefit other AEP members and that the proposed cost sharing method differs substantially from that currently used in equalizing generation among the AEP members.

On April 23, 1984, the City of Westerville, Ohio (Westerville), a wholesale customer of C&S, filed a motion to intervene and a request that the proposed agreement be suspended for five months. On July 12, 1984, Westerville filed a motion requesting that the proposed agreement be rejected or, in the alternative, that the Commission issue a second deficiency letter requiring AEPSC to further justify the agreement. In support of its request for rejection, Westerville states that AEPSC's filing is unjustified with respect to: (1) The cost allocation methodology; (2) the exclusion of transmission lines under 345 kV; (3) the use of separate carrying charges for each member company to compute equalization payments; (4) the disparate projections of transmission investment by member companies; and (5) the use of the single highest non-coincident peak in developing the monthly member load ratios. On April 27, 1984, and July 12, 1984, the Old Dominion Committee for Fair Utility Rates (Old Dominion) filed motions to intervene and protests which raise the same issues as Westerville's pleadings.

On April 23, 1984, the Indian Municipal Power Agency (IMPA),[8] a wholesale customer of I&M, filed a protest and motion to intervene. IMPA requests summary rejection of the proposed five year phase-in plan or, in the alternative, a one day suspension of the proposed agreement and a hearing. In support of its motion for summary disposition, IMPA states that the five year phase-in of equalization payments is discriminatory and deviates from coast-based ratemaking, allows unjustified profits to certain AEP affiliates, and violates the spirit of the Public Utility Holding Company Act. IMPA requests that the Commission order immediate implementation of full equalization payments. On July 12, and July 13, 1984, IMPA filed supplements to its original intervention and protest in which it renews its request for summary disposition and asks the Commission to order I&M to reflect the full value of the proposed equalization payment plan in its next rate filing.

On May 7, 1984, and July 23, 1984, AEPSC filed answers in opposition to IMPA's motion for summary disposition stating that summary rejection of any part of the proposed agreement will disrupt the balance of interests reflected in the agreement and that the proposed agreement reflects the intentions of the parties and cannot therefore be summarily rejected. Answers opposing the motion for summary disposition were also filed by Municipals, Westerville, Old Dominion, and the Virginia State Corporation Commission, all of whom assert the genuine issues of fact exist which are material to a decision in this proceeding and which preclude the granting of summary disposition.[9]

Discussion

Pursuant to Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motions to intervene of IMPA, Westerville, Municipals, the Attorney General of Kentucky, the Kentucky Public Service Commission, the Kentucky Industrial Utility Customers, the Office of the Consumer's Counsel of the State of Ohio, and the Public Utilities Commission of Ohio serve to make them parties to this proceeding. Furthermore, given the fact that a second comment period was afforded in this proceeding following completion of the filing and considering the early stage of this case, we find that good cause exists to grant the untimely motions to intervene of Old Dominion, the Consumer Advocate of the West Virginia Public Service Commission, the West Virginia Public Service Commission, the Division of Consumer Counsel, Office of the Attorney General of Virginia, and the Virginia State Corporation Commission.[10]

With regard to Westerville's and Old Dominion's claims that the proposed transmission agreement should be rejected or that a second deficiency letter should be issued, we find that AEPSC's submittal, as completed on June 22, substantially complies with Part 35 of the Commission's regulations (18 CFR Part 35),[11] and that no other basis for rejection has been shown. We shall, therefore, deny the requests for rejection.

We shall also deny IMPA's request for summary disposition with respect to the five year phase-in of the equalization payments. There is not sufficient information presently in the record on which to base a decision on this question. The matter should be pursued during the hearing which we shall order below.

Our preliminary review of the transmission equalization agreement and the pleadings indicates that the submittal has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept AEPSC's submittal for filing and suspend it as ordered below.[12]

In *West Texas Utilities Co.*, Docket No. ER82-23-00, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for five months where preliminary review indicates that the filing may be unjust or unreasonable and may generate substantially excessive revenues, as defined in *West Texas*. Since our preliminary review indicates that the proposed agreement may result in substantially excessive equalization charges, we shall suspend the agreement for five months. We conclude that good cause has not been shown to waive the notice requirements. Accordingly, we shall deny AEPSC's request for waiver of notice. The proposed transmission equalization agreement shall take effect, subject to refund, on January 22, 1985.

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[7] The Municipals are the Villages of Arcadia, Bloomdale, Corey, Cygnet, Deshler, Greenwhich, Ohio City, Plymouth, Republic Shiloh, Sycamore, and Wharton, and the Cities of Bryan, St. Clairville, and Wapakoneta, Ohio.

[8] IMPA filed its intervention on behalf of itself and three of its member electric systems (the Cities of Richmond, Anderson, and Frankton, Indiana).

[9] We note that, on May 9, 1984, IMPA submitted a "response" to the answers of AEPSC and Municipals. Because our regulations do not permit answers to answers (18 CFR 385.213), and because no good cause has been shown to depart from this rule, we shall reject IMPA's responsive pleading.

[10] We note that late pleadings were also filed by IMPA on July 13, 1984, and by the Virginia State Corporation Commission on July 30, 1984. These pleadings relate to IMPA's request for summary rejection of the five year phase-in proposal and the treatment of equalization payments in individual utility rate cases. In view of our conclusion that factual or legal issues remain with respect to the phase-in procedure, there is no reason to entertain the late pleadings and they will be rejected.

[11] *See Municipal Light Boards of Reading and Wakefield, Mass. v. FPC*, 450 F.2d 1341 (D.C. Cir. 1971), *cert. denied*, 405 U.S. 989 (1972).

[12] AEPSC characterizes its submittal as an initial rate schedule. Even if we were to adopt that characterization, the Commission has previously decided that it has suspension authority under section 205 of the Federal Power Act with respect to "any rate schedule for new service filed after the first-ever filing." *Middle South Energy, Inc.*, Docket No. ER82-616-001, 23 FERC ¶ 61,277, 61,572 (1983).

The Commission orders:

(A) The late interventions of Old Dominion, the Consumer Advocate of the West Virginia Public Service Commission, the West Virginia Public Service Commission, the Division of Consumer Counsel, office of the Attorney General of Virginia, and the Virginia State Corporation Commission are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) IMPA's May 9, 1984 reply to the answers of AEPSC and Municipals, IMPA's July 13 supplemental protest, and the Virginia Corporation Commission's July 30 answer are hereby rejected.

(C) The motions of Westerville and Old Dominion to reject AEPSC's filing are hereby denied.

(D) IMPA's request for summary disposition with respect to the five year phase-in of the equalization payments is hereby denied.

(E) AEPSC's request for waiver of notice is hereby denied.

(F) The proposed transmission equalization agreement is hereby accepted for filing and suspended for five months from 60 days after completion of the filing, to become effective on January 22, 1985, subject to refund.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed transmission equalization agreement.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately ten (10) days from the date of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Such conference shall be held for purposes of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

American Electric Power System

[Docket No. ER84-348-001]

Rate Schedule Designations

Filing Date: June 22, 1984.

Designation and Description

Appalachian Power Company.

(1) Rate Schedule FERC No. 100 (Supersedes Supplement Nos. 2 and 4 to Rate Schedule FPC No. 20): Transmission Equalization Agreement dated April 1, 1984
(2) Supplement No. 1 to Rate Schedule FERC No. 100: Carrying charge

Columbus & Southern Ohio Electric Company

(3) Rate Schedule FERC No. 34: Transmission Equalization Agreement dated April 1, 1984
(4) Supplement No. 1 to Rate Schedule FERC No. 34: Carrying charge

Indiana & Michigan Electric Company

(5) Rate Schedule FERC No. 73 (Supersedes Supplement Nos. 2 as supplement, and 4 to Rate FPC No. 17): Transmission Equalization Agreement dated April 1, 1984
(6) Supplement No. 1 to Rate Schedule FERC No. 73: Carrying charge

Kentucky Power Company

(7) Rate Schedule FERC No. 17 (Supersedes Supplement No. 1 to Rate Schedule FPC No. 11): Transmission Equalization Agreement dated April 1, 1984
(8) Supplement No. 1 to Rate Schedule FERC No. 17: Carrying charge

Ohio Power Company

(9) Rate Schedule FERC No. 78 (Supersedes Supplement Nos. 2 and 4 to Rate Schedule FPC No. 23): Transmission Equalization Agreement dated April 1, 1984
(10) Supplement No. 1 to Rate Schedule FERC No. 78: Carrying charge

[FR Doc. 84-22586 Filed 8-23-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-596-000]

Central Vermont Public Service Corp.; Filing

August 20, 1984.

The filing Company submits the following:

Take notice that on August 13, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a system Sales Agreement (the "Agreement") between the Connecticut Municipal Electric Energy Cooperative (CMEEC) and Central Vermont Public Service Corporation. The Agreement, dated July 30, 1983, provides for the sale of energy (a "Transaction") from the CVPS system to CMEEC and the purchase by CMEEC of energy from the CVPS system.

CVPS states that the Agreement provides that the parties will determine prior to 11:00 AM on a daily or weekly basis during the term of the Agreement whether it is economically advantageous to the parties that a transaction, pursuant to the Agreement, take place during that day or week.

CMEEC shall pay CVPS monthly an amount determined by the sum of an energy reservation charge and an energy charge. The energy reservation charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month, and received by CMEEC pursuant to this Agreement, by the agreed upon energy reservation rate in dollars/MWH for each transaction occurring in that month. The energy reservation rate will be mutually agreed upon by the parties prior to each transaction; however, in no event shall this charge exceed $29.60 MWH for 1983 and $29.80/MWH after 1983. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month, and received by CMEEC pursuant to this Agreement, by the agreed upon energy rate for each transaction occurring in that month. This energy rate shall be based upon CVPS's forecasted incremental system energy cost, adjusted for transmission losses to the delivery point, and shall be mutually agreed upon by the parties prior to each transaction.

CVPS requests an effective date of July 31, 1983, and therefore requests waiver of the Commission's notice requirements. The waiver, if granted, will have no effect upon purchasers under any other rate schedule. If said waiver is not granted, the parties to the Agreement will have to defer receiving the benefits accruing from the Agreement, i.e., their respective systems will be compelled to operate at less than optimum economic efficiency.

According to CVPS copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Steet, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 5, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22587 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-581-000]

El Paso Electric Co.; Filing

August 20, 1984.

The filing Company submits the following:

Take notice that on August 3, 1984, El Paso Electric Company (El Paso) tendered for filing an amendment to the Power Sales Agreement between El Paso and Imperial Irrigation District (IID) dated September 22, 1982. The content of the amendment is as follows:

1. The term of the agreement has been extened by two years from April 30, 1992.

2. The term for Firm Capacity service at 100 MW has been extended by two years from April 30, 1990 to April 30, 1992.

3. Pursuant to the agreement, IID has an option to extend the term of the agreement for 3 to 10 years for 60–150 MW upon written notice to El Paso prior to April 30, 1984. The amendment provides for the deferral of this option date by two years to April 30, 1986.

4. Pursuant to the agreement, IID has an option to extend the term of the agreement for 1 or 2 years for 60–100 MW upon written notice to El Paso prior to April 30, 1987. The amendment provides for the deferral of this option date by two years to April 30, 1989.

El Paso requests that the amendment be permitted to become effective 60 days from the filing date.

According to El Paso, copies of the filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission and IID.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22588 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5965-004]

Firmin O. Gotzinger; Surrender of Exemption

August 21, 1984.

Take notice that Firmin O. Gotzinger, exemptee for the Rattlesnake Hydro Project No. 5965, has requested that his Exemption be terminated. The order granting Exemption for Project No. 5965 was issued on July 6, 1982. The project would have been located on Rattlesnake Creek and North Fork Rattlesnake Creek, near Pollock, Idaho.

Mr. Gotzinger filed the request on June 6, 1984, and the surrender is deemed accepted as of June 6, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22589 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-28-000]

Florida Power Corp.; Petition for a Declaratory Order

August 20, 1984.

Take notice that on July 26, 1984, Florida Power Corporation (Florida Power) submitted for filing its declaratory order petition pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure.

This petition seeks to resolve a controversy over jurisdiction to establish rates for the transmission of cognenerated energy from qualifying facilities to other utilities on Florida Power's transmission facilities.

The Commission, in its Order No. 69 implementing the cogeneration provisions of the Public Utility Regulatory Policies Act of 1978, explicitly stated that, for utilities subject to the Commission's jurisdiction, charges for transmitting energy produced at qualifying facilities will be determined pursuant to Part II of the Federal Power Act.

Florida Power states that the Florida Public Service Commission (FPSC), however, has asserted jurisdiction to set rates for the transmission of cogenerated energy by utilities under the Commission's jurisdiction. Florida Power and other Florida utilities advised the FPSC that the Federal Power Act confers exclusive jurisdiction on FERC to set rates for the transmission of electric energy on facilities that are part of an interconnected interstate transmission grid and that FERC's jurisdiction is not dependent in any way upon the type of generating facility used to produce the energy.

Therefore, Florida Power request that this Commission issue an order declaring jurisdiction over rates for transmissions of cogenerated energy from qualifying facilities to other utilities on Florida Power's transmission facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 31, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22590 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6560-001]

Idaho Hydro, Inc.; Surrender of Preliminary Permit

August 21, 1984.

Take notice that Idaho Hydro, Inc., Permittee for the Floodwood Hydroelectric Project No. 6560, has requested that its preliminary permit be

terminated. The Preliminary Permit was issued on November 26, 1982, and would have been expired on November 30, 1984. The project would have been located on Little North Fork of Clearwater River in Clearwater County, Idaho.

Idaho Hydro, Inc. filed the request on July 27, 1984, and the surrender of the preliminary permit for Project No. 6560 is deemed accepted as of July 27, 1984, and effective as of 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22591 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5002-003]

Mac Hydro-Power Co., Inc.; Surrender of Exemption

August 21, 1984.

Take notice that Mac Hydro-Power Company, Inc., Exemptee for the proposed Haypress Creek Hydroelectric Project No. 5002, has requested that his exemption be terminated. The exemption was issued on July 16, 1982. The project would have been located on Haypress Creek in Sierra County, California. The Exemptee filed his request on June 28, 1984, and the surrender of the exemption for Project No. 5002 is deemed accepted as of June 28, 1984, and effective 30 days after the date of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22592 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-115-000]

Midwestern Gas Transmission Co.; Petition for Waiver and Filing of Accompanying Tariff Sheets

August 20, 1984.

Take notice that on August 14, 1984 Midwestern Gas Transmission Corporation (Midwestern) tendered for filing revised tariff sheets implementing a change in the minimum bill of its CD-1 Rate Schedule. Midwestern also filed a petition requesting limited waiver of § 154.111 of the Commission's Rules and Regulations to permit the filing. The proposed effective date is August 1, 1984.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before August 27, 1984. 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. 84-22593 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6029-001]

Pacific Power and Light Co. and the City of Shady Cove, OR; Surrender of Preliminary Permit

August 21, 1984.

Take notice that Pacific Power and Light Company and the City of Shady Cove, Oregon Permittees for the Prospect No. 5 Hydroelectric Project No. 6029 have requested that their preliminary permit be terminated. The Preliminary Permit was issued on November 1, 1982, and would have expired on May 31, 1985. The project would have been located on the Rogue River in Jackson County, Oregon.

Pacific Power and Light Company and the City of Shady Cove, Oregon filed the request June 7, 1984, and the surrender of the preliminary permit for Project No. 6029 is deemed accepted as the June 7, 1984, and effective as of 30 days after the date of this notice.

Kenneth Plumb,

Secretary.

[FR Doc. 84-22594 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-4-000]

Placid Refining Co.; Notice Permitting Supplemental Comments

Issued August 20, 1984.

On November 2, 1981, Placid Refining Company filed its Petition for Review of a Decision and Order issued on September 30, 1981 by the Office of Hearings and Appeals of the Department of Energy (DOE). The Decision and Order denied Placid's request for exception relief from the provisions of the Domestic Crude Oil Entitlements Program, 10 CFR 211.67, specifically from the July 3, 1980 amendments relating to Alaska North Slope (ANS) crude oil.

On June 28, 1984, DOE announced its final decision not to issue any further entitlements notices. Simultaneously, it issued a Notice of Public Proceeding and Public Hearing concerning the most appropriate manner to handle outstanding exception orders. In that notice DOE announced its tentative decision not to require firms which had received excessive entitlements exception relief to refund that relief.[1]

Notice is hereby given that on or before September 5, 1984 the parties may file comments on the effect of DOE's action on this proceeding. In particular, the parties are requested to address the question whether the Commission should stay further consideration of this proceeding pending DOE's final decision on the issues raised by the June 28, 1984 Notice of Public Proceeding and Public Hearing concerning the appropriate manner to handle outstanding exception orders.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22595 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER84-505-000 et al.]

Puget Sound Power and Light Co.; Order Accepting Rate for Filing Subject to Refund or Adjustment, Granting Intervention, Consolidating Dockets, Establishing Hearing Procedures, and Delegating Authority

Issued: August 20, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On June 21, 1984, Puget Sound Power and Light Company (Puget) filed revised Average System Cost (ASC) rates applicable to exchange sales made to the Bonneville Power Administration (BPA), under the terms of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).[1] That Act authorizes participating electric utility systems to sell to BPA at "average system cost" amounts of energy equivalent to their residential customers' loads and to repurchase such energy from BPA at BPA's lower preference rate.

The Commission issued a Final Rule governing these exchanges on October 6, 1983.[2] Under the established

[1] 49 FR 27410 (July 3, 1984).

[1] *See* Attachment for rate schedule designation.

[2] Order no. 337, Docket No. RM81-41-000, Sales of Electric Power to the Bonneville Power Administration; Methodology and Filing Requirements; Final Rule [FERC Statutes and Regulations ¶ 30,506.] The Final Rule became effective on January 10, 1984.

procedures, jurisdictional utilities must file each ASC rate proposal with BPA. That rate is to be reviewed by BPA wthin 120 days. If BPA's review results in an ASC determination different from that developed by the utility, BPA is to issue a report of its findings, together with the ASC rate to be used by the utility. The utility's proposed ASC rate, BPA's report and BPA's adjusted ASC rate, if any, must then be filed with the Commission for review. The rules further provide that such filings are subject to the procedures applicable to other filings under sectin 205 of the Federal Power Act, as the Commission deems appropriate. The Commission may order changes in an ASC rate which was not determined in compliance with the final rules.

Puget's revised ASC rate filing reflects a change in the company's base ASC rate resulting from the winter trimester Energy Cost Admjustment Clause (ECAC) # 6 Average System Cost filing to be effective from February 1, 1984, through May 31, 1984. BPA's report accepts Puget's ECAC with no changes. However, the revised ASC rate represents an adjustment to Puget's base rate which was previously determined by BPA and has been contested by Puget in Docket No. ER84–198–000. Accordingly, Puget's objections in Docket No. ER84–198–000 apply equally in the instant docket.

Notice of the filing was published in the **Federal Register**, with responses due by July 18, 1984. A timely intervention was filed by BPA's Direct Service Industrial Customers (DSIs). An untimely intervention was filed by BPA on July 26, 1984. Neither BPA nor the DSIs has identified specific issues with respect to the current filing. However, both indicate a desire to comment on issues raised by other parties and further state that they may request a hearing or oral argument.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), the timely intervention serves to make the DSIs parties to this proceeding. BPA has stated no reason for its late invervention. However, intervention by BPA at this early stage will not prejudice other parties or delay the proceeding. Further, BPA is a party in a number of pending dockets involving Puget's ASC rates and obviously has a similar interest in the outcome of the instant proceeding. As a result, the Commission will grant BPA's late intervention.

This docket is one of many involving ASC rates now pending before the Commission. In our recent order in *Pacific Power and Light Company, et al.*, Docket Nos. ER81–780–000, *et al.*, 28 FERC ¶ 61,143 (1984), we set for hearing the other pending ASC dockets of Puget and three other utilities [3] participating in the exchange sale program. Inasmuch as the current filing involves the same issues as Puget's other ASC dockets, it is appropriate to accept Puget's revised ASC rate for filing to become effective as of February 1, 1984, subject to refund or other adjustment, and to consolidate this docket with Puget's other ASC dockets for purposes of hearing and decision.

As noted, there are currently four utilities with ongoing ASC proceedings. We anticipate that during the pendency of those cases, future ASC filings will be "contested" based exclusively on the same issues as those already being litigated. Barring unforseen circumstances or novel objections, we would expect such subsequent filings to be uniformly consolidated with the pending proceedings for purposes of ultimate disposition. Inasmuch as the ASC rates are automatically collected subject to refund or other adjustment (*See* 18 CFR 35.31), there appears to be no need for the Commission to separately address each such filing. Accordingly, where later filings under BPA's currently effective ASC methodology reflect only pro forma reiterations of issues already subject to litigation, we shall delegate to the Director of the Commission's Office of Electric Power Regulation the authority to accept such filings subject to refund or adjustment as the rules provide, to set them for hearing, and to consolidate them with the pending proceedings.

The Commission orders

(A) BPA's untimely intervention is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) Puget's revised ASC rates in Docket No. ER84–505–000, as adjusted by BPA, are hereby accepted for filing, to become effective as of February 1, 1984, subject to refund or other adjustment.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 5 and 9 of the Pacific Northwest Electric Power Planning and Conservation Act, section 402(a) of the Department of Energy Organization Act, and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act and the Pacific Northwest Electric Power Planning and Conservation Act (18 CFR Chapter I), a public hearing shall be held concerning the consistency with the ASC methodology of the average system costs determined by BPA in this proceeding for Puget.

(D) Docket No. ER84–505–000 is hereby consolidated with Docket Nos. ER82–448–000, ER82–715–000, ER83–44–000, ER83–45–000, ER83–46–000, ER83–187–000, ER83–334–000, ER83–541,000 ER83–567–000, ER83–706–000, ER84–40–000, ER84–198–000, and ER84–305–000 for purposes of hearing and decision.

(E) The Director of the Office of Electric Power Regulation is hereby delegated the authority to accept for filing and make effective, subject to refund or adjustment pursuant ot 18 CFR 35.31, and to set for hearing and consolidate with ongoing proceedings all future ASC filings made pursuant to BPA's currently effective (first) ASC methodology if the contested issues raised are exclusively reiterations of issues previously raised in regard to prior filings under this ASC methodology which have been set for hearing by the Commission.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[3] Portland General Electric Company, Idaho Power Company, and Montana Power Company.

Puget Sound Power and Light Company

[Docket No. ER84–505–000]

Rate Schedule Designation

Designation and Description

Supplement No. 13 to Supplement No. 3 to Puget Sound Power & Light Company/Bonneville Power Administration Service Agreement under Pacific Northwest Electric Power Planning and Conservation Act FERC Electric Tariff Original Volume No. 1 (Supersedes Supplement No. 12 to Supplement No. 3): Revised ASC for Washington Jurisdiction with BPA Report

[FR Doc. 84–22596 Filed 8–23–84; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 3017–004]

Richard K. Mathews, Peter E. Smith and Henry M. Fletcher III; Application for Transfer of Minor License

August 21, 1984.

Public notice is hereby given that an application was filed on April 16, 1984,

under the Federal Power Act, 16 U.S.C. 791(a)–825(r), by Richard K. Mathews, Peter E. Smith and Henry M. Fletcher III, Licensees and Peter E. Smith and Henry M. Fletcher III, Transferees, for transfer of minor license for the Jetty Lake Hydroelectric Project No. 3017. The project is located on Jetty Lake in the Borough of Sitka near Port Alexander, Alaska. Correspondence with the Applicants should be directed to: Mr. Henry M. Fletcher III, P.O. Box 6031, Ketchikan, Alaska 99901.

Anyone desiring to be heard or to make any protest about this application should file a motion to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 385.211 or 385.214. Comments not in the nature of a protest may also be submitted by conforming to the procedures specified for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party or to participate in any hearings, a person must file a motion to intervene in accordance with the Commission's Rules. Any comments, protests, or motions to intervene must be received on or before September 27, 1984. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The aplication is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–22597 Filed 8–23–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID–2045–001]

Rodney H. Carlson; Application

August 21, 1984.

Take notice that on August 10, 1984, Rodney H. Carlson filed an application pursuant to section 303(b) of the Federal Power Act to hold the following positions:

Vice President-Operations, Upper Peninsula Power Company
Vice President, Upper Peninsula Generating Company
Director, Upper Peninsula Generating Company

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–22598 Filed 8–23–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA84–21–000]

Russell V. Johnson, Jr.; Petition for Adjustment

Issued: August 20, 1984.

On July 10, 1984, Russell V. Johnson, Jr. (Johnson), 1518 First City Place, 204 North Robinson, Oklahoma City, Oklahoma 73102, filed with the Federal Energy Regulatory Commission (Commission) a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978,[1] and Rules 1101–1107 [2] of the Commission's regulations. Johnson requests the adjustment with respect to sales of natural gas produced from December, 1979 to July, 1981, from the Earnest No. 1 well, located in Woods County, Oklahoma.

Johnson alleges that the working interest owners of the subject well suffer special hardship as a result of the disqualification of the subject well for incentive prices under NGPA section 108. Johnson states that this disqualification resulted in refunds to purchasers in the amount of $32,077.15 in principal and $12,121.76 in interest. Johnson indicates that the owners filed the original section 108 application in February, 1979, and that they received a notice from the Commission in August 1980, stating that the well had exceeded production requirements for stripper well qualification for four 90-day production periods in 1979. Johnson further states that the owners filed an application for seasonally affected status in October 1980, which application was "effectively" denied by a Commission letter dated November 1982. Johnson indicates that the owners filed a second section 108 application in July, 1981, for which an affirmative determination became final in April, 1982.

Johnson claims out-of-pocket losses for the Earnest No. 1 well during the period from December 1979 to July 1981 amounting to $5,282.72. He additionally claims that the owners will suffer financial hardship unless they receive the requested adjustment to collect the difference between the otherwise applicable section 104 price and the section 108 price in the amount of $25,889.82 in principal and $19,053.15 in interest. Johnson submits that the production records maintained in his office indicate that the well was producing at levels that would meet the requirements for section 108 qualification during the period in question.

Subpart K of Part 385 of the Commission's Rules of Practice and Procedure sets out the procedures that apply to this adjustment proceeding. Any person wishing to participate in this proceeding shall file a petition to intervene in accordance with Subpart K. All such petitions must be filed within 15 days after this notice appears in the **Federal Register.**

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–22599 Filed 8–23–84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84–25–000]

Snow Mountain Pine Co. v. CP National Corp., and Idaho Power Co.; Petition for a Declaratory Order

August 21, 1984.

Take notice that on July 12, 1984, Snow Mountain Pine Company (Snow Mountain) submitted for filing its petition for declaratory order pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.

Snow Mountain states that the current Requirements Contract between Idaho Power Company (IPC) and CP National Corporation (CPN) is contrary to public policy to the extent that (a) the contract language expressly discourages or penalizes PURPA section 210 purchases; (b) the contract is used by CPN as an excuse for not purchasing pursuant to section 210 of PURPA; and (c) the contract should be used by CPN in the future to offer costs which approximate IPC's average system costs rather than true avoided costs.

Snow Mountain therefore requests that this Commission issue a declaratory order declaring the rights of each of the parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

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[1] 15 U.S.C. 3301–3432 (1982).

[2] 18 CFR 385.1101–1107 (1983).

D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22600 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-648-000]

Southwest Gas Corp.; Application

August 20, 1984.

Take notice that on August 13, 1984, Southwest Gas Corporation (Applicant), P.O. Box 15015, Las Vegas, Nevada 89114, filed in Docket No. CP84-648-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale and delivery of certain volumes of natural gas to Sierra Pacific Power Company (Buyer), for resale to designated large commercial and industrial customers, pursuant to the sales agreement between Applicant and Buyer dated August 8, 1984, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant asserts that the primary purpose of the subject proposal is to make available to the designated end-users volumes of natural gas which are competitively priced with alternative fuels, thus resulting in the retention of price-sensitive loads which are about to be lost due to relatively high gas prices. This would allow the regaining of certain customers which previously have switched to alternative fuels.

Applicant states that it purchases natural gas from Northwest Pipeline Corporation (Northwest) at the Idaho/Nevada border. It is stated that Northwest recently obtained certificate authorization in Docket No. CP84-294-000 to effectuate a program involving the purchase and resale of incentive-priced Canadian natural gas from its supplier, Westcoast Transmission Company, Ltd. Applicant states that it is informed by Northwest that under this program, certain of these specially priced volumes are available for sale to Applicant for ultimate resale to large volume commercial and industrial end-users. It is asserted that the incentive-priced volumes to be sold to such end-users would be those quantities that exceed the monthly volumes that such end-users would otherwise be expected to purchase. Applicant proposes to sell certain volumes of gas purchased under Northwest's program to one of its resale customers, Buyer, for resale to certain designated large volume commercial and industrial end-users to serve requirements which are in excess of the applicable monthly base period quantity for each such end-user. It is asserted that the effectiveness of the August 8, 1984, sales agreement is contingent on approval of the authorization requested herein.

Pursuant to the sales agreement, Applicant proposes to resell to Buyer volumes of Northwest's incentive-priced Canadian gas (Incentive Gas) at the effective rate applicable under Applicant's Rate Schedule G-1, Wholesale Firm Service, which is contained in Applicant's FERC Gas Tariff, Original Volume No. 1. Applicant states it would then, during each month under the sales agreement, provide Buyer an incentive rate credit for all gas purchased and resold by Buyer to each designated end-user that is in excess of each such customer's base monthly quantity. Applicant asserts that the incentive rate credit amount would be equal to the difference between the effective unit commodity rate under Northwest's Rate Schedule ODL-1 as reflected in Northwest's FERC Gas Tariff, First Revised Volume No. 1, and applicant's actual average unit purchase price, including all delivery costs, of Incentive Gas from Northwest, multiplied by the actual volumes purchased by Buyer's designated customers in excess of their base monthly quantities. During each month under the sales ageement, Applicant states, it would assist Buyer in promoting sales of the Incentive Gas by providing an additional credit of 2.0 cents per therm for all gas purchased and resold by Buyer to each designated end-user that is in excess of such customer's base monthly quantity. It is stated that the base monthly quantity is that volume of natural gas which the end-user would use, or is estimated to use, even without the availability of the incentive-priced gas to be provided under the sales agreement.

Applicant proposes that the sale to Buyer would take place at Applicant's various existing delivery points to Buyer without any addition or modificaiton of facilities. It is proposed that the sale and delivery of gas pursuant to the sales agreement would be subject to interruption or curtailment, at Applicant's discretion, whenever necessary to protect any other service rendered by Applicant or when Applicant deems that such sales can no longer be justified economically. It is also stated that sales of Incentive Gas under the sales agreement are subject to the availability of such gas from Northwest.

Applicant states that it estimates that with prompt certification, approximately 2,464,200 therms would be sold under the sales agreement during August, September, and October 1984. Applicant states that the sales agreement would be effective for a primary term commencing upon the receipt of all necessary regulatory approvals and ending on October 31, 1984, and, subject to the continued availability of the incentive-priced Canadian gas supply, would continue in effect from month to month thereafter until terminated upon thirty days written notice. It is stated that under the stipulation and agreement approved by the Commission in Docket No. CP84-294-000, Northwest's certificate to sell its incentive-priced Canadian gas to Applicant would terminate as of October 31, 1984, thereby ending the availability of Incentive Gas to be sold under the sales agreement. applicant states that in the event that Northwest were to obtain authorization from the Commission to extend its program, Applicant might then also seek a similar extension of authorization for the sales proposed herein.

Applicant asserts that the purchased gas costs associated with the proposed service would be removed from Applicant's total purchased gas costs for the purpose of calculating the monthly purchased gas cost deferrals to F.E.R.C. Account No. 191 under Applicant's purchased gas cost adjustment mechanism. Thus, it is stated the purchase of the additional Canadian supplies would have no impact on the cost of gas to Applicant's other customers.

Applicant asserts that the purpose of Northwest's incentive-priced Canadian gas program certificated in Docket No. CP84-294-000 is to permit Northwest to make available to certain of its jurisdictional customers, including Applicant, specially priced volumes of Canadian gas for resale to specified large commercial and industrial customers so as to retain and regain loads threatened by or lost to competition with alternative fuels. Applicant proposes to make quantities of this incentive-priced gas available in turn, through one of its jurisdictional customers, to certain large commercial

and industrial customers who would be expected to use other fuels in lieu of such gas volumes were it not for the discounted pricing.

Applicant states that both it and Buyer have agreed to reduce their normal rates in an effort to ensure that Northwest's incentive-priced Canadian gas proposed to be sold hereunder can be resold to the designated end-users at a price that is competitive with the alternative fuels available to the end-users. Applicant states it would pass along the purchased gas cost savings between Northwest's normal commodity rate and the special incentive rate and would also provide an additional credit on sales of incentive gas to Buyer of 2.0 cents per therm. Applicant asserts that with prompt certification, Buyer would achieve an estimated gas cost savings of $103,891 through October 1984 in comparison to the normal cost of the same quantity of gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22601 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-116-000]

United Gas Pipe Line Co.; Motion

August 20, 1984.

Take notice that United Gas Pipe Line Company (United) on August 7, 1984, filed a motion requesting that the Commission seek limited remand of its Order Nos. 94-A and 94-C implementing section 110 of the Natural Gas Policy Act of 1978 (NGPA). These orders promulgated regulations in 18 CFR § 271.1104 establishing allowances for production related costs. These Orders are currently under review in the United States Court of Appeals for the Fifth Circuit.

United states that these regulations, insofar as they require that by December 31, 1984, pipelines must reimburse producers for production-related costs incurred by producers since 1980, will adversely impact consumers, pipeline purchasers, and producers. United requests that the Commission seek a remand from the Court and amend its regulations to defer such payments pending final and unappealable judicial resolution.

Any person wishing to comment on this motion should file with the Office of the Secretary on or before September 19, 1984, at 825 North Capitol Street NE., Washington, D.C. 20426. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-22602 Filed 8-23-84; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51532; FRL-2656-3]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-three PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-1030 and 84-1031—October 29, 1984.

PMN 84-1037—October 30, 1984.

PMN 84-1038—November 3, 1984.

PMN 84-1039, 84-1040, 84-1041, 84-1042, 84-1043, 84-1044, 84-1045 and 84-1046—November 4, 1984.

PMN 84-1047, 84-1048, 84-1049, 84-1050, 84-1051 and 84-1052—November 5, 1984.

PMN 84-1053, 84-1054, 84-1055, 84-1056 and 84-1057—November 6, 1984.

Written comments by:

PMN 84-1030 and 84-1031—September 29, 1984.

PMN 84-1037—October 1, 1984.

PMN 84-1038—October 4, 1984.

PMN 84-1039, 84-1040, 84-1041, 84-1042, 84-1043, 84-1044, 84-1045 and 84-1046—October 5, 1984.

PMN 84-1047, 84-1048, 84-1049, 84-1050, 84-1051 and 84-1052—October 6, 1984.

PMN 84-1053, 84-1054, 84-1055, 84-1056 and 84-1057—October 6, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS-51532]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Acting Chief, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-1030

Importer Confidential.

Chemical. (G) Poly(alkylsuccinic diester).

Use/Import. (G) Polymer additive for open, non-dispersive use.

Import range: Confidential.
Toxicity Data. Acute oral: >10 g/kg; Irritation: Skin—Not an irritant, Eye—Negative; Ames test: Not mutagenic.
Exposure: Confidential.
Environmental Release/Disposal. Confidential. Disposal by waste water treatment system.

PMN 84–1031

Importer Confidential.
Chemical. (G) Poly(alkylsuccinic diester).
Use/Import. (G) Polymer additive for open, non-dispersive use.
Import range: Confidential.
Toxicity Data. Acute oral: >16 g/kg; Irritation: Skin—Not an irritant, Eye—Not an irritant; Ames test: Not mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by waste water treatment system.

PMN 84–1037

Manufacturer. Uniroyal, Incorporated.
Chemical. (G) Diphenylmethane diisocyanate terminated polyester polyol polyurethane prepolymer.
Use/Production. (S) Industrial durable polymer for molded products; e.g., wheels and tires, sheets, mechanical goods. Prod. range: Confidential
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 2 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. No release to air. Disposal by landfill and approved waste disposal facility.

PMN 84–1038

Manufacturer. Confidential.
Chemical. (S) Antimony pentachloride: dimethyl methylphosphonate complex.
Use/Production. (G) Catalyst. Prod. range: Confidential.
Toxicity Data. Acute oral: Males—>5,000 mg/kg, Females—5,000 mg/kg; Acute dermal: Males and Females—2,000 mg/kg; Irritation: Skin—Extreme, Eye—Extreme; Ames Test: Non-mutagenic.
Exposure. Manufacture and processing: dermal, a total of 38 workers.
Environmental Release/Disposal. 3 kg/batch released with less than 0.01 to less than 0.10 kg/day to water. Disposal by incineration.

PMN 84–1039

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) Resin in coatings. Prod. range: Confidential
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–1040

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–1041

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (G) Resin in coatings. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84–1042

Manufacturer. Confidential.
Chemical. (S) Methylammonium n-methyldithiocarbamate.
Use/Production. (G) Destructive use intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: Males—1,509 mg/kg, Females—1,525 mg/kg; Acute dermal: 1,211 mg/kg; Irritation: Skin—Moderate, Eye—Moderate; Morphological transformation (BALB/3T3): No transforming activity; Salmonella typhimurium: Not mutagenic; Forward mutation assay: Mutagenic; Cytogenetic assay: Increase in structural chromosomal aberrations.
Exposure. Manufacture and use: a total of 6 workers.
Environmental Release/Disposal. 0.09 kg/batch released. Disposal by landfill.

PMN 84–1043

Manufacturer. Dresser Industries, Inc.
Chemical. (G) Sulfurized magnesium soap.
Use/Production. (G) Oil well drilling fluid additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 1 worker, up to ½ hr/da, up to 10 da/yr.
Environmental Release/Disposal. 0 to 100 hrs/yr released to dust.

PMN 84–1044

Manufacturer. Confidential.
Chemical. (G) Fatty dimethyl amine.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Less than 15 kg/batch released to air and land. Disposal by publicly owned treatment works (POTW).

PMN 84–1045

Manufacturer. Confidential.
Chemical. (G) Fatty trimethyl ammonium chloride.
Use/Production. (S) Anti-static agent and emulsifier. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 g/kg; Irritation: Skin—Not corrosive.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Less than 10 kg/batch released to air and land. Disposal by POTW.

PMN 84–1046

Importer. Biddle Sawyer Corporation.
Chemical. (S) 2-naphthylamine-3,6,8-trisulfonic acid, disodium salt.
Use/Import. (G) Intermediate for dyestuff. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No exposure.
Environmental Release/Disposal. No release.

PMN 84–1047

Manufacturer. Confidential.
Chemical. (G) Aliphatic polycarbonate silicon urethane.
Use/Production. (S) Coating and adhesive for industrial, commercial and consumer use. Prod. range: 20,000-40,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release.

PMN 84–1048

Manufacturer. Confidential.
Chemical. (G) Aliphatic polycarbonate urethane.
Use/Production. (S) Coating and adhesive for industrial, commercial and consumer use. Prod. range: 20,000-40,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. No release.

PMN 84–1049

Manufacturer. Confidential.
Chemical. (G) Aromatic polyether urethane.
Use/Production. (S) Coating and adhesive for industrial, commercial and consumer use. Prod. range: 20,000-40,000 kg/yr.
Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release.

PMN 84–1050

Manufacturer. Confidential.

Chemical. (G) Aliphatic polycarbonate urethane.

Use/Production. (S) Coating and adhesive for industrial, commercial and consumer use. Prod. range: 20,000-40,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release.

PMN 84–1051

Manufacturer. Ethyl Corporation.

Chemical. (G) Halogenated aromatic substituted olefin.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Males—4,716 mg/kg, Females—3,293 mg/kg; Acute dermal: > 5 mg/kg; Irritation: Skin—Mild, Eye—Mild; Ames Test: Negative; Rat hepatocyte primary culture DNA/repair test: Negative.

Exposure. Confidential.

Environmental Release/Disposal. Release to air, water and land. Disposal by company owned brine wells.

PMN 84–1052

Manufacturer. Confidential.

Chemical. (G) Spend sulfite liquor, reaction product with an aromatic monomer.

Use/Production. (G) Chemical recovery. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Not an irritant, Eye—Not an irritant; LC_{50} 96 hr (Rainbow trout): 4,250 mg/l.

Exposure. Manufacture: dermal and inhalation.

Environmental Release/Disposal. Confidential.

PMN 84–1053

Importer. Confidential.

Chemical. (G) Ethoxylated vegetable fatty acids, end-capped.

Use/Import. (G) Synthetic fiber processing aid. Import range: Confidential.

Toxicity Data. Irritation: Skin compatibility—Slight.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1054

Manufacturer. Confidential.

Chemical. (G) Alkyl, sulfonic acid, ammonium salt.

Use/Production. (G) Foaming agent. Prod. range: 2,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 35 workers, up to 8 hrs/da, up to 14 da/yr.

Environmental Release/Disposal. Less than 3.5 kg released to air with 3.5 kg to water. Disposal by POTW, incineration and waste treatment.

PMN 84–1055

Manufacturer. Confidential.

Chemical. (G) Alkyl, sulfonic acid, ammonium salt.

Use/Production. (G) Foaming agent. Prod. range: 2,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 35 workers, up to 8 hrs/da, up to 14 da/yr.

Environmental Release/Disposal. Less than 3.5 kg released to air with 3.5 kg to water. Disposal by POTW, incineration and waste treatment.

PMN 84–1056

Manufacturer. Confidential.

Chemical. (G) Alkyl, sulfonic acid, ammonium salt.

Use/Production. (G) Foaming agent. Prod. range: 2,700–11,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 35 workers, up to 8 hrs/da, up to 14 da/yr.

Environmental Release/Disposal. Less than 3.5 kg released to air with 3.5 kg to water. Disposal by POTW, incineration and waste treatment.

PMN 84–1057

Manufacturer. Confidential.

Chemical. (G) Alkyl, sulfonic acid, ammonium salt.

Use/Production. (G) Foaming agent. Prod. range: 1,000–2,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 35 workers, up to 8 hrs/da, up to 14 da/yr.

Environmental Release/Disposal. Less than 3.5 kg released to air with 3.5 kg to water. Disposal by POTW, incineration and waste treatment.

Dated: August 13, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–22009 Filed 8–23–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59168; FRL–2659–3]

Certain Chemicals; Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by September 10, 1984.

ADDRESS: Written comments, identified by the document control number "[OPTS–59168]" and the specific TME number should be sent to: Document Control Officer (TS–793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room 107 at the above address.

TME 84–76

Close of Review Period. September 23, 1984.

Manufacture. Allied Fibers and Plastics.

Chemical. (G) Polyamide—graft—polyacrylate polymer.

Use/Production. (G) The uses of the copolymer will be open and non-dispersive in that it is a component of a mixture of other polymers which will be molded into a variety of items. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Manufacture: dermal, up to 10 customers minimal.

Environmental Release/Disposal. No data submitted.

TME 84–77

Close of Review Period. September 26, 1984.

Manufacturer. Confidential.

Chemical. (G) Aliphatic amine adducted with epoxy resin.

Use/Production. (S) Used to produce electrical potting, adhesive and coating. Prod. range: Confidential.

Toxicity Data. No data on the TME substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. No data submitted.

Dated: August 20, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–22532 Filed 8–23–84; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51533; FRL–2659–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of sixteen PMNs and provides a summary of each.

DATES: Close of Review Preiod:

PMN 84–1058 84–1059 and 84–1060, November 7, 1984

PMN 84–1061 and 84–1062, November 10, 1984

PMN 84–1063, 84–1064, 1065, 84–1066, 84–1067 and 84–1068, November 11, 1984

PMN 84–1069, 84–1070, 84–1071, 84–1072 and 84–1073, November 13, 1984

Written comments by:

PMN 84–1058, 84–1059 and 84–1060, October 8, 1984

PMN 84–1061 and 84–1062, October 11, 1984

PMN 84–1063, 84–1064, 84–1065, 84–1066, 84–1067 and 84–1068, October 12, 1984

PMN 84–1069, 84–1070, 84–1071, 84–1072 and 84–1072, October 14, 1984

ADDRESS: Written comments, identified by the document control number "[OPTS–51533]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–409, 401 M St., SW., Washington, DC 20460, (202–382–3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–216, 401 M St., SW., Washington, DC 20460, (202–382–3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 84–1058

Manufacturer. Confidential.

Chemical. (S) Polymer of: diethylene glycol, maleic anhydride, benzoic acid.

Use/Production. (S) Commercial pigment dispersing aid. Prod. range: 400,000–500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 7 workers, up to 1 hr/da, up to 251 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by sawdust landfill control technology.

PMN 84–1059

Importer. Confidential.

Chemical. (G) Fluoropolyester modified toluene diisocyanate polymer.

Use/Import. (G) Paint additive, open, non-dispersive use. Import range: Confidential.

Toxicity Date. Acute oral: 24 hrs—14.8 ml/kg, 14 da—12.9 ml/kg; Irritation: Skin—Slight, Eye—Strong.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1060

Manufacturer. Allied Corporation.

Chemical. (G) Polyamide-graft-polyacrylate polymer.

Use/Production. (G) Open and non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 20 workers.

Environmental Release/Disposal. Release to land. Disposal by landfill.

PMN 84–1061

Manufacturer. Confidential.

Chemical. (G) Trisubstituted malonamide.

Use/Production. (G) Chemical intermediate. Prod. range: 2,700–5,400 kg/yr.

Toxicity Data. Acute oral: Males and females: > 3,200 mg/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Low potential.

Exposure. Manufacture and use: dermal and inhalation, a total of 21 workers, up to 0.5 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Less than 2 kg/batch disposed of by biological treatment system with less than 2 to less than 5 kg/batch incinerated.

PMN 84–1062

Manufacturer. Fairfield Chemical Company, Inc.

Chemical. (S) Methyl vinyl sulfone.

Use/Production. (S) Industrial chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Males—92 mg/kg, Females—83 mg/kg, Combined—86 mg/kg; Acute dermal: Males—845 mg/kg, Females—1,199 mg/kg, Combined—923 mg/kg; Irritation: Upper airway irritation—Significant respiratory irritant; Eye—Maximally irritating; Ames Test: Not mutagenic; Mouse lymphoma forward mutation assay; Active.

Exposure. Confidential.

Environmental Release/Disposal. Release to water. Disposal by incineration.

PMN 84–1063

Manufacturer. The Dow Chemical Company.

Chemical. (S) 1,3-bis(1-phenylethenyl)benzene.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 4,000 mg/kg; Irritation: Skin—No irritation, Eye—Slight; LC_{50} 48 hr (Daphnia magna)—3.0 mg/l; LC_{50} 96 hr (Fathead minnow)—10 mg/l.

Exposure. Manufacture and use: dermal, 4 workers.

Environmental Release/Disposal. Less than 0.005 to 0.01 kg/hr and 0.005 kg/day released to air with less than 1 kg/drum and less than 0.005 kg/day to water. Disposal by incineration and navigable waterway after treatment.

PMN 84–1064

Manufacturer. The Dow Chemical Company.

Chemical. (G) Modified polyacrylamide anionic polymer.

Use/Production. (G) Industrial flocculant and viscosifier. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air and water. Disposal by incineration and navigable waterway after treatment.

PMN 84–1065

Manufacturer. Confidential.

Chemical. (G) Polymer of mixed fatty acids, unsubstituted aromatic dicarboxylic acids and an aliphatic triol.

Use/Production. (G) Paper coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1066

Importer. Confidential.

Chemical. (G) Substituted trisazo dye, salt.

Import. (S) Industrial colorant for inks and leather dye. Import range: 33,000–75,000 kg/yr.

Toxicity Data. Acute oral: Males and females—>5,000 mg/kg; Irritation: Eye—Non-irritant.

Exposure. Processing: dermal, a total of 1–2 workers, up to 1–2 hrs/da, up to 50–100 da/yr.

Environmental Release/Disposal. 10 to 200 parts per million (ppm) released to water. Disposal by incineration and landfill.

PMN 84–1067

Importer. Confidential.

Chemical. (G) Substituted metal complex.

Use/Import. (S) Textile dye. Import range: 660–2,640 kg/yr.

Toxicity Data. Acute oral: Males and females—>5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames Test: Not mutagenic.

Exposure. Processing: dermal.

Environmental Release/Disposal. Minimal release.

PMN 84–1068

Manufacturer. Uniroyal, Inc.

Chemical. (S) N-dimethylthiocarbamylthio-N^1-phenyl urea.

Use/Production. (S) Industrial vulcanization accelerator for rubber processing. Prod. range: Confidential.

Toxicity Data. Acute oral: 3,849 mg/kg; Acute dermal; >2,000 mg/kg; Irritation: Skin—Mild to slight, Eye—Moderate; Ames Test: Negative; Skin sensitization: Non-immunogenic.

Exposure. Manufacture and use: dermal and inhalation, a total of 12 workers, up to 4.0 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 2.3 kg XA–49/batch released to air with 3.5 kg IXES/batch and 7.7 kg XA–49/batch to water. Disposal by publicly owned treatment works (POTW) and biological treatment system.

PMN 84–1069

Manufacturer. Confidential.

Chemical. (G) Substituted ether of alkoxylated fatty alcohol.

Use/Production. (G) Emsulsifier. Prod. Range: Confidential.

Toxicity Data. Acute oral: 2.29 g/kg; Irritation: Skin—Mild, Eye—Moderate; Corneal anesthesia (normal): Short term inhibition @ 7 hrs.

Exposure. Confidential

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84–1070

Manufacturer. Confidential.

Chemical. (G) Alkoxylated fatty alcohol.

Use/Production. (G) Intermediate/emulsifier. Prod. range; Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

PMN 84–1071

Importer. Ajinomoto U.S.A. Inc.

Chemical. (G) Alkoxy aluminum alkylacetoacetate.

Use/Import. (G) Dispersant. Import range: Confidential.

Toxicity Data. Acute oral: 34.3 ml/kg; Irritation: Skin—No irritation.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84–1072

Manufacturer. Confidential.

Chemical. (G) Copolyester polymer.

Use/Production. (S) Film coating. Prod. range: 3,500–4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 18 workers, up to 13.5 manhours/yr, 3 batches/yr.

Environmental Release/Disposal. No release.

PMN 84–1073

Manufacturer. Confidential.

Chemical. (G) Copolyester polymer.

Use/Production. (S) Film coating. Prod. range: 3,500–4,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 18 workers, up to 13.5 manhours/yr, 3 batches/yr.

Environmental Release/Disposal. No release.

Dated: August 20, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84–22533 Filed 8–23–84; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2659–1]

Availability of Environmental Impact Statements Filed August 13, 1984 Through August 17, 1984

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

EIS No. 840363, Draft, FS, WY, Bighorn National Forest Land and Resource Management Plan, Bighorn, Johnson, Sheridan and Washakie Cos., Due: November 26, 1984, Contact: Elena Green (202) 447–4710.

EIS No. 840364, Draft, FHW, FL, FL–44 Upgrading, CR 581 to Eastern Intersection of FL 44/45 (US–41), Citrus County, Due: October 9, 1984, Contact: P.E. Carpenter (904) 681–7223.

EIS No. 840365, DSuppl, COE, NC, Manteo (Shallowbag) Bay Project, Navigation Improvement, Dare County, Due: October 9, 1984, Contact: Richard Jackson (919) 343–4745.

EIS No. 840366, Final, BLM, UT, Sunnyside Combined Hydrocarbon Lease Conversion, Approval, Carson County, Due: September 24, 1984, Contact: Robert Pizel (303) 234–6737.

EIS No. 840367, FSuppl, COE, CA, Walnut Creek Flood Control Plan, Contra Costa County, Due: September 25, 1984, Contact: Cay Goude (916) 440–2364.

EIS No. 840368, Report, COE, CA, John F. Baldwin and Stockton Ship Channels Improvements, San Francisco to Stockton, San Francisco and Contra Costa Cos., Contact: Rod Chisholm (415) 974–0446.

EIS No. 840369, Final, EPA, NV, Reno-Sparks Wastewater Facilities Expansion, Approval, Sparks County, Due: September 24, 1984, Contact: Steven Fuller (415) 974–8153.

EIS No. 840370, Final, COE, AL, TN, French Broad Sand and Gravel Dredging, Permit, Tennessee and Cumberland Rivers, Due: September 24, 1984, Contact: Ray Hedrick (615) 251–5026.

EIS No. 840371, FSuppl, COE, MS, Tombigbee River, East Fork Continued Operation and Maintenance, Itawamba County, Due: September 24, 1984, Contact: Ken Sims (205) 690–2722.

EIS No. 840372, Draft, COE, PR, Rio Puerto Nuevo Basin Flood Control Study, San Juan Metropolitan Area, Due: October 9, 1984, Contact: Gerald Atmar (904) 791–2615.

EIS No. 840373, Final, DOE, MD, Brandon Shores Generating Station, unit 1 and 2, Coal Conversion, Prohibition Orders, Anne Arundel County, Due: September 24, 1984, Contact: Deborah Valentine (202) 252–9504.

EIS No. 840374, DRevised, BLM, WY, Buffalo Resource Area Resource Management Plan, Campbell, Johnson, and Sheridan Cos., Due: November 23, 1984, Contact: Glen Bessinger (307) 684–5586.
EIS No. 840375, Final, HUD, FL, Forest Lakes Subdivision, Mortgage Insurance, Pinellas County, Due: September 24, 1984, Contact: Ivar Iverson (404) 221–5197.
EIS No. 840376, Final, FHW, AL, Corridor X Construction, Al–19 to US 78, Marion and Walker Counties, Due: September 24, 1984, Contact: Joe Wilkerson (205) 832–7370.
EIS No. 840377, Draft DOE, NY, Niagara Falls Storage Site, Radioactive Waste and Residue, Long Term Management, Due: October 9, 1984, Contact: Lowell Campbell (615) 576–1052.

Amended Notices:

EIS No. 810286, Draft, EDA, NJ, Port District Industrial Development and Resource Recovery, Published FR 4–24–81 OFFICIALLY WITHDRAWN.
EIS No. 840350, Draft, MMS, MXG, 1985 Eastern, Central, and Western Gulf of Mexico OCS Oil and Gas Sales 94, 98, and 102, Leasing, Published FR 8–17–84, Correction: Due date should read: October 9, 1984

Dated: August 21, 1984.

Allan Hirsch,
Director, Office of Federal Activities.

[FR Doc. 84–22604 Filed 8–23–84; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Consolidated Reports of Condition and Income (Insured State Nonmember Banks).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Judy McIntosh, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4446.

SUMMARY: The FDIC is submitting for OMB approval a request to clarify and simplify the reporting of deposit data in the Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial banks (OMB No. 3064–0052). The requested changes would become effective as of the September 30, 1984 report data in order to reduce the reporting burden for banks and to improve the quality of the reported deposit data.

The deposit clarifications will result in the replacement of Schedule RC–E, Memoranda items 3(a), 3(b), and 3(c), which request detail on "Deposits that are subject to fixed federal interest rate ceilings" with Memoranda items 3 and 4 for "Super NOW accounts" and "Money market deposit accounts." The definition of one deposit-related line item in each of two other schedules, Schedule RC–K—Quarterly Averages, and Schedule RI—Income Statement, will also be revised to be consistent with the changes to the Schedule RC–E Memoranda items. In addition, certain new items are proposed for inclusion in Schedule RC–E—Deposit Liabilities, and in Schedule RC–O—Other Data for Deposit Insurance Assessment, that would permit banks to more easily satisfy the reporting requirements associated with the calculation of their semiannual FDIC insurance assessments.

Finally, the FDIC wishes to formally advise OMB of a reporting change to the Call Report information collection system which discontinues the semiannual collection on a voluntary basis of selected Report of Condition schedules from commercial banks that are not insured by the FDIC.

Dated: August 10, 1984.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 84–22520 Filed 8–23–84; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–720–DR]

Major Disaster and Related Determinations; Utah

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–720–DR), dated August 17, 1984, and related determinations.

DATED: August 17, 1984.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 287–0501.

Notice

Notice is hereby given that, in a letter of August 17, 1984, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended, (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288) as follows:

I have determined that the damage in certain areas of the State of Utah, resulting from severe storms, flooding, mudslides and landslides beginning on April 1, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. In accordance with Pub. L. 93–288, these funds are to be allocated for damage that is the direct result of the declared incident.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Roger E. Free of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster:

The following counties for Public Assistance only:

Box Elder	Sevier
Davis	Tooele
Juab	Utah
Millard	Wasatch
Sanpete	

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 84-22519 Filed 8-23-84; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Filing of Petition for Rulemaking

Notice is hereby given that eleven Conferences [1] operating in the trades between the United States and Latin America have filed a petition requesting the Commission to institute a rulemaking proceeding concerning procedures to be utilized by common carriers and conferences to determine whether an organization purporting to be a "shippers' association" qualifies as such within the meaning of section 3(24) of the Shipping Act of 1984.

In order for the Commission to make a thorough evaluation of the petition, interested persons are requested to submit views, arguments or data on the petition no later than October 9, 1984. Responses shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies. Responses shall also be served on counsel for petitioners: Nathan J. Bayer, Esq., Freehill, Hogan and Mahar, 80 Pine Street, New York, New York 10005.

Copies of the petition are available for examination at the Washington, D.C., office of the Commission, 1100 L Street, NW., Room 11101.

Francis C. Hurney,

Secretary.

[FR Doc. 84-22551 Filed 8-23-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Camden National Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 17, 1984.

A. Federl Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Camden National Corporation,* Camden, Maine; to become a bank holding company by acquiring 100 percent of the voting shares or assets of Camden National Bank, Camden, Maine.

2. *First/Martha's Vineyard Bancorporation,* Vineyard Haven, Massachussets (formerly, The First Bancorporation located in Chelmsford, Massachusetts); to acquire 68.5 percent of the voting shares of The Martha's Vineyard National Bank, Vineyard Haven, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *BT Financial Corporation,* Johnstown, Pennsylvania; to acquire 100 percent of the voting shares or assets of Laurel National Bank, Ebensburg, Pennsylvania.

C. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Commonwealth Trust Bancorp, Inc.,* Covington, Kentucky; to acquire 50.77 percent of the voting shares or assets of Peoples Deposit Bank, Burlington, Kentucky.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Holdings, Inc.,* Omaha, Nebraska; to become a bank holding company by acquiring 88.6 percent of the voting shares of First National Bank of Macomb, Macomb, Illinois.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Jansen Bancshares, Inc.,* Jansen, Nebraska; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Jansen, Jansen, Nebraska.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Bankshares of La Jolla,* La Jolla, California; to acquire 51 percent of the voting shares or assets of National Bank of Fairbanks Ranch (In Organization), Rancho Santa Fe, California.

2. *The Sumitomo Bank, Limited,* Osaka, Japan; to become a bank holding company by acquiring rights offering to retain current interest of 13.7342 percent of the voting shares of CPB, Inc., Honolulu, Hawaii.

Board of Governors of the Federal Reserve System, August 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22501 Filed 8-23-84; 8:45 am]

BILLING CODE 6210-01-M

Community Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank or ban holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

[1] Associated Latin American Freight Conferences; Atlantic & Gulf/West Coast of South America Conference; East Coast Columbia Conference; West Coast of South America Northbound Conference; United States Atlantic & Gulf/Southeastern Caribbean Conference; United States Atlantic & Gulf/Jamaica and Hispaniola Steamship Freight Association; United States Atlantic & Gulf/Ecuador Freight Conference; United States Florida/Ecuador Steamship Conference; South Atlantic & Gulf/Panama & Costa Rica Rate Agreement; South Atlantic & Gulf/Guatemala El Salvador & Honduras Rate Agreement; and United States Atlantic & Gulf/Venezuela Conference.

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreases or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Community Bancorp, Inc.*, Manchester, Missouri; to acquire at least 77.1 percent of the voting shares of First Missouri Banks, Inc., Manchester, Missouri, thereby indirectly acquiring the following banks: First Missouri Bank & Trust Company, Creve Coeur, Missouri; First Missouri Bank of St. Charles County, Wentzville, Missouri; First Missouri Bank of Jefferson County, Arnold, Missouri; First Missouri Bank of St. Francois County, Flat River, Missouri; First Missouri Bank of Montgomery County, Montgomery City, Missouri; First Missouri Bank of Gasconade County, Hermann, Missouri; First Missouri Bank of Franklin County, Gerald Missouri; First Missouri Bank of Warren County, Warrenton, Missouri; and First Missouri Bank of St. Peters, N.A., St. Peters, Missouri.

Community Bancorp, Inc. has also applied to retain its *de novo* subsidiary, First Missouri Insurance Group, Inc., Phoenix, Arizona, thereby continuing to engage in the sale of credit life and credit accident and health insurance for customers of the bank holding company organization as reinsurer; and to retain its *de novo* subsidiary, St. Louis Computer Center, Creve Coeur, Missouri, thereby continuing to engage in the provision of limited data processing services to various non-affiliated companies. Both *de novo* subsidiaries will conduct their activities in the State of Missouri.

Board of Governors of the Federal Reserve System, August 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22502 Filed 8-23-84; 8:45 am]

BILLING CODE 6210-01-M

St. Joseph Bancorporation, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.25(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana; to engage *de novo* through its subsidiary St. Joseph Mortgage Co., Inc., South Bend, Indiana, thereby engaging in originating, acquiring, selling and servicing of residential, commercial and industrial mortgage loans. The activities will be conducted at an office in the vicinity of Kokomo, Indiana, serving a 50-mile radius around Kokomo, including the counties of Howard, Tippecanoe, Grant, and contiguous counties.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Union Bancshares, Inc.*, Wichita, Kansas; to engage *de novo* throught its subsidiary, UBI Financial Services, Inc., Wichita, Kansas, thereby engaging in the extension of credit or acquisition of loans such as those made by a consumer or commercial finance company.

2. *Union Bancshares, Inc.*, Wichita, Kansas; to engage *de novo* through its subsidiary, UBI Growth Capital, Inc., Wichita, Kansas, in the activities of a venture capital company by providing capital and credit to new companies. These activities will be conducted in the state of Kansas.

Board of Governors of the Federal Reserve System, August 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22503 Filed 8-23-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 17.

Public Health Service

Health Resources and Services Administration

Subject: National Alcoholism and Drug Abuse Program Inventory—New Collection

Respondents: State and local governments

Subject: Quarterly Debt Management Report (QDMR) (0915–0046)—Extension/No Change
Respondents: Educational institutions
OMB Desk Officer: Fay S. Iudicello

National Institutes of Health

Subject: Evaluation of Counseling—Sickle Cell Disease—New Collection
Respondents: Individuals
OMB Desk Officer: Fay S. Iudicello

Centers for Disease Control

Subject: A Study of Pneumoconiosis in Surface Coal Miners—New Collection
Respondents: Coal Miners
Subject: Coal Mine Dust Personal Sampler Unit Certification Program (0920–0148)—Revision
Respondents: Businesses
Subject: Gonococcal Pelvic Inflammatory Disease Summary Report (0920–0121)—Extension/No Change
Respondents: State and local governments
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Hospital Survey Report Form—Existing Collection
Respondents: State survey agencies
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Application for Widow's or Widower's Insurance Benefits (0960–0004)—Revision
Respondents: All applicants for Widow's or Widower's Insurance Benefits
Subject: Employment Relationship Questionnaire (0960–0040)—Existing Collection
Respondents: Selected individuals and small businesses
Subject: State Estimate Form—New Collection
Respondents: States
OMB Desk Officer: Robert J. Fishman

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: August 17, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84–22369 Filed 8–23–84; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket Nos. 82N–0095 and 81N–0396; DESI 6514]

Drugs for Human Use; Drug Efficacy Study Implementation; Prescription Drugs Offered for Relief of Symptoms of Cough, Cold, or Allergy; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of pertinent parts of new drug applications (NDA's) for Ambenyl Expectorant (NDA 9–319) and Dimetane Expectorant and Dimetane Expectorant-DC (NDA 11–694). FDA is withdrawing approval because these combination drug products lack substantial evidence of effectiveness in the relief of symptoms of cough, cold, or allergy. Reformulations of the products have been approved as safe and effective.

EFFECTIVE DATE: September 24, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 6514 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margery Erickson, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In notices of opportunity for hearing published in the **Federal Register** of May 25, 1982 (47 FR 22604 and 22609), FDA proposed to withdraw approval of the NDA's for the three drug products described below. The basis of the proposal was that the products lack substantial evidence of effectiveness as combination drugs as required by 21 CFR 300.50. In response to the notices, the holders of the NDA's submitted hearing requests and proposed to reformulate the products.

1. Ambenyl Expectorant (NDA 9–319) containing codeine sulfate, bromodiphenhydramine hydrochloride, diphenhydramine hydrochloride, ammonium chloride, potassium guaiacolsulfonate, and menthol; Marion Laboratories, Inc., Pharmaceutical Division, Marion Industrial Park, 10236 Bunker Ridge Rd., Kansas City, MO 64137.

2. Dimetane Expectorant (NDA 11–694) containing brompheniramine maleate, phenylephrine hydrochloride, phenylpropanolamine hydrochloride, and guaifenesin; A. H. Robins Co., 1407 Cummings Dr., Richmond, VA 23220.

3. Dimetane Expectorant-DC (NDA 11–694) containing codeine phosphate, brompheniramine maleate, phenylephrine hydrochloride, phenylpropanolamine hydrochloride, and guaifenesin; A. H. Robins Co.

In notices published in the **Federal Register** of November 5, 1982 (47 FR 50344) and January 3, 1984 (49 FR 153), FDA announced the marketing conditions for reformulations of the products listed above. FDA subsequently approved the supplemental applications providing for the Ambenyl and Dimetane reformulations.

Marion Laboratories and A. H. Robins Co. have since withdrawn their hearing requests. Accordingly, FDA is now withdrawing approval of those parts of the new drug applications that provide for the old formulations known as Ambenyl Expectorant, Dimetane Expectorant, and Dimetane Expectorant-DC, each described above.

Any drug product that is identical, related, or similar to Ambenyl Expectorant, Dimetane Expectorant, and Dimetane Expectorant-DC and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the combination drug products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA

9-319 that provide for Ambenyl Expectorant and those parts of NDA 11-694 that the provide for Dimetane Expectorant and Dimetane Expectorant-DC, and all the amendments and supplements for those products, in withdrawn effective September 24, 1984. Shipment in interstate commerce of the products above or any identical, related, or similar products that are not the subject of an approved new drug application will then be unlawful.

Dated: August 10, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-22499 Filed 8-23-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 75N-0230; DESI 1786]

Peritrate With Phenobarbital SA Tablets; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug application (NDA) 12-266 for Peritrate with Phenobarbital SA Tablets containing pentaerythritol tetranitrate and phenobarbital. FDA is withdrawing approval because the combination drug product lacks substantial evidence of effectiveness. The product has been used in the treatment of angina pectoris, but is no longer marketed.

EFFECTIVE DATE: September 24, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 1786 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Margery C. Erickson, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register on August 29, 1973 (38 FR 23349), and amended on December 9, 1975 (40 FR 57377), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the NDA's for certain combination drugs containing an organic nitrate. The basis of the proposal was that the products lack substantial evidence of effectiveness. In response to the notices, Warner Chilcott Laboratories, succeeded by Parke-Davis, Division of Warner-Lambert Co., requested a hearing for Peritrate with Phenobarbital SA Tablets.

Parke-Davis has since discontinued marketing this product and has withdrawn its request for a hearing. Accordingly, FDA is now withdrawing approval of the following NDA:

NDA 12-266; Peritrate with Phenobarbital SA Tablets containing pentaerythritol tetranitrate and phenobarbital; Parke-Davis, Division of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

This notice does not apply to the following related products that are the subjects of pending hearing requests which are under review:

Corovas Tymcaps (no NDA) containing pentaerythritol tetranitrate and secobarbital; Amfre-Grant, Inc., 520 South Dean St., Englewood, NJ 07631.

Antora-B T.D. Capsules (no NDA) containing pentaerythritol tetranitrate and secobarbital; Mayrand, Inc., 1026 East Lindsey St., Greensboro, NC 27420.

Mannitol Hexanitrate with Phenobarbital and Mannitol Hexanitrate with Reserpine (no NDA's); Lemmon Pharmacal Co., Sellersville, PA 18960.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Peritrate with Phenobarbital SA Tablets will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, of suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 12-266 and all its amendments and supplements is withdrawn effective September 24, 1984. Shipment in interstate commerce of the product above or any indentical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 17, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-22500 Filed 8-23-84; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Cancer Education Review Committee; Cancellation

Notice of the meeting of the Cancer Education Review Committee, National Cancer Institute, National Institutes of Health, September 13, 1984, published in the Federal Register on August 7, 1984, (49 FR 31497) is hereby cancelled due to lack of receipt of sufficient numbers of applications to be reviewed.

For further information, please contact Dr. Robert L. Manning, Executive Secretary, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7721).

Dated: August 15, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84-22508 Filed 8-23-84; 8:45 am]

BILLING CODE 4140-01-M

Consensus Development Conference on Fresh Frozen Plasma; Indications and Risks; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Fresh Frozen Plasma: Indications and Risks," sponsored by the National Heart, Lung, and Blood Institute of the National Institutes of Health, the Center for Drugs and Biologics of the Food and Drug Administration and the NIH Office of Medical Applications of Research. The conference will be held September 24-26, 1984, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

Fresh frozen plasma is prepared from whole blood of a single donor and promptly frozen to preserve labile clotting factors. The use of fresh frozen plasma has increased dramatically during the past decade. In 1980, more than 1.5 million units were infused.

Clinical indications for the use of fresh frozen plasma are often vague and without scientific basis. Moreover, infectious agents such as those causing non-A, non-B hepatitis may be present in plasma, and the risk of disease

transmission is significant. It is likely that other products are available that are equally effective and safer than fresh frozen plasma.

The key questions to be addressed at the conference include: What is the current knowledge regarding the effectiveness of fresh frozen plasma? What are the risks of fresh frozen plasma? What alternate therapies exist? What are the current recommended clinical indications for fresh frozen plasma? What directions for future research are indicated?

This consensus conference will bring together biomedical investigators, blood bank specialists, surgeons, anesthesiologists, consumers and representatives of public interest groups. Following two days of presentations by medical experts and discussion by the audience, a Consensus Panel will weigh the scientific evidence and formulate a draft statement responding to the key conference questions. On the morning of the third day, Consensus Panel Chairman James L. Tullis, M.D., Professor of Medicine Emeritus, Harvard University Medical School, Boston, will read this preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Mr. Peter Murphy, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468–6555.

Dated: August 14, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 84–22507 Filed 8–23–84; 8:45 am]

BILLING CODE 4140–01–M

Planning Subcommittee of the National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given to the meeting of the Planning Subcommittee of the National Digestive Diseases Advisory Board on September 24, 1984, 10:00 a.m. to adjournment, at the Marriott Hotel, 102 Ditmas Blvd., East Elmhurst, New York. The meeting, which will be open to the public, is being held to discuss the 1985 plans for the Board. Attendance by the public will be limited to space available. Notice of the meeting room location will be posted in the hotel lobby.

Further information may be obtained by contacting Dr. Ralph Bain, Executive Director, National Digestive Diseases Advisory Board, P.O. Box 30377, Bethesda, Maryland 20814, (301) 496–2232. The agenda and rosters of the members can also be obtained from his office. Summaries of the meeting may be obtained by contacting Carole A. Frank, Committee Management Office, NIADDK, National Institutes of Health, Room 9A46, Building 31, Bethesda, Maryland 20205, (301) 496–6917.

Dated: August 15, 1984.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 84–22506 Filed 8–23–84; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting

Notice is hereby given of a change in the September 17–18 meeting of the National Advisory Allergy and Infectious Diseases Council in Building 31, Conference Room 10, which was published in the **Federal Register** on August 8 (49 FR 31775).

The September 17 session will be open to the public, as previously announced, from approximately 9:00 a.m. to 9:30 a.m. for opening remarks of the Institute Acting Director and again from 1:30 p.m. to approximately 5:00 p.m. for a discussion on the use of animals in research.

The meeting was to reconvene at 9:00 a.m. on September 18 in open session. This has been changed to 8:30 a.m. and reports will be given on the proposed Minority Research Enhancement Program and the NIH Peer Review Appeals System. The report on the revised training grant guidelines will be presented at a later date. The meeting will be closed to the public on September 17 from 9:30 a.m. to 1:30 p.m. and again on September 18 from 9:30 a.m. to adjournment for the review of grant applications.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health)

Dated: August 15, 1984.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 22509 Filed 8–23–84; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Presidential Commission on Indian Reservation Economies; Special Meeting

AGENCY: Presidential Commission on Indian Reservation Economies.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the Presidential Commission on Indian Reservation Economies (PCIRE) announces the following special meeting in conjunction with the National Association of Counties.

DATE: September 13, 1984, 9:00 AM—5:00 PM.

Place: Seattle Marriott (Airport), 3201 South 176 Street, Seattle, Washington 98188.

Purpose: The purpose of this meeting is to: (1) Brief county officials on some of the Commission's initial findings pertaining to state and local governments and to (2) obtain additional information and explore the potential for more cooperative arrangements and agreements between counties and reservations and opportunities to jointly assist one another in the development process.

Status: The meeting will be open to the public but limited to the space available.

SUPPLEMENTARY INFORMATION: The Presidential Commission on Indian Reservation Economies is authorized under Executive Order 12401 and as amended by Executive Order 12442.

Contact: Further information may be obtained by contacting Eric Rudert, Deputy Director, PCIRE, at 1717 H Street, Northwest, Washington, D.C. 20006. Telephone: 202/653–2436.

Eric Rudert,

Deputy Director.

[FR Doc. 84–22259 Filed 8–23–84; 8:45 am]

BILLING CODE 4310–02–M

Garrison Diversion Unit Commission; Public Hearings

Public hearings will be held in Bismarck, North Dakota on September 10 and 11, 1984, to obtain views and comments from interested individuals and organizations. The Garrison Diversion Unit Commission has been directed by Congress to examine, review, evaluate, and make recommendations with regard to the comtemporary water development needs of the State of North Dakota, including 11 specific areas of congressional concern set forth in section 207(c)(2)(A)-(K) of the 1985 Energy and Water Development Act, Pub. L 98–360.

The hearings will be held at the Bismarck, North Dakota Civic Center Auditorium on September 10, 1984, from 9:30 a.m. to 1:00 p.m., and September 11, 1984, from 8:30 a.m. to 12:00 noon and from 1:00 p.m. to 2:30 p.m.

Persons wishing to make oral statements will be scheduled in the order that telephone requests are received unless a specific time period is

requested. If a speaker requests a specific time period, the speaker will be scheduled to speak as close to the requested time as possible. Scheduled speakers not present when called will lose their privilege in the scheduled order, and their names will be recalled after all other scheduled speakers have been heard.

Individual hearing witnesses will be allowed 5 mintues to present their oral comments. Speakers will not be allowed to trade or consolidate time in order to obtain a longer oral presentation; however, the Hearing Officer may allow a speaker to provide additional oral comments after scheduled witnesses have been heard.

Individuals and organizations wishing to make oral statements should contact Kathy House of the Garrison Diversion Unit Technical Staff Office in Denver, Colorado at (303) 234–3942 to make arrangements. Requests for scheduling presentations will be accepted until 4:00 p.m. on September 5, 1984. Requests received subsequent to that time, either in Denver or at the Hearings will be handled on a first come, first served basis following the scheduled presentations. Written comments from those unable to attend and those wishing to supplement their oral presentations will be accepted for the record until 4:00 p.m. on September 11, 1984. Written comments may be filed at the hearings or addressed to the Garrison Diversion Unit Commission, P.O. Box 23265, Washington, D.C. 20026, and should specify that they are to be included in the hearing record.

A transcript will be made of the hearings. Requests for information on arrangements for reviewing or obtaining copies of the transcripts should be directed to Kathy House at the above telephone number.

Dated: August 22, 1984.

James C. Wiley,

Commission Staff Director.

[FR Doc. 84–22653 Filed 8–23–48; 8:45 am]

BILLING CODE 4310–09–M

Bureau of Land Management

Buffalo Resource Area; Casper District, WY; Availability of Draft Resource Management Plan and Environmental Impact Statement, Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Public notice that the Draft Resource Management Plan and Environmental Impact Statement for the Buffalo Resource Area, Casper District, Wyoming is available for public review and comment. A public hearing on the draft document will also be held.

SUMMARY: The Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) presents a range of resource management alternatives and the consequences of implementating each alternative for the public lands in the Buffalo Resource Area. The draft RMP/EIP contains a preferred management plan for the three-county area—Campbell, Johnson, and Sheridan counties in north-central Wyoming. The RMP–EIS includes a recommendation of non-wilderness designations for three wilderness study areas.

DATE: The 90-day public comment period on the draft RMP/EIS will close on November 23, 1984. The public meeting/hearing will be held at 7:00 p.m. on Wednesday, September 26, 1984.

Location of Hearing: Guaranty Federal Bank, 412 N. Main, Buffalo, Wyoming.

Location of Documents: The draft RMP/EIS plus associated background and source material is available for public review at the Buffalo Resouce Area Office, 300 Spruce Street, Buffalo, Wyoming.

FOR FURTHER INFORMATION CONTACT: Glenn Bessinger, Area Manager, Bureau of Land Management, 300 Spruce Street, Buffalo, Wyoming 82834, (304) 684–5586.

SUPPLEMENTARY INFORMATION: The Buffalo Resource Area encompasses three north-central Wyoming counties—Campbell, Johnson, and Sheridan. The RMP/EIS is a comprehensive 10-year land use plan for BLM-administered lands in those counties. The final RMP/EIS will guide management actions on the public lands for that period. Within the three-county area, BLM manages 11% of the surface, approximately 799,000 acres, and about 54% of the mineral estate, approximately 3.9 million acres.

The major purpose in preparing the Buffalo RMP was to provide a comprehensive framework for managing and allocating resources in the resource area for the next 10 years or more. The planning process included the identification of issues, the development of planning criteria, inventory and data collection, an analysis of the management situation, the formulation of alternatives, an analysis of effects of alternatives, and the selection of a preferred management plan as the best approach for addressing each issue. The four alternatives included the continuation of present management and alternatives that generally favor economic production, one that generally trends toward environment production and a fourth alternative that generally favors production of needed goods and services while protecting important and sensitive environmental values.

Standards, guidelines, and procedures for RMP preparation are contained in 43 CFR Part 1600.

The Buffalo RMP/EIS was prepared by an interdisciplinary team of specialists from the resource area, the Casper District office and the Denver Service Center. Disciplines included cultural, energy and minerals, fire, forestry, grazing (range), lands, recreation, soil, water, air, wildlife, and socioeconomics. In depth reviews for accuracy and consistency were provided by the district and state office staffs. The wilderness, range and energy minerals sections were also reviewed by the Washington office staffs. Consultation, coordination, and public involvement have occurred throughout the process through public meetings, informal meetings, individual contacts, newsletters, and a **Federal Register** notice.

The major issues addressed in the draft RMP/EIS are the protection of cultural resources, fire management, grazing management, lands and realty, minerals, management, and wilderness. Three wilderness study areas (WSAs) are located in the resource area; Fortification Creek T. 53 R. 76, T. 52 Rs. 75, 76, 77 (12,419 acres), Gardner Mountain T. 44 Rs. 84, 85 (6,423 acres), and North Fork of the Powder River T. 45, 46, 47 R. 84 (10,089 acres). Under the preferred alternative, none of the WSAs are recommended for inclusion in the Wilderness Preservation System. Maps showing therefor boundaries of the areas are available for review at the address indicated above.

The public has 90 days in which to review and comment on the document. Comments may be made in writing or may be given orally at the public hearing on September 26, 1984 at 7:00 p.m. in the Guaranty Bank Building, Buffalo, Wyoming. Comments should address the adequacy of the document, the merits of the alternatives or both. All public comments on this draft RMP/EIS will be evaluated. A final RMP/EIS will published in the spring of 1985. A resource management plan will be selected in a record of decision to be published after the final RMP/EIS.

Copies of the draft document have been sent to all parties on the mailing list who requested them. Other copies are available for review in county libraries throughout the Casper District or in the Casper District Office. Single copies are available upon request at the address above. County libraries with

reivew copies are Campbell, Johnson, Sheridan, Natrona, Converse, Crook, Weston Albany and Laramie.

James W. Monroe,

District Manager.

[FR Doc. 84-21836 Filed 8-23-84; 8:45 am]

BILLING CODE 4310-22-M

[U-54597]

Utah; Invitation To Participate in Coal Exploration Program; Getty Mining Co.

Getty Mining Company is inviting all qualified parties to participate in a program for the exploration of coal reserves near the Tie Fork Canyon five miles west of Hiawatha, Utah. The lands are located in Emery County, Utah, and are described as follows:

T. 15 S., R. 7 E., SLM, Utah
Sec. 25, SW¼;
Sec. 26, S½;
Sec. 27, SE¼;
Sec. 34, E½;
Sec. 35, all;
Sec. 36, W½.
T. 16 S., R. 7 E., SLM, Utah
Sec. 1, lots 3, 4, S½NW¼, SW¼;
Sec., 2, all.

Containing 2,857.40 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111, and to James W. Osborn, Getty Coal Company, 5250 South 300 West, Salt Lake City, Utah 84107. Such notice must be received within 30 days after the publication of this notice in the **Federal Register.**

Any party wishing to participate in this exploration program must share all cost on a pro rata basis. A copy of the exploration plan, as submitted by Getty Mining Company, is available for public review during normal business hours in the following office, under serial number U-54597; Bureau of Land Management, Room 1400, University Club Building, 136 East South Temple, Salt Lake City, Utah 84111.

W.R. Papworth,

Deputy State Director for Operations.

[FR Doc. 84-22497 Filed 8-23-84; 8:45 am]

BILLING CODE 4310-DQ-M

Vale District OR; Meeting

A public meeting will be held Friday, September 21 to discuss the Sheepshead Mountains Wild Horse Herd. Approximately 600 horses will be gathered in fiscal year 1985 to reduce the heard population to within prescribed management levels.

The meeting will begin at 9:00 a.m. at the Vale District Office, 100 East Oregon Street, Vale, Oregon 97918.

Fearl M. Parker,

District Manager.

[FR Doc. 84-22565 Filed 8-23-84; 8:45 am]

BILLING CODE 4310-33-M

Cancellation of Competitive and Modified Competitive Sales of Public Land in Jackson and Klamath Counties, OR

Date: August 17, 1984.

The Notice of Realty Action published in **Federal Register** Volume 49, No. 142, Page 29684 on July 23, 1984 is hereby cancelled.

James P. Clason,

Associate District Manager.

[FR Doc. 84-22521 Filed 8-23-84; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Application for Permit; Denver Wildlife Research Center

Notice is hereby given that an applicant has applied in due form to renew and amend his permit to continue the take of West Indian manatees as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Endangered Species Act (16 U.S.C. 1537), and the regulations governing the taking and exporting of Marine Mammals (50 CFR Parts 17 and 18).

1. Applicant:

a. Name: Chief, Marine Mammal Section PRT 2-8430.

b. Address: Denver Wildlife Research Center, USFWS, San Simeon, CA.

2. Type of permit: Take for scientific research.

3. Name and number of animals: West Indian manatee (*Trichechus manatus*); about 100 from the wild and about 15 in captivity annually.

4. Type of Activity: (a) Radiotagging and tetracycline marking, (b) attach peduncle tags or free-floating tether tags, (c) tail-notch, (d) freeze-brand injured and rescued manatees, (e) carry out nonharmful studies on rehabilitation, (f) collect dead and injured animals, and (g) export salvaged animals.

5. Location of Activity: Southeastern U.S. and Puerto Rico.

6. Period of Activity: September 1984 through October 1987.

The purpose of this application is to continue to conduct research to secure information on manatee movements and reproductive biology. This information is important in developing sound management plans necessary to help recover the species. The permittee has been conducting the described research activities since october of 1981 and all techniques have proven safe for the manatee.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views or requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), P.O. Box 3654, Arlington, VA 22203, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements contained in this notice are summaries of those of the applicant.

Documents submitted in connection with the above application are available for review during normal business hours (7:45 am-4:15 pm) in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: August 20, 1984.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 84-22510 Filed 8-23-84; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 6178, Block A-20, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on August 16, 1984.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf

of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties because effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 16, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–22517 Filed 8–23–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4263, Block 111, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on August 17, 1984. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 17, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84–22516 Filed 8–23–84; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf North Atlantic Oil and Gas Lease Sale 82; Finding of No Significant Impact

ACTION: Analyze potential impacts to the environment which could occur from the leasing of the proposed sale area as defined in the Department of the Interior **Federal Register** notice of May 14, 1984, the Proposed Notice of Sale, "Outer Continental Shelf, North Atlantic, Proposed Oil and Gas Lease Sale No. 82.". Those potential impacts were compared to those analyzed in the Final Environmental Impact Statement (EIS) for proposed Sale No. 82. Changes in the proposed sale from the Final EIS included deferral of blocks in response to expressions of oil and gas industry interest and comments from the Department of Defense. The Environmental Assessment also included an alternative to consider the impacts of a recent recommendation by the Commonwealth of Massachusetts, as well as the effects of deferring blocks of disputed jurisdiction between the United States and Canada. In addition, new information provided by the Environmental Studies Program was included in the analysis. This analysis and updating was carried out to determine if the sale requires a supplemental impact statement.

Result of Review: Finding of no significant impact (FONSI)

Documents included with the FONSI are as follows:

Environmental Assessment.....see attached
Final EIS Outer Continental Shelf (OCS) Sale No. 82..... available on request

FONSI: Based on the Environmental Assessment, no significant impacts were identified as accruing to the proposed sale area identified in the Proposed Notice of Sale that were not already assessed in the Final EIS for OCS Sale No. 82. In addition, recently available information from the Environmental Studies Program was incorporated into the analysis and did not alter the findings.

Based on the Environmental Assessment of the proposed action including the additional information provided by the Environmental Studies Program, I have determined that a supplemental EIS is not required.

William D. Bettenberg,

Director, Minerals Management Service.

Environmental Assessment on the Effects of Sale 82

A Comparison of the Area Proposed to be Offered and Alternative 10 in the Final Environmental Impact Statement

August 1984.

Introduction

On May 14, 1984, the U.S. Department of the Interior (DOI) published a Proposed Notice of Sale in the **Federal Register** for Oil and Gas Lease Sale No. 82, Outer Continental Shelf, North Atlantic (49 FR 2048). The acreage included in that Proposed Notice was reduced from that analyzed in the Final Environmental Impact Statement,

Proposed Outer Continental Shelf Oil and Gas Lease Sale No. 82, FES 83–61 (hereafter called FEIS–82 and incorporated by reference in this environmental assessment). The configuration of the May 14, 1984 proposal (hereafter called the proposal or the proposed action) is most similar to the area analyzed in FEIS–82 as Alternative 10, "The Appropriations Bill Deferral." This environmental assessment will analyze the impacts of offering the proposal and the impacts of one alternative. It will also compare those impacts to the ones analyzed for Alternative 10 in FEIS–82.

The Proposal and Alternative

The Proposal

After the publication of FEIS–82, DOI held consultation and coordination meetings and exchanged numerous letters with the New England States, the Department of Defense, the U.S. Coast Guard, environmental groups, and the oil and gas industry. Representatives of oil and gas companies were asked to review their earlier expressions of interest in the area remaining in the proposed sale after the Congressional Appropriations moratorium (see Alternative 10, FEIS–82). Based on industry response, the area was divided into four subareas representing high, medium, low, and no interest. This, coupled with information already available to DOI and further knowledge gained during the consultation period, allowed DOI to define the proposal as published in the Proposed Notice of Sale and analyzed in this environmental assessment.

The proposal contains blocks remaining in the sale area after the Congressional moratorium, except for 327 blocks identified by industry as having low or no interest and which also had resource or use conflicts. Those 327 blocks were removed from the proposed sale. Also deleted were 151 blocks identified by the Department of Defense as containing submarine transit lanes. For a more complete description of the area in the proposal, see the Proposed Notice of Sale, which is hereby incorporated by reference in this environmental assessment.

The eastern part of the proposed sale area, which is located within the area currently in dispute between the United States and Canada, also is addressed in this environmental assessment. That disputed portion of the proposed sale area includes 987 blocks. A decision on leasing blocks within that area will not be made until after a ruling by the International Court of Justice (ICJ) to delimit the maritime boundary in the Gulf of Maine area. Any blocks determined by the ICJ to lie within United States jurisdiction may be included in Part II of Sale 82. For purposes of this environmental assessment, we assume that all disputed blocks would be removed from the sale. In addition, one small group of 12 blocks which is outside the disputed area in the Northeast Peak of Georges Bank will be evaluated in this environmental assessment along with the 987 disputed blocks, although those 12 blocks ultimately may not be offered in Sale 82. No significant change in this analysis will result whether or not those 12 blocks are offered.

Alternative—Delete All Blocks in Waters Shallower Than 400 Meters

The Commonwealth of Massachusetts, in its July 3, 1984 comments on the size, timing, or location of the proposed sale, recommended that all blocks in waters shallower than 400 meters be deleted. Massachusetts offered this recommendation to delete 1,114 more blocks from the proposal in order to further increase the protection of fisheries. This protection would be in addition to that already provided by the deletion alternatives analyzed in FEIS–82 and the mitigating measures included in the proposal. Although Massachusetts' comments were submitted under the Outer Continental Shelf Lands Act (OSCLA), not the National Environmental Policy Act (NEPA), we are treating the new deferral request as an alternative in order to assist the Secretary in his decisionmaking process on the final Notice of Sale. The Council on Environmental Quality (CEQ) regulations specifically contemplate the use of environmental assessments for this purpose.

Resource Estimates and Scenario

The estimated condition mean level of resources produced under the proposal is projected to be comparable to the 140 mmbbls of oil and 3.1 tcf of gas estimated under Alternative 10. This occurs in part because most areas removed from Alternative 10 to arrive at the proposal were lower priority resource areas and less likely to contain prospective hydrocarbon bearing structures. An analysis of the method used to calculate resource estimates appears in Appendix C of FEIS–82. All oil produced under the proposal hypothetically would be collected by numerous gathering lines and connect to single point moorings from which it would be transported by tankers or a tug-barge system to refineries on the Raritan and Delaware Bays. Gas produced under the proposal would be transported to shore via a pipeline with a landfall on the southern shore of either Rhode Island or Massachusetts, near the border of these two States. One gas processing plant associated with the above pipeline is assumed to be located in or around the Fall River, Freetown area of Bristol County, Massachusetts for purposes of analysis. An alternative theoretical option could be a single pipeline coming ashore on Cape Cod with a gas processing plant in Plymouth County, Massachusetts. If the area under dispute with Canada is deferred, the southern pipeline scenario would be most likely.

Operations support could be provided from the existing Quonset-Davisville support base in Washington County, Rhode Island. This port meets the principal requirements for a support base: proximity to the lease area, a draft at low tide of 15 to 20 feet, and access to industrial infrastructure such as railroad lines, highways, and warehouse space. The capacity of the Quonset-Davisville facility is adequate to support the level of activity expected from the proposal.

It has been assumed that helicopter support would be provided from a number of local airports such as Barnstable Municipal Airport on Cape Cod or Green Airport in Providence, Rhode Island. This assumption is based on the prior involvement of these airports in the support of the exploration of previously leased lands in the North Atlantic and their identification in the Environmental Reports required to the exploration of leased lands.

The expected quantity of pipecoating work generated as a result of the proposal, as well as the ability of existing yards to meet the assumed delivery schedule of the oil and gas industry, indicate that pipecoating activity could be accommodated by existing yards.

It has been assumed that platform fabrication and subsea complex construction for the proposal would occur at existing yards in the Gulf of Mexico region, from which they would be shipped to the offshore area.

Oil Spill Risk Analysis

Resource estimates for the proposal were projected to be comparable to those calculated for Alternative 10. As such, detailed discussion of the probability of 1 or more spills occurring as well as condition probabilities will not be undertaken in this environmental assessment. These can be adequately discerned by referring to FEIS–82.

Conditional probabilities from FEIS–82 are used in this environmental

assessment were applicable. It should be remembered that conditional probabilities assume that an oil spill has occurred within a specific area. Joint probabilities, as discussed in FEIS–82, Sections IV.E.4 and 5, take into account the low probability of a spill actually occurring.

Environmental Consequences

In addition to defining the proposal, the proposed Notice of Sale of May 14, 1984, presented nine lease stipulations and twelve information-to-lessees (ITL) clauses. Many of the stipulations and ITL clauses are designed to help reduce environmental impacts. The following analysis contains discussions of the impacts expected without the application of the stipulations or ITL clauses, as well as a discussion of the expected impacts with these measures in place. The stipulations and ITL clauses having potential to reduce impacts are listed below. For a complete listing and text, please refer to the Proposed Notice:

Stipulations With Environmental Mitigation Potential

No. 1. Cultural Resources
No. 2. Biological Populations or Habitats
No. 3. Pipelines
No. 4. Disposal of Muds and Cuttings
No. 5. Fisheries Training Program
No. 8. Two Hundred Meter Canyon Buffer

Information-to-Lessees Clauses With Environmental Mitigation Potential

b. Information on Corps of Engineers Permits and Navigational Safety.
d. Endangered Species Act Advice.
e. Biological Stipulation and the Biological Task Force.
f. Geohazards Surveys.
g. Harassment of Cetaceans and Endangered and Threatened Species.
m. Oil Spill Cleanup.

The levels of impacts used in this environmental assessment are defined on pages 90 to 93 of FEIS–82. This assessment is not intended to replace the analysis done in that document, but rather to update it by analyzing the proposal, and by incorporating the most up-to-date information developed by the DOI Environmental Studies Program. The following analysis, therefore, incorporates FEIS–82 by reference.

Impacts on Water Quality

The most severe impacts on marine water quality from the proposal would result from large (greater than 1,000 barrels), acute oil spills as usually associated with well blowouts and tanker accidents. The severity of the impact would depend on the oceanographic and meteorologic conditions at the time of the spill as well as the amount and chemical state of the oil (sources of oil spills and weathering/degradation processes in the North Atlantic marine environment are described in Sections IV.B. and E. of FEIS–82).

The major geographical area of concern in regard to oil spills from the proposal is the crest of Georges Bank. Due to the shallow (less than 60 m depth) and turbulent hydrographic conditions here, spilled oil could get dispersed throughout the water column, may get entrained in suspended particles and bottom sediments, and possibly be released into the water column from the disturbed sediments. Within this area, weathered oil and toxic products could be circulated before complete degradation occurs or before they are transported off the Bank at one of the exit areas described by Houghton *et al.*, 1981. However, the proposal, like Alternative 10, excludes the Georges Bank crest. A spill originating within the sale area adjacent to the crest (primarily the eastern flank) could be transported into the crest area resulting in substantial, although likely temporary, degradation of water quality.

Dispersion and deposition of discharged drilling muds and cuttings would most likely occur as previously observed in rig-monitoring studies (discussed in Section IV.D. and E. FEIS–82). Two factors in particular, currents and water depth, would be significant in determining the actual dispersion of materials from the point of discharge. However, the relatively small volume of this component compared to the large volume of receiving water would result in the rapid settling and dispersion of materials to background levels within approximately 1,000 meters of discharge. Additionally, discharges would be spaced over a large area and long period of time so impacts on ambient water quality are expected to be minimal. Only those muds designated by the Environmental Protection Agency (EPA) to be environmentally acceptable, as determined by bioassay test results, can be discharged on the Outer Continental Shelf (OCS). The anticipated minimal impact on water quality from drill muds and cuttings as a result of the proposal is in agreement with the general conclusion of minimal environmental risk determined by the recent National Research Council Marine Board Study (National Academy of Sciences, 1983).

Discharged formation waters would be diluted rapidly and ultimately lost in the large volume of receiving water. Depending on hydrographic conditions, background levels of trace metals would be reached within a few hundred meters. The hydrocarbon content of discharged formation waters would be within EPA's prescribed effluent limits [the concentration of oil should not exceed an average 30-day concentration of 40 mg/l (40 CFR Part 435)].

Minimal impacts are expected from the discharge of domestic wastes, sanitary wastes, and low-levels of oil (e.g. due to deck drainage) from drilling rigs and platforms. These discharges are regulated by the EPA through the National Pollutant Discharge Elimination System (NPDES) permit requirements and are quickly diluted to ambient levels in the receiving waters.

In summary, routine discharges would result in localized and relatively minor water quality perturbations. Although a large (greater than 1,000 barrels), accidental oil spill could cause a severe alteration of ambient water quality, this is likely to be only temporary.

As with Alternative 10, selection of the proposal would eliminate blocks which are adjacent to the northern and southern portions of the Georges Bank crest. Thus, oil from a large spill, which may occur in adjacent blocks, is less likely to enter the important crest area. In turn, the potential impact to water quality is considered to be minor for both the proposal and Alternative 10.

By commitment of Stipulation No. 4 (dealing with potential shunting/transport of drill muds and cuttings and reinjection of formation waters), some incremental improvement in water quality may be realized. However, the resultant reduction in impact to water quality would be primarily in the immedate area of the discharge. Overall, the routine releases of drill muds, cuttings, and formation waters, as would result following the proposal, are expected to have minimal water quality impact.

If the area disputed with Canada is deferred, blocks adjacent to the eastern portion of the Georges Bank crest would be eliminated. Oil from a large spill, which may occur in adjacent blocks, is less likely to enter and degrade water quality in the important crest area. Some decrease in potential impact from large accidental oil spills and routine discharges could result in accordance with a decrease in the number of drilling rigs and platforms per the Canadian deferral. However, as with the proposal, the overall potential water quality impact would still be minor.

Conclusion

A minor overall impact on water quality is expected from the proposal. This impact level would not be

substantially affected by adoption of Alterative 10 or the Canadian area deferral. Commitment of Stipulation No. 4 could help reduce impacts near rigs or platforms but would result in only a minor decrease in overall impacts throughout the proposed sale area.

Impacts on Plankton

Discharges of drill muds, cuttings, formation waters, and waste waters from the drill platforms are expected to have extremely localized impacts on plankton populations. Formation waters have been shown to be toxic to larval stages of crustaceans (Zein-Eldin and Keney, 1979). However, formation water discharges are rapidly diluted in the immediate vicinity of the discharge pipe and reach ambient levels within the physical structure of the platform (Gallaway, 1981). Ninety percent of the drilling muds which are discharged at the surface will rapidly settle out of the surface waters and the remaining 10 percent generally will dilute to ambient levels within 800 to 1000 meters from the discharge pipe (Ayers, *et al.*, 1980; NRC–MB, 1983). Impacts to the plankton from the surface plume are expected to be minor and localized, and primarily resulting from decreased light transmittance for phytoplankton and mechanical damage from increased suspended particulates for phytoplankton and zooplankton. Most of the proposed sale area is in water depths greater than 50 to 80 meters so a secondary subsurface plume is likely to form. Because the primary method of dilution for the secondary plume is passive diffusion, it may transport drill materials for long distances from the disposal site (NRC–MB, 1983). The National Research Council (NRC–MB, 1983) has reported that calculations have indicated that concentrations in the lower plume are an order of magnitude higher than the surface plume. The increased concentrations, in conjunction with the slower rate of dilution by passive diffusion, indicate that elevated levels of drill fluids may be evident for greater distances from the discharge point for the subsurface plume than for the surface plume. However, because of the low toxicity of the drilling fluids used and the much greater areal extent of the plankton populations in relation to the area potentially impacted by the drilling fluids, impacts to the plankton community resulting from the proposal are expected to be minor and not different from those described in deferral Alternative 10. Adoption of Stipulation No. 4 would further decrease potential impacts to the plankton community by shunting away or not discharging, drilling muds, cuttings, and formation water which may adversely affect the organisms.

Under the proposal, as with Alternative 10, the probability of an oil spill of greater than 1,000 bbls resulting from Sale 82 leases is approximately 23 percent over the 30 year development period. Impacts to planktonic organisms resulting from oil spills are covered in section IV.E.2. of FEIS–82 and should be referred to for specific information. It is expected that the impacts to plankton resulting from an oil spill will be very similar to those listed for Alternative 10, which were reported as minor.

If the area which is in dispute with Canada is deferred from the proposal, the resource estimate, amount of drill fluids, formation waters, and wastewater discharged, and number of exploration and production rigs may decrease. The impacts to the plankton community would decrease correspondingly, be less than under Alternative 10, and classified as minor.

Conclusion

The overall impacts to the plankton community as a result of the proposal, and of the proposal without the disputed area, are expected to be minor.

Impacts on Benthos

Impacts to the benthos could occur from the placement of drill platforms, sub-sea well complexes, and gas pipelines, the discharge of drill muds and cuttings, and oil spills which may contact the bottom. The impacts caused by the physical placement of pipelines and operating equipment are expected to be the same as those reported in Alternative 10 because of the similarity in resource potential.

Recent studies on the effects of drilling discharges from an active exploration well on Georges Bank have demonstrated no significant impact to benthic communities from the drilling mud (Batelle and WHOI, 1983). The primary impacts to the benthos resulting from drill fluid discharge would be localized smothering of less mobile organisms and changing the granulometry of the sediments in the immediate vicinity of the rigs or platforms.

The shallower areas of Georges Bank are hydrodynamic and the bottom sediments are generally well sorted. Bothner, *et al.* (1983) reported that R.A. Cooper conducted a visual and photographic survey of a drill site on Georges Bank and could not discern a recognizable cuttings pile. Most water-based drilling fluids discharged on the United States OCS have low chronic and acute toxicities at the dilutions common after disposal (NRC–MB, 1983). Gilbert (1981) reported that the water soluble fraction of a common drill fluid used on the Atlantic OCS had no significant effect on the larval shell growth rate of the scallop, *Placopecten magellanicus*, a valuable resource in the Georges Bank area. Hecker, *et al.* (1980, 1983) have reported that the canyon head areas in the North Atlantic are more faunally diverse and biologically productive than open slope areas; these canyon heads have been deleted from the proposed sale area.

Impacts to the benthos from drilling discharges resulting from the proposal are expected to be slightly less than those reported for Alternative 10, therefore, also minor. Adoption of Stipulation No. 4 could further decrease impacts to benthos by protecting areas of higher biological productivity from the discharging of drilling fluids or formation waters. Potential impacts to the benthos in the event of an oil spill are discussed in Section IV.E.3 of FEIS–82. The impacts on the benthos caused by an oil spill as a result of the proposal are expected to be similar to those discussed under Alternative 10, which are reported to the minor.

In the event of the deferral of the lease area in dispute with Canada, a decrease in the resource estimate and the amount of drilling discharges is epxected. A concomitant decrease in projected impacts to the benthic community resulting from oil spills or drilling discharges would be expected. Overall impacts to the benthos under this option would be expected to be minor.

Conclusion

The overall impacts to the benthic community as a result of the proposal, and of the proposal without the disputed area, are expected to be minor.

Impacts on Fish and Commercial Fish Resources

Since completion of FEIS–82, some new information has become available which further describes the fish and fishery resources of the North Atlantic. These reports include: Grosslein (1983), Hecker *et al.* (1983), McKenney (1983), and Sedberry (1983). In addition, the Woods Hole Laboratory of the National Marine Fisheries Service, under the guidance of Dr. Grosslein, has performed new evaluations of their MARMAP offshore trawl data (1968–1981) reported by sampling stratum. These data are contained in Appendix A, Table 1. To make the data more understandable, Figures 1, 2, and 3 (Appendix A) were generated by Minerals Management Service (MMS).

This is the first time these data have been corrected for catchability variances, which makes them the best approximation of offshore fish distribution in the Middle and North Atlantic regions currently available. This new data set reinforces statements made in FEIS–82 that Georges Bank is an area of high fish productivity. Inspection of Figures 2 and 3 (Appendix A) also reveals the importance of the Great South Channel and Northeast Peak, previously asserted in FEIS–82.

Table IV.N.4–1 of FEIS–82 shows the probabilities of an oil spill occurring and contacting important fish resources of the Georges Bank and vicinity. These probabilities are still essentially correct, with some minor variations. Under the proposal, the discharge locations of P23, P24 (Northeast Peak) and P29–33 (central Georges Bank) are no longer part of the area to be offered (see Appendix D, Figure 2; FEIS–82). These potential spill locations did demonstrate that some probabilities of contacting the crest and southeast protions of Georges Bank do exist. Eliminating potential spills from these locations reduces the risk of an oil spill occurring and contacting these locations of Georges Bank which are important to the fish resoruces of the Bank in total.

In the discussion which follows, conditional oil spill probabilities are considered. Conditional probabilities are calculated based on the assumption that an oil spill has occurred in a designated location within the sale area. With this initial premise in mind, the conditional probabilities give information about where the oil is expected to be transported and the vulnerability of the target areas in question (i.e. the southeast and crest portions of Georges Bank). These data do not take into account the oil resource estimates anticipated or the distribution of the hydrocarbon reserves. Analysis using these conditional probabilities closely resembles a "worst case" analysis. However, joint probabilities do consider resource abundance and distribution. When these values are considered, a more accurate assessment of likely overall risks to the fish and fishery resources is obtained. Joint probabilities for the crest and southeast Georges Bank were projected to be 5 and 3 percent, respectively (Section IV.E.4 and 5; FEIS–82). Since the proposal contains many fewer blocks and lower resource values than Alternative One in FEIS–82, the joint probabilities could be expected to be much lower than the already low level identified for that alternative. Therefore, it is anticipated that the magnitude of impact would be less than the Minor-Moderate level projected in that document.

Despite the identified reductions, P22 (see Appendix C),[1] located just north of the crest, remained in the proposed sale area. The conditional probability of a spill from this location reaching the crest remains at 42 percent (3 days post-spill—Appendix D, Table 3; FEIS–82). In a similar manner, the southeast portion of Georges Bank exhibits probabilities of contact listed as 28 and 20 percent from potential discharge locations P34 and P35, respectively (Appendix D, Table 3; FEIS–82). Other locations with high oil spill contact probabilities are not part of the proposal, but were contained in Alternative 10. Oil spill risks are still present under the proposal, but to a lesser degree than identified for Alternative 10.

As identified in section IV.N.5 (FEIS–82), inshore impacts of oil spills are projected to be low. This same expectation holds for the proposed action. Oil spill probabilities of contact to valuable nearshore and estuarine habitats are very low if a spill were to occur from within the proposed sale area.

Because the resource estimate for the proposed sale area is similar to Alternative 10, the impacts of drill muds and cuttings discussed in sections IV.N.4 and IV.N.5 (FEIS–82) are comparable. slightly less impact on commercially important sea scallop beds located on the Northeast Peak can be expected because a protion of the area has been deferred. Recent findings by the National Research Council (NRC–MB, 1983) support the minimal impacts on fish and fishery resources asserted by FEIS–82. One conclusion of this panel was that the effects of individual discharges are quite limited in extent and are confined mainly to the benthic environment. This conclusion is further supported by recent updats of the Georges Bank Monitoring Program [Battelle and WHOI (1983), SAI (1983), and Bothner *et al.* (1983)].

The impacts of pipeline placement on fish and fishery resources are similar to those identified in FEIS–82, since the pipeline placement scenario is unchanged for the proposal.

Tables IV.N.5–1 through 5–4 (FEIS–82) list analyses of potential impact to the important fishery areas of Stellwagen Bank, Nantucket Shoals, southeast Georges Bank, and the crest. These analyses are still applicable. Probability values for Tables IV.N.5–1, 5–2, and 5–4 are the same as shown, whereas those for Table IV.N.5–3 are slightly different. The seasonal conditional probabilities of contact are now: winter—22 percent, spring—22 percent, summer—21 percent, and autumn—25 percent (Appendix D, Table B; FEIS–82). These values are so close to those shown in Table IV.N.5–3, that the analysis of potential impact magnitude is still valid.

Recent reviews by Grosslein (1983) and Teal and Howarth (1984) indicate that assessing impacts on commerical fisheries through the use of potential egg and larvae mortalities, as was employed in FEIS–82, is an acceptable approach. However, quantification of this procedures is still difficult because of the inherent natural variability in fish stocks.

The number of rigs, miles of trunk and connecting line, and other assumptions involved in modeling projected impacts under the catch-loss model remain the same as identified for Alternative 10 in FEIS–82. Therefore, it is estimated that approximately $116 thousand will be the total annual loss to commercial fisherman and would occur each year from 1999 on.

The Proposal vs. Alternative 10 (FEIS–82):

Because the proposed sale area and the area which would be offered for lease under Alternative 10 are similar, with comparable resource estimates and slightly less acreage (13 percent), impacts projected for the proposal are only slightly less than those previously identified in Sections IV.N.4 and 5 of FEIS–82. These very slight reductions in the expected magnitude of impact are caused by oil spill risks to fish and fishery resources being less under the proposal.

Conditional probabilities of contact for the southeast portion and crest of Georges Bank are correspondingly lower for the proposal than those calculated previously for Alternative 10. The southeast portion of Georges Bank exhibited conditional oil spill probabilities of 20, 34, 32, 28, and 20 percent from discharge locations P31–35, respectively (3 days post-spill—Appendix D, Table 3; FEIS–82). Under the proposal, the same area possessed conditional oil spill probabilities of 28 and 20 percent from discharge locations P34 and P35, respectively. Other discharge locations with relatively high probabilities of contact to the southeast part of Georges Bank are removed under the current proposal. Despite this reduction in overall risk, the probabilities of 28 and 20 percent (3 days post-spill) indicate that if a spill should occur from these locations, it still

[1] Appendix C is filed with the original and also included in the FEIS–82.

could contact the southeast portion of Georges Bank.

Similarly, the crest of Georges Bank, known to be a valuable nursery area for many Georges Bank fish and shellfish, exhibits conditional oil spill probabilities of 42, 19, 20, 31, 30, 25, and 11 percent from discharge locations P22 and P30–35, respectively (3 days post-spill—Appendix D, Table 3; FEIS–82). For the proposal, the same area possessed conditional oil spill probabilities of 42, 25, and 11 percent, respectively (3 days post-spill also). Overall risks of an oil spill occurring from within the proposed sale area and contacting the crest of Georges Bank would be reduced, but not eliminated.

All other impact producing factors such as drilling discharges, pipeline placement, and spatial preclusion of fishing activities are expected to produce the same levels of impact already identified in Alternative 10.

Stipulations and ITL Clauses

Among the stipulations and mitigrating measures with the potential to reduce impacts on fish and fishery resources, Stipulations No. 2, 4, 5, and 8, as well as information in the OCS Operating Orders are the most applicable (see Chapter II; FEIS–82). These specifications deal primarily with operational problems or the discharge of drilling fluids. These measures would reduce potential impacts in some locations, most notably the remaining portions of the Northwest Peak where commercial concentrations of scallops occur. However, the greatest risk to the fish and fishery resources of Georges Bank would be a major oil spill as identified and discussed in sections IV.E.4 and IV.E.5 of FEIS–82. Although there will be localized benefits from commitment of the stipulations and ITL clauses, the potential risk for the sale area as a whole is approximately the same as for the proposal without those measures.

The Proposal with Canadian Disputed Blocks Deferred:

Should all blocks east of the disputed Canadian boundary line be deferred, the sale area would be changed in configuration (see Introduction). Under the proposal, the total number of blocks offered would be approximately 2,462. With the identified blocks removed, the offering would contain roughly 1,475 blocks. The areas of Georges Bank deferred from the proposal would include most of the east end of the Bank and the majority of the Northeast Peak. Changes in impacts would be projected in three areas; oil spill induced egg and larvae mortalities, drilling discharges, and space-use losses. Other impact producing factors would remain the same as discussed above.

As identified above, the deferral of portions of central Georges Bank and the Northeast Peak would reduce the risk of an oil spill occurring and contacting Georges Bank fish and fishery resources. In a similar manner, these further reductions of the same areas result in lower probabilities of an oil spill occurring within the sale area and contacting important fishery locations of Georges Bank.

Given the sale area configuration with blocks east of the disputed Canadian boundary line deferred, the potential discharge locations of P24, P25, P34, P35, and P43–45 would be eliminated. The risk of an oil spill occurring within the sale area and reaching the important fishery resource areas identified in Table IV.N.4–1 (FEIS–82) is low under the proposal except for the crest and southeast portions of Georges Bank. Conditional probabilities of contact to the crest under the proposal were identified earlier in this environmental assessment. With easterly blocks deferred, risks to the crest would not occur from three potential locations, but rather from one; P22 (Appendix C). This probability estimate remains the same as identified in Alternative 10 or the proposal. Spills that occur from these remaining blocks north of the 60 m crest area still demonstrate a probability of contacting the crest of Georges Bank.

Conditional probalities of contact to the Southeast portion of Georges Bank were identified above. In a similar manner to that previously discussed for the crest, the risk of an oil spill that occurs within the sale area contacting this location is reduced with easterly blocks deferred. Risks of an oil spill contacting the southeast portion of Georges Bank no longer would occur from two discharge locations (P34, 35), but rather from one; P43. Conditional probabilities are also much lower; 28 and 20 percent (P34, 35; respectively) reduced to 9 percent from P43. This reduction lowers the risk of an oil spill from within the sale area contacting the southeast portion of Georges Bank. Inshore impacts related to spills occurring from within the proposal are expected to be minor.

Within the blocks east of the disputed Canadian boundary line deferred, the expected number of exploration and development facilities would also be reduced below those listed in Alternative 10. Because of this reduction, the volumes of drill muds and cuttings would be expected to be less than those for the proposal. Effects on benthic and demersal fish and fishery resources would also be less under this scenario. This is especially true for the sea scallop resources known to be concentrated in the Northeast Peak, and to a lesser extent, the eastern end of Georges Bank.

Because exploration and development facilities would likely be reduced under this scenario, dollar losses to commercial fishermen from space-use conflicts would be less than identified in section IV.N.5 (FEIS–82). The fisheries with the greatest reduction can be expected to be sea scallop, groundfish (otter trawl), and, to a lesser extent, offshore lobster (otter trawl).

Conclusion

Impacts on Marine and Coastal Birds

In FEIS–82, the impact level on fish and fishery resources was determined to be Minor-Moderate for Alternative 10. Under the proposal, the level of impact is expected to be essentially the same; Minor-Moderate.

Marine and coastal birds are widely distributed throughout the North Atlantic Planning Area but concentrate their feeding activities in upwelling areas and shallow nearshore waters. Under the proposal, no drilling activity would occur in shallow nearshore waters, in the immediate vicinity of submarine canyons, nor in important upwelling areas around the Georges Bank crest. However, these birds could experience impacts from exploration, development, and production activities occurring on lease blocks near of important use areas. The low level of anticipated OCS activities should pose only a minor impact to marine and coastal bird populations.

An insignificant difference in the level of impact on marine birds between Alternative 10 and the proposal is anticipated because the location of the proposed sale area and projected oil and gas resources are very similar to those considered under Alternative 10. The committment of any or all of the stipulations is not expected to result in a signficant direct benefit to marine and coastal bird species. Therefore, the level of impact is not expected to change from what is anticipated under the proposal.

The deferral of all blocks in dispute with Canada would result in a further 40 percent reduction in the size of the sale area. Because of the distance the disputed blocks are from shore, it is unlikely that the level of impact on coastal birds would change from the proposal. However, the disputed blocks are important feeding areas for some marine birds and the absence of drilling activities in these blocks could reduce

the potential impacts on these species. OCS activities in the remainder of the sale area would continue to have only a minor impact on marine and coastal bird species.

Conclusion

No significant change in the level of impact (minor) on marine and coastal birds is anticipated because important feeding, resting, and breeding areas are generally located well beyond proposed lease blocks.

Impacts on Estuaries, Wetlands, and Sensitive Coastal Habitats

The North Atlantic region is dominated by three major estuaries (Narragansett, Raritan, and Delaware Bays) and a sandy beach/barrier dune shoreline. Impacts on these sensitive coastal areas would be minor under the proposal because of the distance between land and the sale area (over 50 miles) and from the low level of development and production activity anticipated. No clearing, trenching, or filling of wetlands will be needed for a support base or gas processing plant as existing port space and industrial sites are adequate for anticipated OCS development. Only one gas pipeline and no oil pipelines are likely to be required to bring hydrocarbons ashore. A tanker spill could still pose some threat to coastal areas, but, because of the low resource estimate, an oil spill would be very unlikely.

No signficant changes in the level of impacts between Alternative 10 and the proposal are anticipated. Although the proposal is approximately 13 percent smaller in size then the area evaluated under Alternative 10, this reduction does not significantly change the resource potential and associated impacts. In addition, no changes in the development and production scenario are expected.

The commitment of any or all of the proposed stipulations and ITL clauses would not result in a significant direct benefit to estuaries, wetlands, or sensitive coastal habitats. Therefore, the level of impact is not expected to change from what is anticipated under the proposal.

The deferral of all blocks in dispute with Canada would result in a 40 percent reduction in the size of the sale area. The disputed area includes blocks that are the furtherest from shore and pose a negligible risk to coastal areas. A limited amount of OCS activities could occur on the remaining blocks but, because of the reduction in the size and resources in the sale area and in OCS activities, a negligible level of impact on estuaries, wetlands, and sensitive coastal habitats should result.

Conclusion

A minor level of impact is anticipated on sensitive coastal habitats under the proposal and under Alternative 10. Impacts on these areas would be negligible if the area disputed by Canada is deferred.

Impacts on Endangered and Threatened Species

Impacts on endangered birds and coastal species (described in FEIS–82) would be minor under the proposal because of the distance between land and the area to be offered for lease and from the anticipated low level of development and production activities. A large platform spill or tanker accident could still pose some threat to coastal areas. No drilling activities will take place within the Great South Channel, an area identified by National Marine Fisheries Service as being a preferred right whale feeding area in which drilling activities should be restricted (see Appendix F, FEIS–82).

Because no drilling activity could take place within 50 miles of shore or within the Great South Channel, there is a minimal risk that OCS activities will adversely affect the primary North Atlantic feeding grounds of the leatherback and loggerhead sea turtles, and the right, humpback, and fin whales. Only the sei and sperm whales, and to some extent the fin whale, appear frequently within the proposed sale area. The absence of drilling activities in the major canyon areas, on adjacent blocks, and in military operating areas will reduce the amount of exposure that these three species would have to drilling impacts. In addition, no significant new information has become available since the publication of FEIS–82 regarding the impacts of OCS activities and oil spills on marine mammals (Geraci and St. Aubin, 1984; Sorensen *et al.*, 1984). Therefore, activities associated with the exploration, development, and production in the proposed sale area should have only a minor effect on all endangered sea turtles and large whales because of the low oil spill risk, the absence of drilling activities in essential feeding grounds, and the low level of occurrence of most species in the proposed sale area.

Although the proposed sale area is approximately 13 percent smaller than the area evaluated under Alternative 10, this reduction in size does not occur in any known important use area and does not significantly change the resource potential. Therefore, no significant change is anticipated between the level of impact discussed for Alternative 10 (minor) and the level identified for the proposal (minor).

The commitment of any or all of the proposed stipulations is not likely to result in a significant direct benefit to endangered or threatened species. However, the issuance of guidelines for lessees and vessel operators as ITL clauses will assist them in conducting activities in a manner which causes minimal adverse impacts to endangered and threatened species. ITL's should help to reduce the potential for impacts on endangered species but would not change the overall level of impact (minor) of the proposal.

The deferral of all blocks in dispute with Canada would result in a further 40 percent reduction in the size of the sale area. Although the disputed area has not been identified as a preferred area for sea turtles or whales, the loggerhead and leatherback sea turtles and the fin, sei, and sperm whales have all been observed in these waters during the spring, summer, and autumn seasons. The absence of drilling activities in these waters would benefit these animals by further reducing any possible risk of impact. The reduction in the size of the area undergoing exploration, development, and production activities similarly would benefit all species of whales and sea turtles; a negligible level of impact on all endangered species is anticipated.

Conclusion

A minor level of impact is anticipated on all endangered or threatened turtles and whales under the proposal and Alternative 10. Impacts could be slightly less but still minor if the ITL clauses are included in the Notice of Sale. Impacts on turtles and whales would be negligible if the area disputed by Canada is deferred.

Impacts on Coastal Recreation and Tourism

Coastal areas important for recreation and tourism could be affected as a result of the proposal by facility construction and/or by oil spills which reach shore.

Hypothetically, one gas pipeline could result from the proposal with a landfall either near the Massachusetts-Rhode Island border or on the Cape Cod National Seashore. Experience in other coastal areas and barrier islands indicates that, as long as construction is time for an off-peak season for recreational use, and the landfall site is restored to its previous condition, there should be no conflict between the landfall or right-of-way and the potential or actual recreational use of the land.

An oil spill reaching shore, contacting beaches or scenic coastlines, and causing closure of water-oriented recreational facilities has the most potential for adversely affecting coastal recreation and tourism. It should be noted however, that the proposal excludes virtually all areas in Oil Spill Trajectory Analysis Model (OSTAM) launch zones with a conditional probability greater than 1 percent of contacting any land between Cape Cod and Cape Hatteras (see FEIS–82). The likelihood that an oil spill resulting from the proposal would adversely affect coastal recreation and tourism is, therefore, extremely low. Transportation of the proposed action's oil could slightly increase this likelihood of spill contact with land. However, substantial risk would exist independent of the proposal because of existing transportation of imported oil.

Impacts on coastal recreation and tourism resulting from Alternative 10 (FEIS–82) are essentially the same as those described above for the proposal.

Stipulations contained in FEIS–82 would not affect the impacts on coastal recreation and tourism described here.

As with the proposal, one gas processing plant and one pipeline landfall are anticipated if recoverable resources are found. However, if the area of territorial dispute with Canada is deferred, it would be most likely that any pipeline built would come ashore directly from the proposed sale area, perhaps near the Massachusetts-Rhode Island State line and the Cape Code pipeline considered in FEIS–82 would be unlikely. This eliminates consideration of potential short-term disruption of recreational activities there. The potential for oil spill contact with any land from Cape Code to Cape Hatteras remains quite low if the disputed area is deferred. In addition, such exclusion would remove from the sale several areas which pose the highest threats of spill contact with the shores of Nova Scotia.

Conclusion

The proposal with committed stipulations and ITL clauses has potential for localized moderate impacts to coastal recreation and tourism in the very unlikely event that an oil spill should reach shore. This potential is further reduced should the area of territorial dispute with Canada be deferred. Pipeline construction could cause short-term minor impacts on beach areas but, overall, the proposal is anticipated to have minor impacts on coastal recreation and tourism.

Impacts on Land Use and Coastal Management

The proposal's main potential for impacts on land use and coastal management are associated with the one pipeline, gas processing plant, and the support base included in the development scenario.

The pipeline which may be constructed for natural gas production is hypothesized to have its landfall either near the Rhode Island-Massachusetts State line with a processing plant in Bristol County, or to have its landfall in the Massachusetts Cape Cod Ocean Sanctuary with a processing plant in Plymouth County. Either routing would be subject to the approval of the Federal Energy Regulatory Commission (FERC) which requires that the facility conform to State and local laws, permit requirements, and policies. Additionally, construction and maintenance must be undertaken in a manner that will minimize adverse effects on scenic, historic, wildlife, and recreational values. FERC also recognizes the need to fit the construction of pipeline facilities into existing State and regional land development plans. The Rhode Island Coastal Resources Council would have permitting authority for a landfall in that State and probably would require that such a landfall and/or right-of-way would not:

—Conflict with any Council management plan or program (including the Federally-approved Rhode Island Coastal Management Program);
—Alter any area, making it unsuitable for its designated uses or activities; or
—Significantly damage the environment of the coastal region.

A gas pipeline routing with landfall in coastal Massachusetts would be subject to review by the Massachusetts Energy Facilities Siting Council (EFSC) which could intervene in the FERC proceedings. In addition, the EFSC would evaluate the project for consistency with the Massachusetts Coastal Zone Management Program. A conflict could exist with the Massachusetts Ocean Sanctuaries Act if a Cape Cod pipeline route was selected by the oil and gas industry. The Act prohibits "the building of any structure on the seabed or under the subsoil . . ." although neither the Act nor its implementing regulations specifically address OCS natural gas pipelines which are of a National or regional benefit and might not be subject to exclusion. Review by Massachusetts State agencies presumably would include consideration of whether all reasonable measures have been taken so that the assumed pipeline would not seriously alter or otherwise endanger the ecosystem or the appearance of the ocean, the seabed, its subsoil, or the Cape Cod National Seashore. Experience indicates that adverse effects related to pipeline landfalls are temporary, occurring during the construction phase.

A gas processing plant in either Bristol County or Plymouth County would be hypothetically sited in an appropriate area outside the boundaries of the Massachusetts coastal zone. Nonetheless, such a siting would be subject to the reviews outlined above in conjunction with the gas pipeline landfall and right-of-way. No conflicts between these sitings and land use plans or coastal management programs are known at this time.

The support base facilities currently in use at Davisville, Rhode Island are sufficient in size to support the proposal without expansion and thus should have no impact on local plans. The Rhode Island Coastal Management Program states that an ". . . OCS support service base could be accommodated at Quonset/Davisville within the framework of balanced and environmentally sound development" (Policy 540.0–2).

The development scenario for Alternative 10 is the same as for the proposal and, thus, impacts on land use and coastal management are essentially the same as those described above.

Stipulations and ITL clauses which may be committed would not alter the development scenario and, therefore, do not affect the impacts on land use and coastal management described here.

If the area of territorial dispute with Canada is deferred from Sale 82, the development scenario would contain only one hypothesized gas pipeline and processing plant, that of a Rhode Island landfall and processing plant in Bristol County, Massachusetts. The Cape Cod Ocean Sanctuary landfall with a processing plant in Plymouth County would be excluded from the scenario. As a result, the potential land use and coastal management conflicts associated with that pipeline route and processing plant would be eliminated.

Conclusion

Impacts on land use and coastal management could be moderate if the hypothesized Cape Cod Ocean Sanctuary pipeline route was to be built. In all other cases activities postulated in the development scenario should be accommodated within the framwork of existing land use plans and coastal

management programs, resulting in only minor impacts.

Impacts on Employment, Population, Infrastructure, and Vessel Traffic

Under both the proposal and Alternative 10, it is projected that approximately 2,800 jobs could be generated by OCS activity when employment peaks in 1996. Of this number only 40 percent would be directly related to OCS activities. The remaining 60 percent would be in industries which support OCS activities (e.g. dredging, machinery repair, muds and mineral fluids supply, catering) and in industries which provide services to individuals employed in OCS-related industries (e.g. retail, banking, other services). The majority of the OCS-related employment would be concentrated in the Washington County, Rhode Island area, site of the OCS support base. Total OCS-related employment in the Washington County area is projected to reach approximately 2,100 by 1996. A smaller concentration of OCS-related employment is projected for either Bristol County or Plymouth County, Massachusetts, if a projected gas treatment facility were constructed.

It is estimated that the proposal could increase employment in the North Atlantic region by approximately 2,800 jobs. This represents less than 0.1 percent of the current and projected employment level for the region. At the local level, Washington County, Rhode Island would experience an increase of approximately 3 percent in its current level of employment.

Regional population increases associated with OCS activity are projected to peak at approximately 2,800 persons in 1995. As with employment, Washington County, Rhode Island is expected to absorb the majority of the new OCS-related population.

On both a regional and local level, impacts are expected to be minor; population increases would be so low as to have no noticeable effect on regional infrastructure. Since the support base already exists in Washington County, it is unlikely that the base itself will have any measurable effect on industrial or community infrastructure.

The impact of the proposal on vessel traffic is expected to be minor because of the small amount of increased vessel traffic assumed to result. The impact of the proposal on vessel-platform conflicts is also expected to be minor.

Impacts on employment, population, infrastructure, and vessel traffic under the proposal would be similar to those described in Alternative 10.

The stipulations which may be committed would have no significant impact on employment, population, infrastructure, or vessel traffic. However, ITL clause (b), "Information on Corps of Engineers Permits and Navigational Safety" states that a Corps of Engineers surface occupancy permit may not be granted for certain blocks within vessel safety fairways, precautionary areas, and traffic separation schemes.

Deferral of all blocks in the area in dispute with Canada would cause somewhat lower OCS-related employment and population projections and less resultant stress being placed on both the regional and local community infrastructure. Conflicts with vessel traffic also would be somewhat reduced by deferring the disputed blocks.

Conclusion

Impacts on employment, population, infrastructure, and vessel traffic would be minor under the proposal, Alternative 10, committed stipulations, and the Canadian deferral.

impacts on Cultural Resources

Under the proposal, all blocks identified by MMS as having medium to high probabilities of containing prehistoric sites are eliminated. In addition, most of the blocks south of Nantucket Shoals which contain shipwrecks and approximately 17 to 20 blocks lying within the 60-m depth contour which may contain historic shipwrecks are eliminated. Several blocks which lie on the eastern end of Georges Bank within the disputed Canadian boundary area may, however, be sites of historic shipwrecks as outlined in Table III.D.1–2 of FEIS–82. Some degree of disturbance or damage to the wrecks could be realized should drilling take place within those blocks. Impacts to cultural resources under the proposal would be the same as those associated with Alternative 10 as stated in FEIS–82.

Implementation of Stipulation No. 1 would ensure that any of the historic shipwrecks remaining under the proposal will not be adversely affected should drilling take place within those blocks.

Deferral of the disputed Canadian boundary area would eliminate approximately 10 to 15 blocks whch may be sites of historic shipwrecks as outlined in Table III.D.1–2. of FEIS–82. Therefore, no direct impact on these possible wrecks could occur.

Conclusion

Under the proposal, as under Alternative 10, some minor degree of impact to the shipwrecks remaining within the sale area could be realized should drilling take place within those blocks containing the wrecks. Implementation of Stipulation No. 1 would ensure that historic shipwrecks located within the proposed sale area are not adversely affected by drilling. Thus, the already low projected level of impact to cultural resources would be further reduced. The impact level would be reduced even further should the disputed Canadian boundary area be deferred.

Alternative to the Proposal

In its July 3, 1984 comments on size, timing, or location of the sale, the Commonwealth of Massachusetts has suggested that the proposal should be limited to water depths greater than 400 m. This would mean the Northeast Peak, and much of the southeast portion of Georges Bank would be deferred from the sale.

By deferring all blocks in water shallower than 400 m, there would be no blocks adjacent to the Georges Bank crest. Thus, the probability of oil entering and causing water quality degradation in the important crest area, as a result of a large spill in another part of the sale area, is further reduced. Some decrease in potential impact from large accidental oil spills and routine discharges would result in accordance with a decrease in the number of drilling rigs and platforms per this deferral. Overall, a minor impact on water quality is expected under this 400 m deferral alternative.

Deletion of those blocks shallower than 400 m would remove areas of high benthic diversity and productivity from the lease sale. Much of this area of high diversity and productivity is already deleted under the proposal. The deferral would reduce potential impacts to the benthic communities because of the probable decrease in amounts of drill mud discharged and the lower benthic productivity in blocks deeper than 400 m. In deeper water, impacts from surface discharges become less localized and also less severe because of increased fractionation and dispersion of the drill muds and cuttings. Impacts resulting from a change in sediment texture would be reduced because drill mud grain size distributions are more similar to sediments found on blocks deeper than 400 m. Impacts to the plankton community would be reduced under this deferral alternative because discharges would be restricted to the less productive areas off the continental shelf.

Potential impacts of contact resulting from oil spills would be reduced further

under the 400 m deferral alternative. Predominant surface currents in the remaining area would likely move a spill away from the Georges Bank crest, thus decreasing the possibility of oil being advected to the benthic community. It is estimated that impacts to the plankton and benthos under this deferral alternative will be minor.

Risks to Georges Bank fish and fishery resources would be reduced further under this alternative. Elimination of potential oil spill discharge sites on the Northeast Peak, east end, and southeast portions of Georges Bank reduces the chance that an oil spill that occurs within the area remaining after this deferral will contact fish and shellfish eggs and larvae. The major advantage of this alternative over the proposed action is elimination of potential spills from launch site P22 (Appendix C). Conditional probabilities for this alternative indicate that if a spill were to occur within the sale area, the probability of contacting the crest and southeast portion of Georges Bank is reduced to 2 and 9 percent, respectively (P42, P43 3 days post-spill, Appendix D, Table 3; FEIS–82). Potential oil spill risks to the southeast portion of Georges Bank are the same as identified for the proposal if blocks east of the Canadian boundary line are deferred.

Inshore oil spill induced impacts would be minimal as discussed for the proposed action. This is the result of the distance from shore of both the proposal and the proposal with blocks shallower than 400 m deferred.

For the proposal, approximately 2,462 blocks are to be included in the sale area. If all blocks less than 400 m are deferred, the sale would contain about 1,340 blocks. Under this alternative, no exploration and development facilities would be located on the Northeast Peak (P22). Instead, those facilities would be located in water depths greater than 400 m. Dispersal and dilution of drilling muds and cuttings likely would be greater in these water depths, thus a further reduction of the minor impacts from drilling discharges would be anticipated.

If blocks in water depths less than 400 m are deferred, the amount of space lost to commercial fishermen would be reduced because the majority of commercial fishing on Georges Bank, excluding offshore lobster and tilefish operations, generally occurs in water depths less than 200 m. Slight reductions in space loss would be expected for the flounder (otter trawl) and groundfish (otter trawl) fisheries. Minimal losses would be expected for the sea scallop and ocean quahog/surf clam fisheries, and reduced losses are also anticipated for the offshore lobster fishery.

The impacts on fish and fishery resources from the proposal are projected to be slightly less than the Minor-Moderate level reported for Alternative 10 in FEIS–82. A further reduction would occur if blocks less than 400 m were deferred, primarily because the blocks north of the 60-m crest area would be withdrawn from the offering. Risks to the crest of Georges Bank, known to be a valuable nursery area for many Georges Bank fish and shellfish, are reduced under this alternative. Impacts to fish and fishery resources along the shelf-break zone would be essentially the same as those expected for the proposal. The exception to this is the offshore lobster fishery, which would lose less fishing space to OCS related facilities if only blocks deeper than 400 m were offered. In addition, potential drilling discharge impacts on sea scallop resources of the Northeast Peak would be reduced. Therefore, it is anticipated that fish and fishery resources would be affected less than the Minor-Moderate level identified for Alternative 10 and the proposal.

Deferral of all blocks shallower than 400 m would further reduce the already low expected impacts on sea birds and endangered or threatened marine mammals and sea turtles. Many species of sea birds, sea turtles, and marine mammals occur in water depths less than 400 m, but the important feeding areas for most of these species generally are in water depths less than 200 m. This alternative would reduce the amount of possible exposure these animals would have to drilling related impacts. A negligible impact on sea birds, turtles, and marine mammals would be expected.

Conclusion Drawn From This Environmental Assessment

The effects on most resources of leasing and developing the area proposed to be offered in North Atlantic Lease Sale No. 82 are qualitatively the same as those discussed in FEIS–82 under Alternative 10.

Consultation

The list of persons and agencies consulted during the NEPA process appears at pages 484–487 of the Final EIS and is incorporated herein. The Minerals Management Service also has received information considered in the environmental assessments from the seven affected North Atlantic States, the Department of State, the Department of Defense, the Department of Commerce, and representatives of the oil and gas industry who previously submitted information on Sale 82.

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TABLE 1.—AVERAGE CATCH/TOW FOR 24 SPECIES (OR SPECIES GROUPS) [1] AS WELL AS "OTHER FISH" MULTIPLIED BY A MAXIMUM SUSTAINABLE YIELD (MSY) VECTOR AND ALSO BY BOTH MSY AND ECONOMIC VALUE VECTORS (GROSSLEIN, 1984: PERS. COMM.)

Stratum	MSY (values in metric tons)	MSY/ economic value (value in dollars)
1	55,639.00	5,217,354.74
2	25,955.60	5,274,699.46
3	19,167.66	4,583,372.47
4	17,618.34	3,144,237.03
5	46,504.76	6,114,623.15
6	27,964.82	4,716,050.80
7	62,251.22	17,840,757.30
8	14,118.40	2,867,351.50
9	34,017.37	4,872,404.82
10	16,925.49	3,818,208.20
11	7,987.77	2,211,210.02
12	10,768.59	2,965,079.17
13	16,736.48	3,161,848.29
14	12,074.27	2,222,216.71
15	16,094.78	2,673,112.13
16	19,009.60	4,643,125.17
17	18,260.77	4,403,916.33
18	15,245.72	3,334,049.54
19	21,800.17	4,394,970.25
20	27,869.13	4,237,556.10
21	26,123.71	7,270,095.08
22	28,399.72	7,433,260.71
23	25,478.36	5,195,666.40
24	17,896.31	3,883,306.15
25	32,254.04	5,922,011.50
26	83,015.03	5,522,977.88
27	17,194.19	3,833,034.14
28	12,580.43	2,636,388.28
29	12,061.33	2,370,801.04
30	16,365.36	3,166,055.49
36	9,319.57	1,835,348.74
37	15,359.93	3,099,654.63
38	12,186.40	2,340,468.95
39	10,550.63	2,234,606.66
40	15,000.75	2,915,238.61
61	13,377.90	2,874,029.73
62	11,390.80	3,248,572.09
63	12,516.97	3,553,120.88
64	16,167.44	3,221,039.85
65	33,627.03	1,800,262.66
66	13,472.63	3,001,354.17
67	12,626.82	4,516,916.93
68	11,562.82	2,576,922.55
69	42,508.77	2,054,989.33
70	32,937.73	3,682,855.16
71	8,663.09	2,343,8554.4
72	10,492.89	2,193,031.21
73	38,338.11	2,631,047.81
74	18,452.64	3,531,869.75
75	9,916.15	2,892,178.20
76	13,463.16	2,487,478.15

[1] Species analyzed to generate these data include: cod, haddock, redfish, silver hake, red hake, white hake, pollock, yellowtail, American plaice, Atlantic herring, Atlantic mackerel, River herring (alewife and blueback), scup, butterfish, bluefish, cusk, wolffish, spiny dogfish, skates, *Loligo* (squid), *Illex* (squid), other flounders, lobster, miscellaneous finfish, and sand lance.

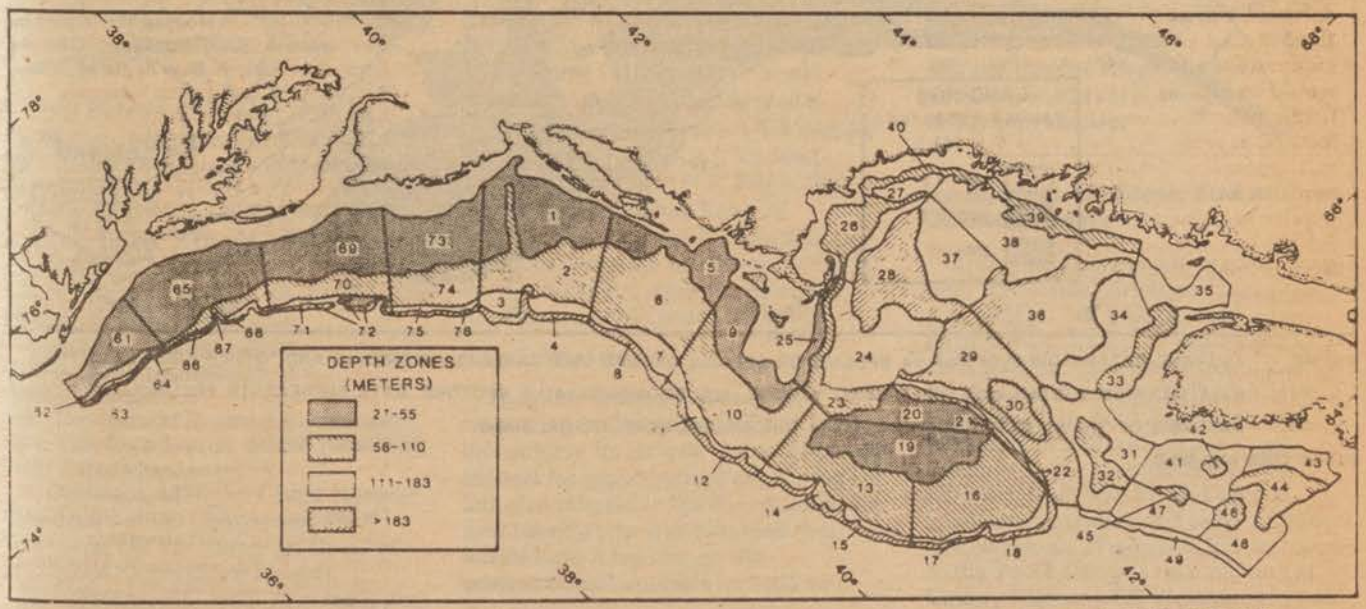


FIGURE 1 NATIONAL MARINE FISHERIES SERVICE SPRING - AUTUMN MARMAP FISHERY INDEPENDENT TRAWL SURVEY STRATUM DELINEATIONS (GROSSLEIN & AZAROVITZ, 1982).

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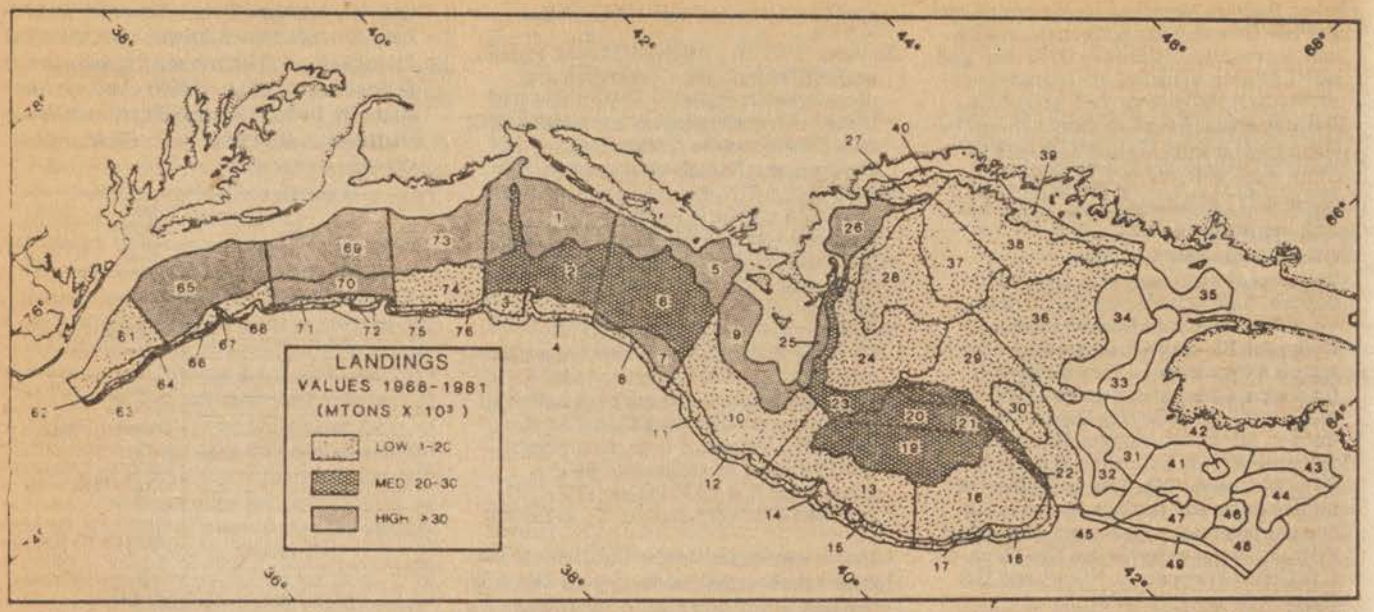


FIGURE 2 AVERAGE CATCH/TOW (KG) FOR 24 SPECIES OR SPECIES GROUPS (SEE TABLE 12, APPENDIX H) AND "OTHER FISH" MULTIPLIED BY A MAXIMUM SUSTAINABLE YIELD (MSY) VECTOR. DATA REPRESENTS PRELIMINARY ANALYSIS OF TRAWL DATA FROM 1968-1981 (GROSSLEIN, PERS. COMM., 1984)

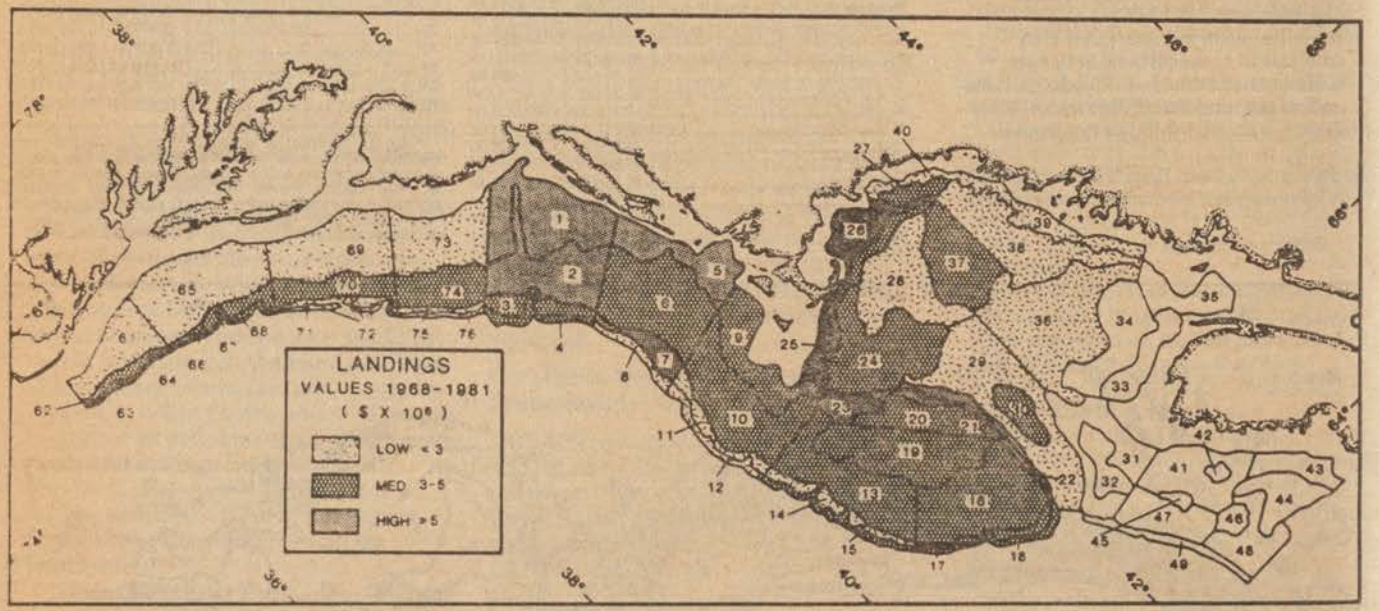


FIGURE 3 AVERAGE CATCH/TOW (KG) FOR 24 SPECIES OR SPECIES GROUPS (SEE TABLE 12, APPENDIX H) AND "OTHER FISH" MULTIPLIED BY A MAXIMUM SUSTAINABLE YIELD (MSY) VECTOR, AND ECONOMIC VALUE VECTORS. DATA REPRESENTS PRELIMINARY ANALYSIS OF TRAWL DATA FROM 1968-1981 (GROSSLEIN, PERS. COMM., 1984).

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Appendix B

Additional Environmental Information for the North Atlantic Planning Area

Following is a list of relevant environmental information that has become available since completion of the Sale 82 FEIS and was considered during the preparation of this environmental assessment.

A. Studies Funded Through the MMS Environmental Studies Program

1. Battelle New England Marine Research Laboratory and Woods Hole Oceanographic Institution (WHOI). 1983. Georges Bank benthic infauna monitoring program—final report for second year of sampling (July 1982–May 1983). Prepared by Battelle and WHOI under contract no. 14–12–0001–29192 for U.S. Dept. of the Interior, MMS, Washington, D.C., 156 p., app.

2. Bothner, M.H., R.R. Rendigs, Esma Campbell, N.W. Doughten, C.M. Parmenter, M.J. Pickering, R.G. Johnson, and J.R. Gillison. 1983. The Georges Bank monitoring program; analysis of trace metals in bottom sediments during the second year of monitoring. Final report prepared by U.S. Dept. of the Interior, USGS under Interagency Agreement No. 14–12–0001–30025 for U.S. Dept. of the Interior, MMS, Washington, D.C., 88 p.

3. Hecker, Barbara, D.T. Logan, F.E. Gandarillas, and P.R. Gibson. 1983. Megafaunal assemblages in Lydonia Canyon, Baltimore Canyon, and selected slope areas. *In:* Canyon and slope processes study, vol. III—Biological processes. Final report. Prepared by Lamont-Doherty Geological Observatory under contract no. 14–12–0001–29178 for U.S. Dept. of the Interior, MMS, Washington, D.C., p. 1–140.

B. Reports From Non-MMS Sources

1. National Academy of Sciences. 1983. Drilling Discharges in the Marine Environment.

2. U.S. Coast Guard. 1983. Pollution Incidents In and Around U.S. Waters (Annual Publication).

3. American Society of Environmental Education. 1983. Conference Proceedings—Georges Bank: Hydrocarbon Exploration and Development.

4. Grosslein, M.D. and T.R. Azarovitz. 1982. Fish Distribution. MESA New York Bight Atlas Monograph 15.

5. Grosslein, M.D. (ed.). 1983. Natural Boundaries of the Continental Shelf Ecosystem Off the Northeast Coast of the United States (Staff Report).

6. Anderson, R.C. 1983. Assessing the Social Costs of Oil Spills: The Amoco Cadiz Case Study. NOAA.

7. Teal, J.M. and R.W. Howarth, 1984. Oil Spill Studies: A Review of Ecological Effects. Environmental Management.

8. Gundlach, E.R., *et al.* 1983. The Fate of Amoco Cadiz Oil. Science.

9. Gould, E. 1983. Seasonal Biochemical Patterns for a Single Population of Sea Scallops (*Placopecten magellanicus*) and their Use in Interpreting Field Data. I.C.E.S.

10. Hellstrom, T. and K.B. Doving. 1983. Perception of Diesel Oil by Cod (*Gadus morhua* L.) Aquatic Toxicology.

11. McKenney, T.W. 1983. Distribution and Abundance of *Merluccius albidus* Larvae in Shelf Waters Off the Northeastern United States, 1977–1981.I.C.E.S.

12. Sedberry, George R. 1983. Food Habits and Trophic Relationships of a Community of Fishes on the Outer Continental Shelf. NOAA.

13. Stanley, J.G. and D.S. Danie. 1983. Species Profiles: Life History and Environmental Requirements of Coastal Fishes and Invertebrates (North Atlantic)—White Perch. U.S. FWS/OBS.

14. New Jersey Dept. of Environmental Protection. 1984. Impacts of Coastal Energy Development on New Jersey's Shorefront Recreational Resources.

15. Geraci, J.R. and D.J. St. Aubin. 1984. Study of the effects of oil on marine mammals: Sixth interim report. Contract No. 14–12–001–29169, U.S. Dept. of the Interior, MMS, Washington, D.C.

16. Grosslein, M.D. 1984. Offshore fish distribution by MARMAP sampling stratum (1968–1981). USDOC, NMFS, Woods Hole Laboratory. Personal communication to Dave Bornholdt, Fishery Biologist, Atlantic OCS Region.

17. Sorensen, P.W., R.J. Medved, M.A.M. Hyman, and H.E. Winn. 1984. Distribution and abundance of cetaceans in the vicinity of human activities along the continental shelf of the northwestern Atlantic. Marine Environmental Research 12:69–81.

C. Industry Interest

The same five companies that responded to the initial Call for Information for Sale 82 responded to our request for supplemental expressions of industry interest in the Sale 82 area. No new information was provided that would have a bearing on the environmental analysis for Sale 82.

[FR Doc. 84–22546 Filed 8–23–84; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Subsistence Resource Commission; Meeting

AGENCY: National Park Service Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Authorities, responsibilities, and operating requirements of the Commission and the National Park Service.

(2) Discuss subsistence issues in the monument.

(3) Commission organization/administration, objectives, guidelines, and chairperson selection.

DATE: The meeting will begin at 9:00 a.m. on September 18, 1984, and conclude the afternoon of September 19, 1984.

ADDRESS: The meeting will be held in the Com Ser Fac Building, King Salmon, Alaska.

FOR FURTHER INFORMATION CONTACT: David Morris, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613, Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Aniakchak National Monument Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96–487.

Robert L. Peterson,

Regional Director, Alaska Region.

[FR Doc. 84–22560 Filed 8–23–84; 8:45 am]

BILLING CODE 4310–70–M

Ice Age National Scenic Trail Advisory Council; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Ice Age National Scenic Trail Advisory Council will be held August 29, 1984, beginning at 9:30 a.m., at the Youth Camp in Kettle Moraine State Forest-Northern Unit. The Youth Camp is located approximately 4 miles northeast of Kewaskum, Wisconsin. The entrance to the Youth Camp is on Fond du Lac County Highway DD approximately 1¼ miles southeast of its intersection with County Highway G.

The council was originally established on January 19, 1981, pursuant to provisions of the National Trails System Act, 82 Stat. 919, 16 U.S.C. 1241 et seq., to advise the Secretary of the Interior on matters relating to the administration and development of the Ice Age National Scenic Trail.

Matters to be discussed at the meeting include a review of a new draft Memorandum of Understanding among the four major parties involved in the Ice Age NST, review of a proposed brochure on the Ice Age NST which will follow the design of all national park area brochures, and discussion of marking existing trail segments and developing/certifying additional segments. The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Thomas L. Gilbert, Division of External Affairs, Midwest Region, National Park Sevice, 1709 Jackson Street, Omaha, Nebraska 68102, telephone (402) 221–3481 (FTS 864–3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: August 17, 1984.

David G. Wright,

Associate Director, Planning and Development.

[FR Doc. 84–22559 Filed 8–23–84; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30514]

NRUC Corporation; Exemption; Issuance of Securities

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts NRUC Corporation from the requirements of 49 U.S.C. 11301 with respect to future securities issuances.

DATES: The exemption will be effective on September 24, 1984. Petitions to reopen must be filed by September 13, 1984. Petitions to stay must be filed by September 4, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. 30514 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Mr. Andrew P. Goldstein, 706 Ring Building, 1200 Eighteenth Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 17, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84–22527 Filed 8–23–84; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Pollution Control; Lodging of Consent Decree; Arvey Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 31, 1984, a proposed Consent Decree in *United States* v. *Arvey Corporation*, Civil Action No. 83 C9233, was lodged with the United States District Court for the Northern District of Illinois. The complaint filed by the United States alleged violations of 42 U.S.C. 7413(b) of the Clean Air Act by Arvey due to emissions of volatile organic compounds (VOCs) at its paper coating facility located at 3500 North Kimball Avenue, Chicago, Illinois. The complaint sought injunctive relief and civil penalties. The Consent Decree provides that Arvey will install pollution control equipment on four paper-coating lines by January 30, 1985; will shut down two coating lines and use only low-VOC coatings on a seventh line. Further, Arvey must pay $40,000 in civil penalties and $5,000 per day in stipulated penalties for failure to achieve compliance with the Consent Decree by January 30, 1985, or for failure to maintain compliance.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Arvey Corporation* D.J. Ref. 90–5–2–1–619.

The proposed Consent Decree may be examined at the office of the United States Attorney, Everett McKinley Dirksen Bldg. Room 1500 S, 219 S. Dearborn Street, Chicago, Illinois 60604; at the office of the Region V Office of Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the office of the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Ave., NW, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

James M. Spears,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84–22524 Filed 8–23–84; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Proposed Consent Decree in Clean Water Act Enforcement Action; City of Utica, NY

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed consent decree in *United States* v. *City of Utica, New York*, Civil Action No. 77–CV–201 (N.D. N.Y.) has been lodged with the United States District Court for the Northern District of New York. The consent decree requires the City to eliminate dry weather overflows in its sewage collection system which discharge to the Mowhawk River, to do a study of its sewer system and to rehabilitate that system. As part of the decree, the City agrees to clean and maintain its Railroad Interceptor sewer line until it can be replaced. The consent decree requires the City to pay a $5000.00 penalty for past violations and provides for graduated stipulated penalties for future violations of the terms and conditions of the decree.

The consent decree may be examined at (1) the office of the United States Attorney, Northern District of New York, Federal Building, Syracuse, New York, (2) the Office of Regional Counsel, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York, and (3) the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515 Main Justice Building, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed

consent decree may be obtained in person or by mail at the Environmental Enforcement Section at a cost of $3.10 per copy ($.10 per page reproduction charge).

The Department will receive comments concerning the decree until September 17, 1984. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should reference *United States* v. *City of Utica, New York,* DOJ No. 90–5–1–2–42.

James M. Spears,

Deputy Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84–22523 Filed 8–23–84; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Lodging of Consent Decree; The Meyercord Co.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that on August 3, 1984, a proposed Consent Decree in *United States* v. *The Meyercord Company,* Civil Action No. 83 C 8466, was lodged with the United States District Court for the Northern District of Illinois, Eastern District. The complaint filed by the United States alleged violations by Meyercord of the Clean Air Act due to emissions of volatile organic compounds (VOCs) at its facility located at 1838–58 W. Hastings Street, Chicago, Illinois. The Consent Decree provides that on or before December 31, 1984, the Meyercord Company shall achieve compliance with Illinois Rule 205(n) as approved by USEPA (45 FR 11472) limiting VOC emissions to 2.9 pounds of VOC per coating applied. In the interim, the Meyercord Company shall achieve interim reductions of VOC content in its emissions, or it may elect by September 1, 1984 to achieve compliance by replacement of coatings also subject to interim reductions of VOCs. Alternatively the Meyercord Company may complete installation of air pollution control equipment on or before December 31, 1984, to achieve and maintain compliance with Illinois Rule 205(n)(2). The Company will pay a civil penalty of $28,000. Non-compliance with the decree will result in payment of stipulated penalties of $1,000 per day for failure to submit certain reports required by the decree, $2,000 per day for failure to demonstrate compliance with any interim VOC reduction and $5,000 per day for failure to achieve and demonstrate compliance with Rule 205(n)(2) by the stated date.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Meyercord Company,* D.J. Ref. 90–5–1–1–2026.

The proposed Consent Decree may be examined at the office of the United States Attorney, Dan K. Webb, Northern District of Illinois, Everett McKinley Dirksen Bldg. Room 1500 S, 219 S. Dearborn Street, Chicago, Illinois 60604; at the office of the Region V Office of Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604; and at the office of the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1521, Ninth Street and Pennsylvania Ave., NW. Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

James M. Spears,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 84–22525 Filed 8–23–84; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Del Norte Fishermen's Marketing Association, Inc. Proposed Final Judgment, and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures & Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the Northern District of California in Civil No. 82–3355–SC, *United States* v. *Del Norte Fishermen's Marketing Association, Inc.* The Complaint in this case alleges that the defendant association engaged in a combination and conspiracy to restrain competition in the sale of seafood in violation of Section 1 of the Sherman Act (15 U.S.C. 1).

The proposed Final Judgment prohibits the defendant from engaging in any joint negotiating, pricing or marketing activities with fishermen who do not belong to the association (nonmembers) and from requesting or coercing nonmembers to comply with defendant's prices, or other terms or conditions of sale. The defendant is required by the proposed Final Judgment to take certain affirmative steps to assure compliance with the Sherman Act and the terms of the Final Judgment, including sending copies of the Final Judgment, together with explanatory letters, to members of the association and to seafood processors. The Department of Justice is given access under the proposed Final Judgment to the files and records of the defendant, to examine such records for compliance or noncompliance with the Final Judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary K. Spratling, Acting Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Richard B. Cohen, Shauna I. Marshall, Jonathan R. Howden, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 16216C, San Francisco, California 94102, Telephone: (415) 556–6300, Attorneys for the United States.

Philip M. Schafer, Schafer, Cochran, Follett & Owen, 888 Fourth Street, Crescent City, California 95531 (707) 464–3178.

John Wm. Cumming, 528 9th St./P.O. Box 704, Eureka, California 95502–0704, Telephone: (707) 445–3007. Attorneys for the defendant.

United States District Court for the Northern District of California

[Civil No. 82–3355 SC]

Stipulation

Filed: July 16, 1984.

United States of America, Plaintiff, v. Del Norte Fishermen's Marketing Association, Inc., Defendant.

It is stipulated by and between the undersigned parties, by their respective representatives, that:

1. The parties consent that a Final Judgement in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may

do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the plaintiff United States of America: J. Paul McGrath, *Assistant Attorney General.* Joseph H. Widmar, Gary R. Spratling, *Attorneys, Department of Justice.* Richard B. Cohen, Shauna I. Marshall, Jonathan R. Howden, *Attorneys, Department of Justice.*

For the defendant, Del Norte Fishermen's Marketing Association. Philip M. Schafer, John William Cumming.

United States District Court for the Northern District of California

[Civil No. C-82-3355-SC]

Final Judgment

Filed: July 16, 1984.

United States of America, Plaintiff, v. Del Norte Fishermen's Marketing Association, Inc., Defendant.

Plaintiff, the United States of America, having filed its Complaint herein on July 6, 1982, and plaintiff and defendant, by their respective attorneys, having each consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence against or admission by either party with respect to any such issue;

Now, Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties, it is hereby Ordered, Adjudged, and Decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

This Final Judgment applies to the defendant and to its officers, directors, agents, employees, members, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

III

As used in this Final Judgment:

(A) "DNFMA" means the defendant, Del Norte Fishermen's Marketing Association, Inc.;

(B) "Person" means any individual, sole proprietorship, partnership, firm, association, corporation or any other legal or business entity;

(C) "Seafood" means either fish or shellfish;

(D) "Processor" means any person who obtains raw seafood from fishermen for the purpose of resale in fresh, frozen or canned form;

(E) "Ex Vessel Price" means the price per pound paid to fishermen by processors for seafood;

(F) "Poundage Fee" means a specified amount of money per pound of seafood delivered to a processor which a processor pays to a fish marketing association as consideration for the processor's right to do business with the association; and

(G) "Member" means any person who has joined the defendant and who has not submitted a signed letter of resignation.

IV

Defendant is enjoined and restrained from:

(A) Participating in any discussion, communication, or agreement with any nonmember commercial fisherman regarding:

1. The ex-vessel price or negotiations about the ex-vessel price that the defendant will offer processors;

2. Any terms or conditions to be offered for the sale of seafood; or

3. Refraining from fishing while defendant is negotiating with processors on an ex-vessel price.

(B) Requesting or coercing nonmember commercial fishermen to:

1. Refrain from fishing; or

2. Sell fish to processors at the DNFMA ex-vessel price or under terms or conditions set by the DNFMA.

(C) Otherwise interfering with the business of nonmember commercial fishermen by means of, but not limited to:

1. Preventing the unloading or transportation of seafood by blocking the hoists, unloading docks, delivery trucks or other equipment used to unload or transport seafood;

2. Vandalizing unloading facilities, motor vehicles, fishing vessels, or fishing gear, including crab posts and live boxes; and

3. Actual or threatened physical violence against the person or property of nonmember fishermen or their families.

(D) Requesting or coercing processors to place any restrictions on the amount of or price paid for seafood purchased from nonmember commercial fishermen.

(E) Provided that nothing in subparagraph (A) of this section shall prohibit defendant from making public announcements by public posting, radio, television or otherwise of the status of negotiations with processors or of the position of defendant with respect thereto.

V

(A) Defendant shall within thirty days after the date of entry of this Final Judgment revise its dealer agreements where necessary to comply with the terms of this Final Judgment.

(B) Whenever the poundage fees paid by a processor to defendant are based on the total seafood poundage delivered in the port, including that delivered by nonmembers, defendant shall:

(1) Make any dock hoist which defendant has the right to operate available to all commercial fishermen, on an equivalent basis without any discrimination between members and nonmembers as to priority of usage or the price charged for usage;

(2) Disseminate and make available to all commercial fishermen, including nonmembers, all commercial fishing industry information (except as prohibited in Paragraph IV A), such as, but not limited to, weather reports, governmental agency announcements and governmental agency regulations; and

(3) Allow nonmember commercial fishermen access to any fishing industry informational or educational activities (except as prohibited in paragraph IV A) sponsored by defendant, such as, but not limited to, seminars, lectures or gear and equipment demonstrations.

(C) Defendant shall:

(1) Within sixty (60) days after the date of entry of this Final Judgment, send a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix A, to each commercial fisherman who has belonged to the DNFMA to any time since January 1, 1977; and

(2) Serve a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix A, upon all of its future members as they become members.

(D) Defendant shall:

(1) Within sixty (60) days after the date of entry of this Final Judgment, send a copy of this Final Judgment together with a letter identical in text to

that attached to this Final Judgment as Appendix B, to each processor who is signatory to a DNFMA Dealer Agreement; and

(2) Serve a copy of this Final Judgment, together with a letter identical in text to that attached to this Final Judgment as Appendix B, upon each processor who in the future states an intent to sign a DNFMA Dealer Agreement before it signs such an agreement.

(E) Defendant shall file with this Court and serve upon the plaintiff within ninety (90) days after the date of entry of this Final Judgment an affidavit as to the fact and manner of compliance with subsection C and subsection D of this Section V.

(F) Defendant shall conduct at least one meeting during 1984 of all of its members during which an attorney retained by defendant will explain the applicability of federal and state (California) antitrust laws to the marketing of seafood by commercial fishermen in California. Reasonable notice of the above-described meeting will be provided to plaintiff, who through its attorneys may attend the meeting.

(G) Defendant shall prepare every year and retain in its files a current and verified membership list. Such a membership list shall be used as the principal means of determining who may attend DNFMA meetings at which prices, terms or conditions for the sale of members' seafood will be discussed.

VI

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records, and documents in the possession or under the control of such defendant corporation, who may have counsel present, relating to any matters contained in the Final Judgment; and

2. Subject to reasonable convenience of the defendant corporation and without restraint or interference from it, to interview any officers, directors, agents, partners, employees or members of such defendant corporation, any of whom may have counsel present, regarding any such matters.

(B) Defendant, upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, shall submit in writing such reports with respect to any of the matters contained in this Final Judgment, as may from time to time be requested.

No information obtained by the means provided in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with the Final Judgment, or as otherwise required by law.

If at any time information or documents are furnished by the defendant to plaintiff, defendant represents and identifies in writing the materials in any such information or documents which is of a type described in Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant marks each pertinent page of such material "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,"; then the (10) days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than Grand Jury proceeding) to which the defendant is not a party.

VII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

VIII

This Final Judgment shall be in full force and effect for a period of ten (10) years following entry of this decree.

IX

The Entry of this Final Judgment is in the public interest.

Dated:

Samuel Conti,

United States District Judge.

Appendix A

Dear Fisherman: This letter and the enclosed Final Judgment are being sent to you as part of the settlement of a lawsuit brought by the United States against the Del Norte Fisherman's Marketing Association (*United States* v. *Del Norte Fishermen's Marketing Association, Inc.*, Civil No. 82–3355). You should read the Final Judgment carefully and note that you are affected by its provisions. The purpose of this letter is to help explain the provisions in the Final Judgment.

The essence and intent of the Final Judgment is that the Del North Fishermen's Marketing Association may not in any way interfere with the pricing or marketing activities or nonmember fishermen. The principal purpose of the Judgment is to prohibit the Association and its members from engaging in any joint activity with nonmembers concerning the price of seafood. Under the law and this Judgment, the Association and its members may act together to establish and maintain prices for seafood for the membership; however, in doing so the Association must act independently. The Association or its members may not discuss, consult, or reach agreement with nonmember fishermen regarding prices or terms or conditions of sale; nor may the Association or its members engage in any type of coercion of nonmember fishermen to fish at certain times, to sell at the Association price, or to sell under terms or conditions set by the Association.

A nonmember fisherman, in turn, is an independent businessman who must be allowed to market this seafood independent of the Association. He is free to decide on his own whether or not to fish while the Association is "tied up," what quantity of seafood to sell to processors and the price at which to sell the seafood.

You, as a member or the Association, must not attempt in any manner to influence the decision of a nonmember in regard to his fishing, pricing or marketing practices.

Appendix B

Dear Processor: This letter and the enclosed Final Judgment are being sent to you as part of the settlement of a lawsuit brought by the United States against the Del Norte Fishermen's Marketing Association (*United States* v. *Del Norte Fishermen's Marketing Association, Inc.*, Civil No. 82–3355). You should read the Final Judgment carefully and note that you are affected by its provisions. The purpose of this letter is to help explain the provisions in the Final Judgment.

The essence and intent of the Final Judgment is that the Del North

Fishermen's Marketing Association may not in any way interfere with the pricing or marketing activities of nonmember fishermen. Under the law and this Judgment, the Association is prohibited from requiring that processors purchase seafood from nonmember fishermen at the Association's prices. Also, the Association is prohibited from requiring that nonmember fishermen be placed on the same poundage limits as Association members. You, the processor, are entitled to allocate such limits as you see fit.

Gary R. Spratling, Richard B. Cohen, Jonathan R. Howden, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, Room 16216C, San Francisco, California 94102, Telphone: (415) 556-6300, Attorneys for the United States.

United States District Court for the Northern District of California

United States of America, Plaintiff, v. Del Norte Fishermen's Marketing Association Inc., Defendant.

[Civil No. C-82-3355SC]

Filed: July 16, 1984.

Competitive Impact Statement

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), the United States submits this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On July 6, 1982, the United States filed a civil antitrust complaint alleging that the Del Norte Fisherman's Marketing Association, Inc. ("DNFMA") conspired to restrain competition among commercial fishermen in violation of section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint asks the Court to find that the DNFMA has violated Section 1 of the Sherman Act and further requests the Court to enjoin the continuance of the conspiracy.

Entry of the proposed Final Judgment will terminate the action, except that the Court will retain jurisdiction over the matter for further proceedings which may be required to interpret, enforce or modify the Judgment or to punish violations of any of its provisions.

II

Practices Giving Rise to the Alleged Violation

Defendant DNFMA is an Association incorporated in the State of California whose members are commercial fishermen, the majority of whom operate out of the Port of Crescent City. DNFMA is a cooperative, formed pursuant to the Fishermen's Collective Marketing Act of 1934 ("FCMA"), 15 U.S.C. 521-522, which permits fishermen to act together to catch, produce, prepare for market, process, handle and market seafood. Under the FCMA, these joint activities are exempt from the antitrust laws as long as only members participate in such activities. The exemption does not apply where fishermen who do not belong to the Association (nonmembers) engage in joint marketing and pricing activities with members. In addition, the immunity does not extend to acts of coercion, harassment or vandalism designed to force nonmembers to comply with DNFMA's prices or policies.

The Government contends, and was prepared to show at trial, that beginning in or about 1975 and continuing up until the time the Complaint was filed, DNFMA conspired to restrain competition among commercial fishermen in violation of section 1 of the Sherman Act. The conspiracy consisted of an agreement and concert of action between DNFMA and co-conspirators to fix the "ex vessel" prices offered to processors by commercial fishermen and to eliminate competition among commercial fishermen in the sale of seafood. In furtherance of this conspiracy DNFMA: (1) Entered into agreements with nonmember commercial fishermen not to fish until the DNFMA had settled with processors on an "ex vessel" price; (2) entered into agreements with nonmember commercial fishermen to sell seafood at DNFMA's prices; and (3) compelled, through threats, harassment and vandalism, nonmember commercial fishermen to comply with DNFMA's prices and policies.

The Government had also contended that DNFMA's "poundage fee" agreement with processors, whereby processors are required to pay a certain dollar amount per pound to the DNFMA for all seafood they purchase from either members or nonmembers, was part of the conspiracy to restrain competition between member and nonmember fishermen. For reasons explained in the following pages, the Government has decided not to press that allegation.

This conspiracy fixed the "ex vessel" prices of seafood sold by commercial fishermen eliminated price and other forms of competition among commercial fishermen in the sale of seafood, and deprived processors of the benefits of free and open competition in the sale of seafood.

III

Explanation of the Proposed Final Judgment

The United States and DNFMA have stipulated that the Court may enter the proposed Final Judgment after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h). The proposed Final Judgment provides that its entry does not constitute any evidence against or admission by either party with respect to any issue of fact or law.

Under the provisions of section 2(e) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(e), the proposed Final Judgment may not be entered unless the Court finds that entry is in the public interest. Section IX of the proposed Final Judgment sets forth such a finding.

The proposed Final Judgment is intended to ensure that the DNFMA discontinue all practices which restrain competition among commercial fishermen.

A. Prohibitions and Obligations

Under Section IV of the proposed Final Judgment, DNFMA is enjoined from participating in any discussion, communication or agreement with nonmembers regarding: (1) The "ex vessel" prices being negotiated between processors and DNFMA; (2) any terms or conditions to be offered for the sale of seafood; or (3) refraining from fishing while DNFMA is negotiating with processors on an "ex vessel" price. Section IV also enjoins DNFMA from requesting or coercing nonmember commercial fishermen to refrain from fishing or to sell fish to processors at DNFMA prices or under terms or conditions set by DNFMA. DNFMA is further enjoined from any interference with nonmember commercial fishermen's business, including but not limited to: Preventing the unloading or transportation of seafood by blocking hoists, unloading docks, delivery trucks, or other equipment used to unload or transport seafood; vandalizing facilities, motor vehicles, fishing vessels, or fishing gear, including crab pots and live boxes; and actual or threatened physical violence against the person or property of nonmember fishermen and their families. Finally, Section IV enjoins DNFMA from requesting or coercing processors to place any restrictions on the amount of or price paid for seafood purchased by processors from nonmember commercial fishermen.

Section V of the proposed Final Judgment requires DNFMA to revise its dealer agreements to comply with the terms of the Final Judgment. It also

requires DNFMA to prepare and maintain each year a current membership list to be used as a principal means of determining who may attend DNFMA meetings at which price-related subjects will be discussed. DNFMA is further obligated under Section V to send a copy of the Final Judgment, along with a letter explaining the Judgment, to all of its members and to all processors who have signed a DNFMA dealer agreement. This requirement applies to all fishermen who have belonged to the Association at any time since 1977 and to each new member as he or she joins, as well as to all processors who are currently signatory to a dealer agreement and to each new processor who becomes signatory.

To ensure understanding of the Final Judgment, Section V requires DNFMA to hold a membership meeting during which an attorney will explain how federal and state (California) antitrust laws apply to the sale and marketing of seafood in California by commercial fishermen.

As stated above, the Government had originally contended that DNFMA's "poundage fee" agreement with processors, which requires processors to pay a certain dollar amount per pound to DNFMA for all seafood they purchase from either nonmembers or members, was part of the conspiracy to restrain competition between member and nonmember fishermen. The Government still views the poundage fee agreement as an artificial restraint on the prices at which nonmember fishermen can sell their catches. However, after considering the difficulty of collecting empirical evidence to support the Government's theory, the DNFMA's willingness to agree to all other relief sought by the Government, and the expense of going to trial, versus the benefits an injunction would achieve, the Government decided that, in this case, it would not press the poundage fee issue further. However, to minimize the potential adverse impact of the poundage fee on nonmembers, the parties agreed that nonmembers whose catches are subject to DNFMA's poundage fee shall have access to all DNFMA services, except those related to price determination, on the same basis as DNFMA members. Therefore, Section V of the proposed Final Judgment provides that, whenever the poundage fees paid by a processor to DNFMA are based on total seafood poundage delivered in the port to that processor, including seafood caught by nonmembers, DNFMA must: (1) Make any dock hoist operated by DNFMA available to all commercial fishermen, without any discrimination between members and nonmembers as to priority of usage; (2) disseminate and make available to all commercial fishermen, including nonmembers, all commercial fishing industry information on the same basis it makes that information available to its members, and (3) allow nonmember fishermen access to educational activities sponsored by DNFMA such as seminars and equipment demonstrations.

B. Scope of the Proposed Final Judgment

Section VIII of the proposed Final Judgment provides that the Final Judgment shall remain in effect for 10 years.

Section II of the proposed Final Judgment provides that the Final Judgment shall apply to DNFMA and to DNFMA's officers, directors, agents, employees, members, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment.

C. Effect of the Proposed Judgment on Competition

The relief set out in the proposed Final Judgment is designed to prevent recurrence of the activities alleged in the Complaint. The proposed Final Judgment's provisions are intended to ensure that only members of DNFMA participate in any marketing or pricing decisions made by the DNFMA and that nonmembers be allowed to make marketing and price decisions independently, without any interference by DNFMA.

IV

Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial of the case. In the view of the Department of Justice, such a trial would involve substantial cost to the united States and is not warranted since the proposed Final Judgment provides almost all the relief that the United States sought in its Complaint.

V

Remedies Available to Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorney fees. Under the provisions of Section 5(a) (15 U.S.C. 16(a)), this Final Judgment has no *prima facie* effect in the lawsuits which may be brought against DNFMA.

VI

Procedures Available for Modification of the Proposed Judgment

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed judgment should be modified may submit written comments to Gary R. Spratling, Acting Chief, San Francisco Office, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, San Francisco, California 94102, within the 60-day period provided by the Act. The comments and the Government's responses to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed judgment at any time prior to its entry if it should determine that some modification of the judgment is necessary to the public interest. The proposed judgment itself provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VII

Determinative Documents

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)) were considered in formulating this proposed judgment. Consequently, none are filed herewith.

Dated: July 16, 1984.

Gary R. Spratling, Richard B. Cohen, Jonathan R. Howden, *Attorneys, U.S. Department of Justice.*

[FR Doc. 84-22542 Filed 8-23-84; 8:45 am]

BILLING CODE 4410-01-M

Proposed Modification of Final Judgment

Notice is hereby given that Culbro Corporation ("Culbro") and Eli Witt Company ("Witt") have filed with the United States District Court for the Southern District of New York a motion to modify the final judgment in United States v. Culbro Corporation, et al., No. 77 Civ. 3149 (EW); and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to modification of the judgment, but has reserved the right to withdraw its consent for at least seventy

days after the publication of this notice. The complaint in this case (filed on June 28, 1977) alleged that a proposed transaction whereby Culbro would acquire a 25 percent option and a subordinated debenture giving it an interest in Havatampa Corporation, a competitor and customer of Culbro, would violate section 7 of the Clayton Act (15 U.S.C. 18). The judgment (entered on July 7, 1978) requires Witt until 1998 to limit its purchases of Culbro cigars to 15 percent of its preceding year's total of cigar purchases from all sources. The proposed modification of the judgment would raise the limitation to 17.8 percent of the preceding year's total purchases, add an optional floor figure which could be used to calculate the permissible amount of Witt's purchases from Culbro, and shorten the term of the purchase limitation from 20 years to a full ten calendar years.

The Department has filed with the court a memorandum setting forth the reasons the Department believes that modification of the judgment would serve the public interest. Copies of the complaint and final judgment, Culbro's motion papers, the stipulation containing the government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530 (telephone: 202–633–2481), and at the office of the Clerk of the United States District Court for the Sourthern District of New York, Room 18, United States Court House, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 84–22541 Filed 8–23–84; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 83–19]

George P. Gotsis, M.D.; Revocation of Registration

On July 14, 1983, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to George P. Gotsis, M.D. of 3405 Pearl Avenue, Lorain, Ohio 44055 (Respondent), an Order to Show Cause proposing to revoke Respondent's DEA Certificate of Registration AG2944088. Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause.

This matter was placed on the docket of Administrative Law Judge Francis L. Young. Counsel for the Government and for Respondent both submitted prehearing statements identifying potential witnesses and documents to be presented at the hearing. On November 3, 1983, Judge Young issued his prehearing ruling which *inter alia*, scheduled the administrative hearing for January 10, 1984. During a telephone conference on January 3, 1984, Respondent's counsel requested an extension of time. Judge Young granted this request and cancelled the hearing scheduled to begin on January 10, 1984.

Subsequently, the Ohio Medical Board held hearings to decide whether or not the Board would revoke Dr. Gotsis' state medical license. The Board apparently initiated these hearings in response to Respondent's felony conviction on February 14, 1983, in the Court of Common Pleas, Lorain County, Ohio of nine counts of illegal processing of drug documents in violation of Ohio Revised Code section 2925.23.

On June 14, 1984, Dr. Gotsis voluntarily surrendered his Ohio medical license and his DEA Certificate of Registration and application for renewal to the Ohio State Medical Board.

DEA has consistently held that termination of a registrant's state authority to handle controlled substances, whatever procedural form that termination may take, requires DEA to revoke the registrant's DEA Certificate of Registration. *Henry Weitz, M.D.*, 46 FR 34858 (1981); *Kenneth E. Wilson, D.D.S.*, 46 FR 25018 (1981); *James Waymon Mitchell, M.D.*, Docket No. 79–16, 44 FR 71466 (1979). Consequently, on July 11, 1984, counsel for the Government moved to terminate the proceedings. Judge Young granted the motion and ordered that all proceedings in this matter before the Administrative Law Judge be terminated on July 12, 1984.

Since DEA has no statutory authority to register practitioners who are not licensed by the state in which they practice, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AG2944088 previously issued to George P. Gotsis, M.D., be, and it hereby is, revoked, effective September 24, 1984.

Dated: August 16, 1984.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 84–22549 Filed 8–23–84; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration; Syncates Assoc., Inc.

By Notice dated April 16, 1984, and published in the **Federal Register** on April 22, 1984, (49 FR 17605), Syncates Associates, Inc., 9307-M Harwin, Houston, Texas 77036, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: August 16, 1984.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 84–22550 Filed 8–23–84; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

District of Columbia Department of Employment Services; Hearing

This notice announces an opportunity for a hearing for the District of Columbia Department of Employment Services pursuant to section 303(b)(2) of the Social Security Act of 1954, 42 U.S.C. 503(b)(2), and 20 CFR 601.5, to be held at 9:30 o'clock in the morning on September 25, 1984, in a Courtroom in the Vanguard Building, 1111 20th Street NW., Washington, D.C.

Issue

The hearing will be held on the following issue:

Issue

Whether, with respect to certification of payment of granted funds for the administration of the District of Columbia unemployment compensation

law, the District of Columbia has adopted rules governing the conduct of benefit appeals proceedings which fail to conform to the provisions specified in sections 303(a) (1) and (3) of the Social Security Act, 42 U.S.C. 503(a) (1) and (3), or the State has failed to comply substantially with such provisions.

Basis of Issue

Section 303(a) of the Social Security Act provides that the Secretary shall make no certification for payment of an administrative grant to a State pursuant to section 302(a), unless he finds that the law of such State includes provision for—

(1) Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

* * * * *

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied.

These provisions require a State law to contain provisions that will ensure that benefits will be paid promptly to individuals entitled thereto and denied to individuals not entitled thereto. Under thse provisions, the agency adjudicator hearing an appeal has the responsibility to conduct an informal and complete hearing, in which the adjudicator identifies the issues on appeal, elicits all relevant information on the issues for the record, and bases a decision solely on the record so made as to whether the claimant is or is not entitled to benefits.

Section 303(b)(2) of the Social Security Act requires reasonable notice and opportunity for hearing to the State agency (here the District of Columbia Department of Employment Services) charged with the administration of the State unemployment compensation law on any issue raised of "a failure to comply substantially with any provision specified in subsection (a)." If the Secretary of Labor finds a failure to comply substantially with any provision of subsection (a), section 303(b) provides that no further payments of grants shall be made until the Secretary "is satisfied that there is no longer any such . . . failure to comply." Similarly, §§ 601.5(a) (1) and (4) of Title 20, Code of Federal Regulations, require reasonable notice and opportunity for hearing on any issue of conformity or substantial compliance arising under section 303(a) of the Social Security Act. These proceedings are brought under these authorities on the ISSUE stated above.

The Rules at issue, promulgated pursuant to the District of Columbia Unemployment Compensation Act, as amended, 49 Stat. 946 (1935), D.C. Code, sec. 46–101 *et seq.*, provide:

4613.5 In an appeals hearing, no misconduct shall be presumed. The absence of facts which affirmatively establish misconduct shall relieve a claimant from offering evidence on the issue of misconduct.

4613.6 In an appeals hearing, the persons who supplied the answers to questionnaires or issued other statements alleging misconduct shall be present and available for questioning by the adverse party.

4613.7 Prior statements or written documents, in the absence of other reliable corroborating evidence, shall not constitute evidence sufficient to support a finding of misconduct by the Director.

Under these Rules, if separation from work by reason of misconduct is the issue on an appeal from denial of benefits at the agency determination level, the claimant need not present any evidence and need not testify. The one alleging misconduct, usually the employer, must not only appear at the hearing, but must also provide all of the evidence on the basis of which a disqualification may be imposed for misconduct. Evidence in the administrative file, on the basis of which the agency denied benefits at the determination level, is not sufficient standing alone to support a decision at the hearing level denying benefits. If the one alleging misconduct does not appear and give evidence at the hearing, the determination disqualifying the claimant for misconduct is reversed, despite information in the file supporting the determination of misconduct on which the disqualification was based and which is the subject of the appeal. The hearing examiner undertakes no responsibility to obtain evidence on the issue of misconduct, relying solely upon the employer party to come forward with the evidence.

These Proceedings

Following the hearing, a decision will be made by the Secretary of Labor which will have a bearing on whether granted funds are any longer certifiable for payment to the District of Columbia under section 302(a) of the Social Security Act. The decision also will have a bearing on grants of funds under the Wagner-Peyser Act.

The proceedings in this matter shall be in accordance with the Rules of Procedure as set out below.

For purposes of this hearing, all motions, briefs, and other papers shall be filed, pursuant to the above referenced Rules of Procedure, with the presiding Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, D.C. 20036, who will be designated in accordance with the Rules of Procedure.

Counsel for the District of Columbia Department of Employment Services shall enter an appearance with the presiding Administrative Law Judge no later than August 28, 1984; a copy shall be provided to William H. DuRoss, III, Associate Solicitor for Employment and Training, 200 Constitution Ave., NW., Washington, D.C. 20210, as expeditiously as possible.

Counsel for the U.S. Department of Labor shall enter an appearance with the presiding Administrative Law Judge no later than August 28, 1984, and provide a copy to the District of Columbia Department of Employment Services as expeditiously as possibe.

Signed at Washington, D.C., on August 20, 1984.

Raymond J. Donovan

Secretary of Labor.

Rules of Procedure

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these Rules.

2. The parties of record shall be the State agency (as defined in 26 U.S.C. 3306(e)) named in the Notice of Hearing and the U.S. Department of Labor.

3. Any non-party State agency, individual worker, employer, or organization, association of workers or employers, or member of the public, asserting an interest in the proceedings, may be permitted by the presiding Administrative Law Judge, upon motion granted, to participate in the hearing as amicus curiae only. Participation by any such amicus curiae shall be limited to the submittal of such briefs as may be directed by the presiding Administrative Law Judge. All motions contemplated by this Rule shall be filed with the presiding Administrative Law Judge no later than two (2) days prior to the scheduled hearing, and shall be served upon and received by each party prior to the hearing. The presiding Administrative Law Judge shall rule on all such motions and inform the applicants and the parties of the rulings prior to the hearing or at the beginning of the hearing.

4. The presiding Administrative Law Judge may issue an appropriate prehearing order governing all issues to be raised in the proceedings, and

designation of evidence to be offered at the hearing.

5. The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings, and may grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date for good cause shown.

6. Upon the commencement of the hearing, the U.S. Department of Labor will be offered an opportunity to make an opening statement as to the nature of the hearing and the matter(s) in issue. The State agency shall then be offered a similar opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The U.S. Department of Labor will proceed first by presenting any evidence it may wish to offer which is relevant to the issue(s) specified in the Notice of Hearing.

(b) The State agency will proceed next to present any evidence it may wish to offer which is relevant to the issue(s) referred to in Rule 7(a) above, followed by an evidence relevant to any additional issue, except that evidence regarding any issue other than the issue(s) referred to in the Notice of Hearing may be admitted only if the party offering such evidence has provided notice of such issue and a summary of such evidence, including a copy of any document to be offered, to each opposing party of record, prior to the hearing.

(c) The U.S. Department of Labor may next present relevant evidence in rebuttal to any issue, and the trial record shall thereafter be closed, except as provided for by Rule 9 below.

8. Technical rules of evidence shall not apply to the hearing. The presiding Administrative law Judge will rule upon offers of proof and the admissibility of evidence, and may exclude irrelevant, immaterial, or unduly repetitious evidence or any other evidence excludable under these Rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a satisfactory showing of their authenticity, relevancy, materiality, and admissibility under these Rules, be received in evidence.

9. During the hearing, the presiding Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter, and may provide for the later receipt of such evidence or any other evidence for the record.

10. The proceedings at the hearing shall be recorded verbatim. The original and one copy of the transcript of the record of the hearing shall be furnished to the presiding Administrative Law Judge. The parties of record and any amicus curiae shall be entitle to secure a copy of the transcript from the reporter upon such terms as the party or amicus may arrange.

11. When any document is offered in evidence, one additional copy thereof shall be furnished to the presiding Administrative Law Judge and, unless previously provided, a copy shall be furnished to each opposing party of record.

12. (a) At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral arguments presented by the parties of record.

(b) Oral arguments shall be in the following order: Opening argument for the U.S. Department of Labor, unless waived; argument for the State agency, unless waived; and closing argument for the U.S. Department of Labor, unless waived.

13. The parties of record and any amicus curiae authorized to participate in the proceedings shall be permitted to file briefs. The parties of record may also file reply briefs and proposed findings of fact and conclusions of law on the matters in issue. All such briefs and other papers shall be filed with the presiding Administrative Law Judge, with proof of service, within such time periods as are established by the presiding Administrative Law Judge.

14. As soon as possible, but in no event later than four weeks after reply briefs are filed, the presiding Administrative Law Judge shall: (1) Prepare a recommended decision on the basis of the record containing recommended findings of fact and conclusions of law on all issues raised by the parties; (2) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (3) forward a copy of the recommended decision to each party of record and amicus curiae. No conclusions of law regarding either the constitutionality of any Federal or State statute or the constitutionality of interpretation thereof shall be made.

15. The parties of record may file with the presiding Administrative Law Judge a Statement of Exceptions, with proof of service, setting forth any exceptions they may have to the recommended decision, within seven (7) days after service by mail of the recommended decision. Upon receipt of any Statement of Exceptions, the presiding Administrative Law Judge shall promptly forward such Statement of Exceptions and proof of service to the Secretary of Labor, noting whether the statement was timely filed.

16. (a) Any briefs or other papers intended to be filed of record with the presiding Administrative Law Judge in the proceedings shall be mailed or otherwise delivered to the officer of the presiding Administrative Law Judge. Unless otherwise ordered, such documents shall be deemed to be filed on the date they are postmarked if transmitted by the United States Postal Service, and shall be deemed to be filed on the date received in the Office of Administrative Law Judges if transmitted by any other means.

(b) An original and one copy of any brief or other paper shall be filed with the presiding Administrative Law Judge and shall be accepted subject to timely filing with proof of sufficient service upon the opposing parties.

(c) If the last day of a time limit prescribed by these Rules or established by the presiding Administrative Law Judge falls on a Saturday, Sunday, or a federal holiday, the time limit shall be extended to the next official business day.

17. Following the certification in accordance with Rule 14 above, and consideration of any Statement of Exceptions filed and served in accordance with Rules 15 and 16, the Secretary of Labor shall render a decision in the matter, in writing, and shall forward the decision together with the record to the Chief Administrative Law Judge, and shall forward copies of his decision to the Governor of the State, to each party of record, and to any amicus curiae authorized to participate in the proceedings.

[FR Doc. 84-22562 Filed 8-23-84; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

Federal-State unemployment Compensation Program; Unemployment Insurance Program Letter No. 31-83, Changes 1 and 2; Tax Equity and Fiscal Responsibility Act of 1982 and Social Security Amendments of 1983 as They Relate to Repayment of Advances to State Under Title XII of the Social Security Act and Interest Assessed Thereon

Change 1 to Unemployment Insurance Program Letter No. 31-83, advises States of Office of Management and Budget

(OMB) approval for reporting requirements in the basic UIPL. Change 2 advises States of the measurement period to be used by the Secretary of Labor in certifying States for interest deferrals, discounts, and delays and caps on Federal Unemployment Tax Act (FUTA) offset credit reduction; refers States submitting initial requests for relief to UIPLs, 31–83, and 35–83; and advises States of action required to secure continued interest relief and cap on offset credit reduction. Change 1 and 2 are published below.

Dated: August 14, 1984.

Patrick J. O'Keefe,

Deputy Assistant Secretary of Labor.

Classification; UI:

Correspondence Symbol: TEURA:

Date: September 13, 1983.

Directive: Unemployment Insurance Program Letter No. 31–83, Change 1.

To: All State Employment Security Agencies.

From: ROYAL S. DELLINGER, Deputy Assistant Secretary for Employment and Training.

Subject: Changes in the Social Security Act, Title XII and the Internal Revenue Code of 1954, Section 3302, made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Social Security Amendments of 1983.

1. *Purpose.* To announce OMB approval for reporting requirements in the basic UIPL.

2. *OMB Approval.* These reporting requirements have been approved by the Office of Management and Budget according to the Paperwork Reduction Act of 1980 under OMB 1205–0205.

3. *Action Required.* Administrators are to provide the above information to appropriate staff and their Governors.

4. *Inquiries.* Direct inquiries to appropriate Regional Office.

Classification; UI:

Correspondence Symbol: TEURA:

Date: July 2, 1984.

Directive: Unemployment Insurance Program Letter No. 31–83, Change 2.

To: All State Employment Security Agencies.

From: BERT LEWIS, Administrator for Regional Management.

Subject: Changes in the Social Security Act, title XII, and the Internal Revenue Code of 1954, section 3302, made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Social Security Amendments of 1983.

1. *Purpose.* To advise States of the measurement period to be used by the Secretary of Labor in certifying States for interest deferrals, discounts, and delays and caps on Federal Unemployment Tax Act (FUTA) offset credit reduction.

2. *References.* Social Security Act, title XII; Internal Revenue Code of 1954, section 3302; Pub. L. 97–35, sections 2406 and 2407; Pub. L. 97–248, section 274; Pub. L. 98–21, sections 511 and 512; and UIPLs 13–82, 31–83 (and Change 1), and 35–83.

3. *Background.* Legislation passed by the Congress in recent years requires the Secretary of Labor to certify that States with outstanding title XII loans, used to pay unemployment benefits, meet specific criteria in order to: (a) Receive a discount, deferral, or delay of interest due, (b) have a limit (cap) placed on the amount of the FUTA offset credit reduction employers in a State are subject to, and (c) continue to receive relief granted by deferrals in subsequent periods. Over the past few years, the Secretary has certified a number of States for both types of relief. In each case, in order to qualify for relief, the State has had to meet criteria that are intended to move the State closer to solvency.

Expiration Date: June 30, 1986.

For interest relief, the State must demonstrate it has taken no action to reduce tax effort or solvency and has taken action to reduce benefits and increase revenues (solvency effort) or has an average tax rate, based on total wages, on employers that equals or exceeds 2.0 percent. The State must maintain its solvency effort in each subsequent period in order to continue to receive interest deferral granted in any prior year. Limited interest relief may be granted if the State has a sufficiently high unemployment rate.

The limit on offset credit reduction is granted if the State has an average tax rate which equals or exceeds its average benefit cost ratio over the prior five years, has not increased its outstanding title XII advances, has not reduced its solvency, and has not reduced its tax effort.

The statutory requirements for determining interest relief specify a measurement period for use in certification, i.e., the calendar year immediately following the year for which relief is requested. For the cap on FUTA offset credit reduction, the measurement period is the 12-month period ending on September 30 of each year. These periods were used in previous determinations. Determinations for 1984 and thereafter will use the relevant periods.

The language used in the statutes affecting the determinations is not specific on a number of issues. The primary problem is to determine that point in a specific measurement period when a State fails to meet the required criteria. With respect to an action affecting solvency or tax effort, the law specifies a 12-month period but fails to indicate whether any single action during the period should be considered or whether all actions taken over the period should be considered in the aggregate. It also fails to specify if action taken in one 12-month period should be considered if it does not impact on tax effort or solvency until a succeeding period.

4. *Policy.* After reviewing the statutory provisions, the Deputy Assistant Secretary determined that only those actions which become effective and have an impact in the period for which relief is being requested should be considered. Further, the Deputy Assistant Secretary determined that the Department's action with respect to a State maintaining its solvency effort should be taken once a year, netting out the cumulative effect of the changes for the relevant 12-month period.

This means that the Department would review each State's actions for the relevant 12-month period and assess the net solvency impact, recognizing that revenue collections are lagged one quarter. A State which passes a provision that appears to reduce solvency would not be held accountable until the end of the 12-month period; any action increasing solvency and having an impact in such 12-month period would be considered as offsetting in part or totally any action reducing solvency. The action taken by a State would be considered only in terms of the impact in the current 12-month period and would not penalize or help a State for either action taken in the current period which is effective in following periods or action taken in succeeding periods. The Deputy Assistant Secretary believes that this option provides the most flexibility to both the Department and to the States and meets the intent and requirements of the statutes. It allows the States to take action to restore solvency and receive relief in the current period without having to worry about future change in their laws. It is clear that if a State does reduce its level of effort in a subsequent period under this option, it would not receive continued relief in that period.

5. *Certification.* Some States previously have requested legisltive-action deferrals and discounted rates for 1984 and 1985 and have been found tentatively acceptable. Final certification for those States will be based upon the States maintaining their solvency effort as specified in section 1202(b)(8)(B) of the Social Security Act. Before final certification for 1984 or 1985

is made, there will be a review and determination as to the impact of any legislation enacted or implemented in the relevant 12-month period. Accordingly, by July 1, 1984 and 1985, the appropriate States are requested to submit a statement to the Secretary of Labor of any tax or benefit law change occurring in the periods ending on September 30 in each year, including an estimate of the cost impact of each change. If no changes occurred during the relevant periods, the States are to certify to that fact.

States submitting initial and final requests for relief should follow the guidelines provided in UIPLs 13–82, 31–83, and 35–83. States submitting initial requests should contact the Division of Actuarial Services (202–376–7066) for economic assumptions, developed as in UIPL 35–83, to be used in preparing the required estimates. In order to receive continued relief for deferrals previously approved, States must certify by July 1 of each subsequent year in the deferral period (through the third year after the deferral was initially approved) that no action has been taken to reduce solvency effort.

6. *OMB Approval.* The reporting requirements contained in UIPLs 13–82 and 31–83 have been approved by the Office of Management and Budget according to the Paperwork Reduction Act of 1980 under OMB Approval No. 1205–0205, expiration date, July 31, 1985.

7. *Action Required.* Administrators shall advise their Governors of the definition of the mesurement period used by the Secretary in certifying States for interest deferrals and discounts, continued relief of interest payment, and cap on offset credit reduction.

8. *Inquiries.* Direct inquiries to the appropriate regional office.

[FR Doc. 84–22557 Filed 8–23–84; 8:45 am]
BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; McQuay-Norris Manufacturing Co., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 13, 1984—August 17, 1984.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,269; McQuay-Norris Manufacturing Co., Connersville, IN

TA–W–15,210; TRW, Inc., Falconer, NY

TA–W–15,211; TRW, Inc., Jamestown, NY

The investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–15,252; Bristol Brass Co., Bristol, CT

Aggregate U.S. imports of brass rod and brass wire did not increase as required for certification.

TA–W–15,302; Westmoreland Coal Co., Imperial Smokeless Div., Mine #7, Quinwood, WV

Aggregate U.S. imports of coal are negligible and aggregate U.S. imports of coke did not increase as required for certification.

TA–W–15,324; Rodson Shipping, Inc., Coral Gables, FL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–15,263; Cities Services Co., Columbian Chemicals Div., Butyl Rubber Plant, Lake Charles, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–15,244; Great Lakes Carbon Corp., Morgantown, NC

The investigation revealed that criterion (2) has not been met. Sales or production, or both, of the firm or subdivision did not decrease as required for certification.

Affirmative Determinations

TA–W–15,296; AMSPEC Chemical Corp., Gloucester, NJ

A certification was issued covering all workers separated on or after March 1, 1984 and before June 30, 1984

TA–W–15,257; Rubin Brothers Footwear, Inc., Waycross, GA

A certification was issued covering all workers separated on or after March 9, 1983 and before June 1, 1984.

TA–W–15,257A; Rubin Brothers Footwear, Inc., New York, NY

A certification was issued covering all workers separated on or after March 9, 1983 and before June 1, 1984.

TA–W–15,226; Citrus World, Inc., Lake Wales, FL

A certification was issued covering all workers separated on or after February 20, 1983 and before May 31, 1984.

TA–W–15,284; Wilshire Fashions, Inc., South River, NJ

A certification was issued covering all workers separated on or after March 24, 1983 and before January 1, 1984.

TA–W–15,167; Inland Shoe Manufacturing Co., Inc., Advance, MO

A certification was issued covering all workers separated on or after December 7, 1982 and before October 31, 1983.

TA–W–15,208; Melville Footwear Manufacturing, Brunswick, ME

A certification was issued covering all workers separated on or after May 3, 1983.

TA–W–15,235; Siebe Norton, Inc., Newton, NC

A certification was issued covering all workers separated on or after February 24, 1983.

TA–W–15,236; Siebe Norton, Inc., Maiden, NC

A certification was issued covering all workers separated on or after February 24, 1983.

TA–W–15,168; Kaiser Steel Corp., Fabricated Products Group, Plate Operation, Fontana, CA

A certification was issued covering all workers separated on or after January 6, 1983.

TA–W–15,175; Vincenti, St. James, MO

A certification was issued covering all workers separated on or after December 29, 1982 and before July 31, 1983.

TA–W–15,180; Carolina Glove Co., Williston Plant, Williston, SC

A certification was issued covering all workers separated on or after June 6, 1983 and before January 30, 1984.

I hereby certify that the aforementioned determinations were issued during the period August 13, 1984—August 17, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 21, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-22603 Filed 8-23-84; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[V-84-3]

The Graniteville Company; Applications

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Notice of applications for variance and interim orders. (2) Grant of interim orders.

SUMMARY: This notice announces the applications of the Graniteville Company for variance and interm orders pending decisions on the applications for variance from the standard prescribed in 29 CFR 1910.1043(e)(3)(iii) concerning the effective date for compliance with the permissible exposure limit for cotton dust solely by means of engineering controls and work practices. It also announces the granting of interm orders until decisions are rendered on the applications for variance.

DATES: The effective date of the interim orders in August 24, 1984. The last date for interested persons to submit comments is September 24, 1984. The interim orders shall remain in effect until March 27, 1985 or until decisions are rendered on the applications for variance, whichever occurs first.

ADDRESS: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3658, Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, at the above address Telephone: (202) 523-7193.

or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 1375 Peachtree Street, N.E. Suite 587, Atlanta, Georgia 30367.

U.S. Department of Labor—OSHA, 1835 Assembly Street Room 1468, Columbia, South Carolina 29201.

U.S. Department of Labor—OSHA, Building 10 Suite 33, LaVista Perimeter Office Park, Tucker, Georgia 30084.

Edgar A. McGowan, Commissioner, South Carolina Department of Labor, 3600 Forest Drive, P.O. Box 11329, Columbia, South Carolina 29211.

Notice of Application

Notice is hereby given that the Graniteville Company, Marshall Street, Graniteville, South Carolina 29829 has made application pursuant to Section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 159–29 U.S.C. 655) and 29 CFR 1905.10 for temporary variances, and interim orders pending decisions of the applications for variance, from the standard prescribed in 29 CFR 1910.1043(e)(3)(iii) which specifies the effective date for engineering controls and work practices to be the sole means to control exposure to cotton dust.

The addresses of the places of employment that will be affected by these applications are as follows:

Granite Mill, Marshall Street, Graniteville, South Carolina 29829.

Hickman Mill, Marshall Street, Graniteville, South Carolina 29829.

Townsend Mill, Second Street, Graniteville, South Carolina 29829.

Vaucluse Mill, Senn Street, Vaucluse, South Carolina 29850.

Sibley Mill, Goodrich Street, Augusta, Georgia 30904.

The applicant certifies that employees who would be affected by the variance have been informed of the application by posting copies at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

The interim orders for the Granite, Hickman, Townsend, and Vaucluse Mills, all of which are located in the State of South Carolina, which has an approved occupational safety and health plan, are granted under the Federal State Reciprocity Procedure (29 CFR 1952.9). Copies of the applications were sent to Mr. Edgar L. McGowan, Commissioner of the South Carolina Department of Labor, on April 20. Mr. McGowan responded on April 27, recommending that the applicant's requests for variance be granted and also listing conditions which he felt were necessary to be followed by all the applicant's facilities in the State of South Carolina. Any of these conditions not already required have been made a part of the interim order.

Regarding the merits of the applications, the applicant contends that it is unable to comply with the requirements of § 1910.1043(e)(3)(iii) by the date specified by the standard.

The applicant contends that during the recent recession, Graniteville was hurt by its dependence on bottom-weight materials. Although the textile industry as a whole was affected by the declining use of textile products, Graniteville was especially hard hit. Forced to re-evaluate its position, in January 1983 the company announced a new move to consolidate its operations. It hoped to regain its competitive position in the market by creating new manufacturing capabilities and retiring obsolete facilities.

To this end three divisions were closed including the Granite Division, of which the original Granite Mill was a part. In order to minimize the losses associated with the plant closings, the Company had already begun to move the usable equipment to other plants.

Then, in the summer of 1983, Graniteville Company was acquired by Southeastern Public Service Company, a Miami Beach, Florida concern. Under the direction of its new management, Granitevill Company began a thorough review of its operations and its position in the marketplace. As a result of these re-evaluations, many of the decisions the original management team had made were re-examined and revised and new markets explored.

The applicant states further that, traditionally, Graniteville Company produced piece-dyed fabric as its primary product. Having failed to mount a sustained recovery in that market, however, the Company has for the first time entered into yarn sales as part of a prescription for financial recovery. To this end the Granite Mill was reopened in 1983 with a scaled down yarn manufacturing operation. Processing cotton and synthetic raw materials from opening through spinning, the mill began to produce yarn for other weaving operations within the Company. Over the last few months the Granite Mill has expanded its yarn manufacturing capabilities to include sales to outside customers. The Company anticipates further expansion of the operations at Granite over the next few months in response to the success of the yarn sales programs.

The applicant further contends that changes have also been made at the other plants. The Townsend Mill has increased its employment twenty-five

percent and now operates twenty-four hours a day, seven days a week. Production at the Vaucluse Mill is no longer limited to light and medium weight, high polyester content fabrics, that mill having now expanded its lines to incude heavy army duck. Graniteville purchased new airjet looms at Hickman to move production from carded heavy weight to the more popular, lighterweight fabrics; and the Company has taken steps to insure a high quality product at the Sibley Mill.

These major changes in production necessitated major changes in the Company's cotton dust compliance program, according to the contentions of the applicant. With the closing of the Warren, Enterprise and Granite Mills, the work on the cotton dust compliance programs at those facilities was suspended. In addition, as equipment was removed from these plants to Townsend and other mills in 1983, their product lines were expanded and their compliance plans had to be modified. These changes directly affected cotton dust levels at the plants: some operations which had never before had dust problems were suddenly above the permissible exposure limits, while dust levels in other plants were reduced as a result of these moves.

The Graniteville Company further contends that identifying and installing feasible engineering controls for cotton dust is a complex task involving extensive evaluation of existing equipment, ventilation systems, and employee work practices, as well as the dust reduction capability of alternative measures. The alternatives must be analyzed and a compliance plan developed. After the expenditures have been approved, the necessary equipment and controls must be designed, ordered, delivered and installed. The equipment must then be fine-tuned. Dust levels must again be monitored and adjustments made. Recognizing the complexity and expense of developing and installing engineering controls for cotton dust, OSHA originally allowed industry four years to achieve compliance with the standard.

The applicant states further that the policy changes the Company has made as part of the major corporate reorganization were necessary in order to ensure its economic survival. However, these changes have also required that the Company, in effect, "start over" on its compliance plans in some operations at several plants. For this reason, necessary construction or alteration of its facilities could not be completed in the short time since these massive production changes were made.

Therefore, the applicant contends, and OSHA agrees that the evidence presented demonstrates, the Graniteville Company's Granite, Hickman, Townsend, Vaucluse, and Sibley Mills are unable to comply with § 1910.1043(e)(3)(iii) of the standard by its effective date.

The applicant further states that although compliance cannot be achieved before March 27, 1985, the safety of the employees will be guaranteed because employees will continue to be protected by the prescribed use of appropriate respirators, the medical surveillance programs, education and training programs, and effective work practices.

The applicant contends that during this period of time, necessary engineering studies will be completed, equipment ordered, received, installed, fine-tuned and minor adjustments made, monitoring completed and the results evaluated.

Grant of Interim Order

It appears from the applications for temporary variance and interim orders that, as required by section 6(b)(6)(A) of the Act, the Graniteville Company is unable to comply with the requirements of 29 CFR 1910.1043(e)(3)(iii) by the date required by the standard. It appears that the applicant is taking all available steps to safeguard its employees during the time needed to come into compliance with the standard. It further appears that interim orders are necessary to prevent undue hardship to the applicant and its employees pending a decision on the variance. Therefore, it is ordered, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.10(c) and in Secretary of Labor's Order No. 9–83 (48 FR 35736), that the five plants of the Graniteville Company listed below are authorized to comply with the requirements of the order set forth below in lieu of complying with the requirements of 29 CFR 1910.1043(e)(3)(iii). All other provisions of the cotton dust standard are unaffected by this order and therefore must be complied with in conjunction with the terms of this order.

Interim orders are being issued for specified areas/operations in the following Graniteville Company mills:

Granite Mill, Marshall Street, Graniteville, South Carolina 29829: Opening, carding, drawing, roving (slubbers), and spinning operations;

Townsend Mill, Second Street, Graniteville, South Carolina 29829: Carding and labbing operations;

Hickman Mill, Marshall Street, Graniteville, South Carolina 29850: Carding operations;

Vaucluse Mill, Senn Street, Vaucluse, South Carolina 29850: Weaving and waste operations; and

Sibley Mill, Goodrich Street, Augusta, Georgia 30904: Carding, drawing, and roving (slubbers) operations.

The terms of the order are as follows:

(1) The terms of the order apply to all employees in the cotton dust exposed workforce.

(2) In lieu of paragraph (d)(3)(i) which requires that the employer repeat the measurements required by paragraph (d)(2) at least every six months, the repetitions shall be at least every three months.

(3) The employer shall agree to allow OSHA (or the State agency, as the case may be) to inspect its premises in connection with this interim order.

(4) The employer shall comply with all other provisions of the cotton dust standard which are unaffected by this order, with particular emphasis on the following:

a. Use of respirators: All affected employees must be required to wear respirators based upon their exposure levels and periodic audits made to ensure proper respirator use.

b. Maintenance of work practices and air handling equipment: A complete and comprehensive work program must be maintained and employees trained in good work practices. Air handling equipment must be maintained correctly to ensure maximum efficiency in reducing cotton dust levels and cleaning and repair of such equipment performed promptly.

c. Exposure monitoring and measurements: All periodic monitoring to ensure proper respiratory usage and employee notification to ensure employee knowledge of exposure must be continued and proper records completed and maintained.

d. Medical surveillance conducted: All aspects of the required medical surveillance program, including examinations and pulmonary function tests to detect impaired lung function, must be administered and medical opinions and records properly obtained and kept.

e. Employee education and training: An in-depth training and education program through which employees become aware of the hazards and their exposure to cotton dust must be continued. Exposure notice and warning signs must be posted and respirator-wear time for each area and shift must be given to employees. Training in proper wearing of respirators and in proper respirator handling and storage must also be continued.

As soon as possible, the Graniteville Company shall give notice of this interim order to employees affected thereby by the same means required to be used to inform them of the applications for a variance.

This interim order shall remain in effect until March 27, 1985, or until a decision is rendered on the applications for variance, whichever is the earlier.

Signed at Washington, D.C., this 20th day of August 1984.

Robert A. Rowland,

Assistant Secretary of Labor.

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[V-84-4]

Temporary Variances From Final Trigger Level for Medical Removal Protection Under the Standard for Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTIONS: Notice of Applications for Temporary Variance and Interim Order; Grants of Interim Order; and Request for Comments.

SUMMARY: This notice announces the applications of 67 plants for a temporary variance and an interim order from the final trigger level for Medical Removal Protection (MRP) of the Standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)). Of the total 67 plants, 65 were granted the interim order. However, recent blood lead data show that of the 65 remaining plants 32 are no longer in need of the relief. Therefore, OSHA is hereby terminating the interim orders granted to 32 plants. This notice announces the granting of the interim order to the remaining 33 plants and invites comments on the variance applications.

DATES: Of the 33 remaining plants, the interim order became effective for 21 on September 2, 1983 and for 5 on October 17, 1983. The Interim order will become effective for 7 additional plants on August 24, 1984. The last date for interested persons to submit comments on the variance applications is September 24, 1984. The date by which affected employers and employees must request a hearing is September 24, 1984.

ADDRESSES: Send written comments and requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3656, Third Street and Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, at the above address, telephone (202) 523-7193, or the following Regional and Area Offices:

U.S. Department of Labor—OSHA, 1515 Broadway (1 Astor Plaza), Room 3445, New York, New York 10036

U.S. Department of Labor—OSHA, 90 Church Street, Room 1405, New York, New York 10007

U.S. Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104

U.S. Department of Labor—OSHA, Room 242, U.S. Custom House, Second and Chestnut Street, Philadelphia, Pennsylvania 19106

U.S. Department of Labor—OSHA, Penn Place, Room 2005, 20 North Pennsylvania Avenue, Wilkes-Barre, Pennsylvania 18701

U.S. Department of Labor—OSHA, Federal Building, Room 2236, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15522

U.S. Department of Labor—OSHA, Progress Plaza, 49 North Progress Avenue, Harrisburg, Pennsylvania 17109

U.S. Department of Labor—OSHA, Federal Building, Room 6226, 400 North 8th Street, Post Office Box 10186, Richmond, Virginia 23240

U.S. Department of Labor—OSHA, 850 N. 5th Street, Allentown, Pennsylvania 18102

U.S. Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367

U.S. Department of Labor—OSHA, Building 10—Suite 33, La Vista Perimeter Office Park, Tucker, Georgia 30084

U.S. Department of Labor—OSHA, 1835 Assembly Street, Room 1468, Columbia, South Carolina 29201

U.S. Department of Labor—OSHA, Todd Mall, 2047 Canyon Road, Birmingham, Alabama 35216

U.S. Department of Labor—OSHA, 951 Government Street—Suite 502, Mobile, Alabama 36604

U.S. Department of Labor—OSHA, Federal Building, Room 302, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301

U.S. Department of Labor, 700 Twiggs Street, Room 624, Tampa, Florida 33602

U.S. Department of Labor—OSHA, Federal Office Building, Room 406, 310 New Bern Avenue, Raleigh, North Carolina 27601

U.S. Department of Labor—OSHA, 32nd Floor, Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Department of Labor—OSHA, 1400 Torrence Avenue—2nd Floor, Calumet City, Illinois 60409

U.S. Department of Labor—OSHA, 6000 West Touhy Avenue, Niles, Illinois 60648

U.S. Department of Labor—OSHA, 344 Smoke Tree Business Park, North Aurora, Illinois 60542

U.S. Department of Labor—OSHA, Federal Office Building, Room 4028, 550 Main Street, Cincinnati, Ohio 45202

U.S. Department of Labor—OSHA, Federal Office Building, Room 899, 1240 East 9th Street, Cleveland, Ohio 44199

U.S. Department of Labor—OSHA, USPO & Courthouse, Room 422, 46 East Ohio Street, Indianapolis, Indiana 46204U.S. Department of Labor—OSHA, Henry S. Reuss Building, 310 West Wisconsin Avenue, Suite 1180, Milwaukee, Wisconsin 53203

U.S. Department of Labor—OSHA, 555 Griffin Square Building, Room 602, Dallas, Texas 75202

U.S. Department of Labor—OSHA, 1425 West Pioneer Drive,Irving, Texas 75061

U.S. Department of Labor—OSHA, Savers Building—Suite 828,320 West Capitol Avenue, Little Rock, Arkansas 72201

U.S. Department of Labor—OSHA, Hoover Annex, Suite 200, 2156 Wooddale Boulevard, Baton Rouge, Louisiana 70806

U.S. Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106

U.S. Department of Labor—OSHA, 1150 Grand Avenue, 6th Floor, Room 606, Kansas City, Missouri 64106

SUPPLEMENTARY INFORMATION:

I. Background

Under the medical removal protection (MRP) provision of the lead standard, (29 CFR 1910.1025(k)), employers are required to remove an employee whose blood lead level is at or above the medical removal trigger level from work having an exposure to lead at or above the action level of 30 micrograms of lead per cubic meter of air (30 $\mu g/m^3$). The employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the return trigger. Employees are guaranteed full wages and benefits throughout the duration of the removal period to a maximum of eighteen months.

The purpose of the MRP provision is to provide temporary medical removal protection to workers who are at risk of sustaining material impairment to health from continuous exposure to lead. The standard specifies four medical removal

and three return trigger levels. These levels were phased in over a five-year period. Phase one required removal of employees having blood-lead levels at or above 80 micrograms of lead per 100 grams of whole blood (80 μg/100g) and allowed return when blood-lead levels decline to 60 micrograms of lead per 100 grams of whole blood (60 μg/100g). Phase two required removal at 70 μg/100g and permitted return at 50 μg/100g. Phase three requires removal at 60 μg/100g and authorizes return at 40 μg/100g. The fourth and final phase requires removal at 50 μg/100g and allows return at 40 μg/100g.

The first three medical removal triggers—the 80, 70, and 60 μg/100g triggers—would require removal of an employee after periodic and followup blood sample tests indicate that the employee's blood lead is at or above the specified trigger. The fourth removal trigger, however, requires the removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous six months, whichever is longer, is at or above 50 μg/100g. An employee need not be removed under the terms of the 50 μg/100g trigger whenever the employee's last blood test results indicate a blood lead level of 40 μg/100g or below.

At present and for the indefinite future, the 60 and 50 μg/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employee's blood-lead test results average 50 μg/100g or when the employee's blood-lead level is confirmed by a follow-up sample to be 60 μg/100g or over.

Prior to the March 1981 effective date of the 60/40 MRP triggers, the primary and secondary lead smelters and lead battery manufacturers petitioned the Agency for industry-wide stays. The petitions were based upon assertions that the companies would be unable to comply with the MRP provision because of the anticipated removal and resulting unavailability of so many key employees affected by the 60/40 μg/100g MRP triggers. The petitions were denied because the data submitted by these industries did not demonstrate a need for an industry-wide stay of the MRP trigger (46 FR 24558 and 46 FR 37891). However, OSHA did find that, on a plant-by-plant basis, there were some feasibility problems. Therefore, on July 23 and 24, 1981 (46 FR 37891 and 46 FR 38074), OSHA announced that the temporary variance and interim order mechanism, set forth in section 6(b)(6)(A) of the OSH Act and covered by regulations in 29 CFR Part 1905, would be used to afford relief to lead smelting and battery companies on a plant-by-plant basis.

The July 23 and 24, 1981 **Federal Register** notice (46 FR 37891 and 46 FR 38074) gave the affected plants until August 31, 1981 to demonstrate that 10 percent or more of their total lead-exposed supervisory, maintenance and skilled employees would be subjected to temporary removal because of blood lead levels between 60–70 μg/100g, or, for any plant below the 10 percent figure, to show by compelling evidence that the relief was needed. Eligible employers were required to submit to OSHA an application for a temporary variance and an interim order, written acceptance of the terms of the interim order, certification of notice to the affected employees and certain data to support their application.

Seventy applications for a temporary variance and an interim order were received. Of the 70 plants requesting this relief, 45 were granted the interim order (46 FR 48654, October 2, 1981; 47 FR 8431, February 26, 1982; and 47 FR 16434, April 16, 1982), which remained in effect until OSHA rendered a decision on the applications for temporary variance.

The variance record demonstrated that immediate compliance with the 60/40 μg/100g MRP removal and return trigger levels presented major feasibility problems for the 45 plants in four main areas: (1) The plants would have to remove 10 percent to 66 percent of their total skilled workforce from lead exposure; (2) experienced employees who would be removed could not easily be replaced because employers would be unable to recruit other employees with the levels of skills necessary to perform these highly skilled positions or to quickly train replacements; (3) removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants, with a resulting increased probability of work-related injuries, illnesses, and deaths; and (4) sufficient transfer opportunities did not exist for removed employees to be transferred to other jobs in the affected plants, and extensive medical removal layoffs would result in greatly increased MRP costs. Based on the above, OSHA concluded that the 45 plants had demonstrated that immediate compliance with 60/40 μg/100g MRP removal and return trigger levels was infeasible. Each, therefore, merited a temporary variance, which was granted on January 28, 1983 (48 FR 4062), effective until February 28, 1983.

The order temporarily relieved the affected employers of the requirement to comply with the 60 μg/100g removal and 40 μg/100g return trigger levels. As conditions of the relief, the employers were obligated to comply with the 70/50 μg/100g triggers, the other conditions and requirements of the order, and with all other provisions of the lead standard. The order also required increased medical surveillance and additional safeguards to protect the health of affected employees.

On March 1, 1983, the 50 μg/100g MRP removal trigger level became effective. Based on the data that had been submitted in support of the requests for temporary variance from the 60/40 μg/100g MRP trigger levels, the lead rulemaking record (OSHA Docket No. H–004), the judicial history of the lead standard and surveys of lead industries, OSHA recognized that this trigger was likely to pose feasibility problems for many companies.

One-hundred and twenty-five plants sought relief from the 50 μg/100g removal trigger. Of that number, only 67 were considered appropriate for relief by OSHA at this time. They submitted applications for a temporary variance and an interim order with supporting data indicating that 10 percent or more of their total skilled lead exposed employees would require removal because their blood lead levels exceed the 50 μg/100g trigger. Based on that data, OSHA decided to grant the interim order to 65 of the 67 plants, since two plants (General Battery's Dallas smelter and Indiana battery plants) no longer needed this relief. Of the 65, the interim order is being granted to 7 plants today. The remaining 58 plants were granted the interim order by letter. The interim order became effective for 48 plants on September 2, 1983, for one plant on September 20, 1983, and for nine plants on October 17, 1983. However, of the 58 plants, 32 no longer need the relief: two plants have closed; 19 no longer qualify; and recent blood lead data indicate that 11 plants are now in compliance with the standard. Therefore, OSHA is hereby terminating the relief to the following plants who earlier were granted interim orders:

Amax Lead Company of Missouri, Boss, Missouri 65440

Associated Lead, 85 Jay Street, Brooklyn, New York 11201

Bulldog Battery Corporation, 1000 Airport Road, Terrell, Texas 75160

C & D Batteries, 1835 Rockdale Industrial Boulevard, Conyers, Georgia 30207

C & D Batteries, Washington and Cherry Streets, Conshohocken, Pennsylvania 19428

C & D Batteries, 82 East Main Street, Leola, Pennsylvania 17540
Canton Metal Alloys Company, 1551 Belden Avenue, S.E., Canton, Ohio 44701
East Penn Manufacturing Company (Secondary Smelter), Deka Road, Lyon Station, Pennsylvania 19536
East Penn Manufacturing Company (Battery Plant), Deka Road, Lyon Station, Pennsylvania 19536
Fry Metals, Inc., Sixth Avenue and 41st Streets, Altoona, Pennsylvania 16602
GNB Batteries Inc., 4115 South Zero Street, Fort Smith, Arkansas 72903
GNB Batteries Inc., 1910 South 4th Street, Leavenworth, Kansas 60648
GNB Batteries Inc., 6901 Westport Avenue, Shreveport, Louisiana 71129
GNB Batteries Inc., 1604–40 Moxahala Avenue, Zanesville, Ohio 43701
GNB Batteries Inc., 576 Patterson Avenue, NW., Salem, Oregon 97304
GNB Batteries Inc., 2215 Person Avenue, Memphis, Tennessee 38114
GNB Batteries Inc., 1880 Valley View Lane, Dallas, Texas 75234
General Battery Corporation, Montrose Avenue and Angeline Street, Reading, Pennsylvania 19103
General Battery Corporation, Old Chick Spring Road, Greer, South Carolina 29651
General Battery Corporation, 2040 Amelia Street, Dallas, Texas 75235
Lenox Crystal, Mount Pleasant, Pennsylvania 15666
Mule Emergency Lighting, Inc., 325 Valley Street, Providence, Rhode Island
Murph Metals, Inc., 2820 North Westmoreland, Dallas, Texas 75212
Powerlab, Inc., RFD 2, Savannah, Illinois 61074
Powerlab, Inc., 1145 South Virginia, Terrell, Texas 75160
Quemetco, Inc., 7870 West Morris Street, Indianapolis, Indiana 46241
Quenell Enterprises, Inc., 3810 Miller Park Drive Garland, Texas 75042
Revere Smelting & Refining Corporation of New Jersey, R. D. #2, Ballard Road, Middletown, New York 10940
Schuylkill Metals Corporation, Brooklawn Drive, Baton Rouge, Louisiana 70897–3916.
Schuylkill Metals Corporation, Cannon Hollow Road, Forest City, Missouri 64451
Standard Industries, Nelson Road at Reliable Drive, San Antonio, Texas 78227
Taracorp Industries, 16th and Cleveland Boulevard, Granite City, Illinois 62040

Of the remainder of the 125 plants which had sought relief, 28 failed to submit sufficient data to establish need, 13 were referred to the appropriate States with approved occupational safety and health plans, and 12 are not being granted relief at this time. Four of the remaining 5 plants submitted applications in error, and one has been withdrawn.

Thirty-three plants also requested relief from the 40 μg/100g return trigger. These plants claim that the 40 return trigger is infeasible because the length of time required for blood lead levels to decline below 40 is longer than anticipated by OSHA. Their concerns focus particularly on long-tenured employers. Based on the evidence to date, however, OSHA concludes that the data are insufficient to support the claim of infeasibility. Thus, OSHA denies the requests for relief from the 40 μg/100g return trigger. This issue is likely to be addressed in the forthcoming proposal to revise the lead standard.

Where temporary variance requests involve an employer at multiple locations, including one or more in a State with an approved occupational safety and health plan, the interim order is granted under the Federal/State Reciprocity Agreement established at 29 CFR 1905.14(b)(3). Thus, each of the appropriate State authorities having jurisdiction over the place of employment covered in the application concurs with the granting of this interim order.

The interim order grants temporary relief to employers from the requirement to comply with the 50 μg/100g removal trigger level. The employers must continue to comply with the 60 μg/100g removal trigger and all other provisions of the lead standard and must satisfy the conditions and requirements of the order.

The names and addresses of each plant still affected by the grant of interim order are as follows:

Primary Smelters

St. Joe Lead Company, 7735 Forsyth Boulevard, Clayton, Missouri 63105

Secondary Smelters

Franklin Smelting & Refining Corporation, Castor Avenue East of Richmond Street, Philadelphia, Pennsylvania 19134
GNB Batteries, Inc., South 5th Street, Frisco, Texas 75034
General Battery Corporation, Spring Valley Road, Reading, Pennsylvania 19603
Gulf Coast Lead Company, 1910 N. 66th Street, Tampa, Florida 33619
ILCO, Inc., Dunnanant Road, Leeds, Alabama 35094
Inland Metals Refining Company, 651 East 119th Street, Chicago, Illinois 60628
Master Metals, Inc., 2850 West 3rd Street, Cleveland, Ohio 44113
Non-Ferrous Processing Corporation, 551 Stewart Avenue, Brooklyn, New York 11222
Sanders Lead Company, Inc., Henderson Road, Troy, Alabama 36081
Seitzinger, Inc., 900 Ashby Street, NW., Atlanta, Georgia 30318
Tonolli Corporation, R. D. #1, Route 54, Nesquehoning, Pennsylvania 18204

Battery Manufacturers

Abex Corporation, Bronze and Alloy Division, Route 19 (Baldwin Street Extension), Meadville, Pennsylvania 16335
Battery Manufacturing Company, Inc., 804 South Dixie, West Palm Beach, Florida 33401
Exide Corporation, 303 Water Street, Logansport, Indiana 46947
Exide Corporation, 2510 North Boulevard, Raleigh, North Carolina 27604
Exide Corporation, 2001 Lee High Street, Allentown, Pennsylvania, 18103
Exide Corporation, U.S. Highway 15, Sumter, South Carolina 29150
Exide Corporation, 1222 18th Street, Racine, Wisconsin 53403
GNB Batteries Inc., 11331 Satellite Boulevard, Orlando, Florida 32809
GNB Batteries Inc., West Station Road, Kankakee, Illinois 60901
GNB Batteries Inc., 2800 Carroll Avenue, Lynchburg, Virginia 24506
General Battery Corporation, 250 Grand Street, Hamburg, Pennsylvania 19526
General Battery Corporation, Spring Valley Road, Reading, Pennsylvania 19603
K W Battery Company, 3555 Howard Street, Skokie, Illinois 60076
Miami Battery Manufacturing Company, 11100 N. W. South River Drive, Miami, Florida 33178
New Castle Battery Manufacturing Company, 3601 Wimington Road, New Castle, Pennsylvania 16105
Prestolite Battery Division, 4700 Fifth Street Highway, Temple, Pennsylvania 19603
Red Diamond Battery Company, Route 6, Box 828, Garland County Industrial Park, Hot Springs, Arkansas 71901

Other Industries

American Cyanamid Company, 4500 West Fifteenth Street, Chicago, Illinois 60623
Associated Lead, Inc., 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125
Eagle-Picher Industries, Inc., Post Office Box 550, Joplin, Missouri 64802
Hamilton Brass & Aluminum Casting Company, Eighth and Chestnut Streets, Hamilton, Ohio 45011

II. Notice of Application for Temporary Variance and Interim Order

Notice is hereby given that 67 primary and secondary lead smelters, lead battery manufacturers, and facilities in other segments of the lead industry submitted appropriate applications pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.10 and the Secretary of Labor's Order No. 9–83 (48 FR 35736) for a temporary variance and an interim order, pending a decision on the variance, from 29 CFR 1910.1025(k)(1)(i)(D), the 50 ug/100g medical removal protection (MRP) trigger of the lead standard. Subsequently, the interim order was granted to 58 of the 67 plants, by letter. However, thirty-two of the 58 now no longer need relief. Of the nine remaining plants 7 will be granted the interim order today, and 2 plants no longer needed this relief. Thus, 33 plants will continue to have interim relief for the 50 ug/100g removal trigger.

This trigger requires an employer to remove an employee from work where lead exposure is at or above 30 ug/m^3 action level whenever the average of the employee's last three blood sample tests or of all tests conducted over the previous six months, whichever is longer, is at or above 50 ug/100g. However, the employee need not be removed if the employee's last blood test is at or below 40 ug/100g.

The requests for temporary variance are based upon the employers' alleged inability to comply with the standard because of the anticipated removal and consequent unavailability of certain employees if the 50 removal and 40 return triggers for MRP were put into effect. Essentially, the applicants made the following three-pronged feasibility argument:

(1) The removal trigger would require for the first time, the removal of many supervisory, maintenance and highly skilled employees whose blood-lead levels are between 50–59 μg/100g.

(2) The removal of the supervisory, maintenance and highly skilled employees would be prolonged beyond OSHA's original expectation in order for their blood-lead levels to drop to the 40 μg/100g return level.

(3) Since these employees are highly paid, occupy crucial positions and are extremely difficult to replace, placing them on MRP not only would be costly, but also would drastically reduce productivity and result in a less safe and healthful workplace.

The employers have submitted data to establish their need for this relief. Submissions by each employer include: individual employee blood lead and air lead levels; documentation of safety and health programs presently administered and enforced at the plant, e.g., respirator and work practice programs; engineering improvements anticipated for implementation in the next 18 months; projections for MRP removal period; estimated costs; and specific analyses of any adverse safety and health consequences of removing supervisors, maintenance and skilled employees who have blood lead levels between 50–59 μg/100g.

An analysis of the blood lead data from September 1, 1982 to March 1, 1983 indicate that the plants receiving relief appear to have severe problems in coming into compliance with the 50 trigger. For the 67 plants that originally required relief, the numbers alone suggest the severity of the problem. The anticipated removals range from a high of approximately 100 percent of all lead exposed supervisory, maintenance and skilled employees to a low of approximately 10 percent. Hamilton Brass and Aluminum Company, with the highest blood lead levels, would have to remove approximately 100 percent of its total skilled workforce. Other plants on the high side include: Miami Battery (86 percent); Steitzinger, (72 percent); Non-Ferrous (71 percent); ILCO, Inc. (70 percent); Eagle-Picher (63 percent); GNB's Frisco smelter and Standard Industries (49 percent); Red Diamond (47 percent); Inland Metals (40 percent). Among the companies having the lowest blood lead levels, approximately 10 percent, are: New Castle and GNB's Reading battery plant.

The employers certify that employees who would be affected by the variance have been notified of the applications by the employer providing copies to the employees' authorized representatives and posting copies at all places where notices to employees are normally posted. The employers also certify that employees have been informed of their right to petition the Assistant Secretary for a hearing. The employers further certify that they accept the conditions and requirements of the interim order, which was forwarded to them by OSHA prior to granting this relief.

The interim order temporarily relieves the affected employers of the requirement to comply with the 50 μg/100g removal trigger level under the lead standard. As a condition of the interim relief, employers must continue to comply with the 60/40 μg/100g triggers and all other provisions of the standard, and must satisfy the special conditions and requirements of the order.

III. Summary and Explanation of the Interim Order Requirements

The primary purpose of the requirements contained in the interim order is to provide significantly increased protection to supervisory, maintenance and skilled employees with elevated blood lead levels between 50–59 μg/100g who, because of this variance, need not be removed from their jobs. In the absence of this relief the employer would have to remove such employees in compliance with the 50 μg/100g removal trigger. Because the order temporarily denies the affected employees that particular form of protection, OSHA, in fulfillment of its statutory obligations under section 6(b)(6)(A) of the Act, mandates further safeguards in order to protect the safety and health of the affected employees from the hazards of lead exposure.

The following is a discussion of the individual requirements of the variance order, including OSHA's rationale for each specific provision.

Paragraph 1 requires that the employers perform blood lead and ZPP testing bi-monthly on all employees with blood leads over 40 μg/100g who are exposed to lead above the 30 μg/m^3 action level. This requirement imposes no additional burden upon employers. Section 1910.1025(j)(2) of the lead standard presently requires such monitoring.

Paragraph 2 requires that the employer provide for a consultation with a physician every 2 months and a comprehensive medical examination every 6 months (or sooner, at the discretion of the consulting or examining physician) for employees with blood lead averages between 50–59 μg/100g who are not removed because of this order. By contrast the lead standard requires medical examinations and consultations annually for any employee whose blood lead level during the preceding 12 months is at or above 40 μg/100g (§ 1910.1025(j)(3)).

Paragraph 3 requires a written medical opinion by the physician as to whether the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. Section 1910.1025(k)(1)(ii) of the lead standard already requires removal of an employee from lead exposure at or above 30 μg/m^3 on each occasion when a final medical determination indicates that the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead. To more fully implement the

preventive aspects of the medical consultations and examinations required by this order, OSHA is requiring the physician's written medical opinion after each visit. This paragraph also requires the employer to submit to OSHA after each consultation and medical examination a written statement from the physician concerning each affected employee who need not be moved from his or her job, stating that it is medically appropriate for the employee to continue to work at his or her present job. This requirement will enable OSHA to monitor compliance with this provision.

Paragraph 4 requires the employer to remove an employee with blood leads at 60 μg/100g or above to areas where lead exposure is below 30 μg/m³, and allows the employer to return the employee when the blood lead level has diminished to 40 μg/100g or below. This is already required by the lead standard (Paragraphs (k)(1)(i)(C) and (k)(1)(iii)(A)(3)).

Paragraph 5 requires that the employer provide OSHA with the name, job classification, and position of each employee who is subject to MRP as a result of either a blood lead level at or above 60 μg/100g or the recommendation of the examining physician. Requiring this data will enable OSHA to confirm employer compliance with the applicable removal provisions of the lead standard.

Paragraph 6 requires full-shift respirator usage for employees with blood lead levels at or above 50 μg/100g who are working in areas with air lead levels at or above 30 μg/m³, and who, because of this order, are not removed. OSHA has concluded that requiring full-shift respirator usage at or above the 30 μg/m³ action level, in lieu of the more limited respirator usage at or above the 50 μg/m³ permissible exposure limit required by § 1910.1025(e)(2) of the lead standard, will provide increased protection to these employees.

Paragraph 7 requires that the employer make an immediate inspection and evaluation of the work conditions and practices of employees with blood lead levels between 50–59 μg/100g who need not be removed under this order, and take all reasonable and appropriate corrective steps necessary to reduce employee lead absorption. This paragraph also requires the employer to make periodic inspections and evaluations of the work conditions and practices until the affected employees blood lead levels are below 50 μg/100g.

Paragraph 8 requires that the employer provide OSHA with blood lead, ZPP, and air lead data as accumulated bi-monthly for all skilled employees. OSHA has concluded that the data will assist in determining the applicant's compliance with the lead standard and terms of the variance order.

Paragraph 9 requires that the employer agree to OSHA (or, where relevant, State) health and safety inspections related to its temporary variance. OSHA, in granting this relief, must be assured that it can readily monitor compliance with the requirements of the order.

IV. Grants of Interim Order

It appears from the applications and supporting data that temporary variances are likely to be granted to the above listed 33 plants. The interim order is necessary to prevent undue hardship to the employers and their employees pending decision on the variance. Therefore, it is ordered, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor's Order No 9–83 (48 FR 35736), and in 29 CFR Part 1905, that the 33 plants listed above are hereby authorized to comply with the requirements of the interim order set forth below, with respect to their lead exposed supervisory, maintenance and skilled employees, in lieu of complying with 29 CFR 1910.1025(k)(1)(i)(D). All other provisions of the lead standard are unaffected by this order and therefore must be complied with in conjunction with the terms of this order.

The conditions and requirements of the interim order are enumerated below:

(1) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood lead level at or above 40 μg/100g and who is exposed to lead above the 30 μg/m³ action level.

(2) For employees whose last three blood tests or all blood tests for the previous six months (whichever is longer) average 50 μg/100g or above who work in jobs having airborne lead exposure at or above 30 μg/m³ and who need not be removed because of this order, the employer shall provide:

(a) A personal consultation with a licensed physician every two months; and,

(b) A comprehensive medical examination by a licensed physician every six months, or sooner, as determined by a physician.

(3) After each personal consultation and comprehensive medical examination, the physician shall make a written medical determination as to whether the employee has a detected medical condition which places the employee at increased risk of material impairment to health from exposure to lead.

(a) If the employee is determined to have such a condition, the employee shall be removed from work having an exposure to lead at or above 30 μg/m³; or,

(b) If the employee is determined not to have such a condition, the employer shall submit to the Office of Variance Determination a written statement from the physician stating that it is medically appropriate for the employee to continue to work at the employee's present job.

(4) Employers shall remove each employee with blood lead levels at or about 60 μg/100g and return the employee when the employee's blood lead level is at or below 40 μg/100g in accordance with the provisions of §§ 1910.1025(k)(1)(i)(C) and 1910.1025(k)(1)(iii)(A)(3) of the lead standard.

(5) The name and job classification of each employee on MRP and the area where the employee is assigned shall be submitted to the Office of Variance Determination each time an affected employee is placed on medical removal protection as a result of either a blood lead level at or above 60 μg/100g or the recommendation of a physician.

(6) For employees with blood lead levels at or above 50 μg/100g who are working in areas with air-lead levels at or above 30 μg/m³, respirator usage shall be mandatory during the entire workshift.

(7) For all employees with blood lead levels between 50–59 μγ/100g, who need not be removed under the terms of the order, the employer shall make immediate inspections and evaluations of:

(a) The lead-related work practices affecting the employees;

(b) The employee's respirator usage;

(c) The use and availability of hygiene facilities, and the employee's relevant personal hygiene habits; and,

(d) The existing engineering controls, to determine whether they are maintained properly to ensure that such controls do not have an adverse effect on the employee.

Based on that inspection and evaluation, the employer shall take all reasonable and appropriate corrective steps in these regards to reduce the employee's absorption of lead. The employer shall submit to the Office of Variance Determination a written report (within 45 days after the effective date of this order) documenting when and where the evaluation took place, any corrective actions that were necessary,

and the name and job classification of the affected employee. Periodic inspections and evaluations shall be conducted until the employee's blood lead level is below 50 μg/100g.

(8) For the duration of the interim order, the employer shall submit to the Office of Variance Determination every two months blood lead, ZPP, and air lead data as accumulated for all skilled employees.

(9) The employer shall agree to allow OSHA or, where relevant, State safety and health officials to inspect its facility in connection with this variance application and this interim order.

EFFECTIVE DATE: This order became effective for the following 21 plants on September 2, 1983:

American Cyanamid Company
Associated Lead, Inc. (Philadelphia, PA plant)
Battery Manufacturing Company, Inc.
Eagle-Picher Industries, Inc.
Exide Corporation (2 plants)
  Allentown, PA plant
  Sumter, SC plant
Franklin Smelting and Refining Corporation
GNB Batteries Inc. (4 plants)
  Orlando, FL plant
  Kankakee, IL plant
  Frisco, Texas—Secondary Smelter
  Lynchburg, VA plant
General Battery Corporation (3 plants)
  Hamburg, PA plant
  Reading, PA—Secondary Smelter
  Reading, PA—Battery Manufacturing plant
Gulf Coast Lead Company
Hamilton Brass & Aluminum Casting Company
Master Metals
New Castle Battery Manufacturing Company
Seitzinger, Inc.
St. Joe Lead Company
Tonolli Corporation

This order became effective for the following 5 plants on October 17, 1983.

Exide Corporation (3 Plants)
  Logansport, IN plant
  Raleigh, NC plant
  Racine, WI plant
ILCO, Inc.
K W Battery Corporation

This order shall become effective for the following 7 plants on August 24, 1984.

Abex Corporation
Inland Metals, Inc.
Miami Battery Manufacturing Company
Non-Ferrous Processing Corporation
Prestolite Battery Division
Red Diamond Battery Company
Sanders Lead Company

The above 33 plants shall give notice of this grant of interim order to all affected employees by the same means required to be used to inform them of the application for variance.

The Assistant Secretary may revoke this order at any time if the employer does not comply with any requirement of the order or the relevant standards, or if other information indicates that revocation of the interim order is warranted. Unless revoked, the interim order will remain in effect until a decision is made on the applications for variance.

Copies of the applications for variance will be made available for inspection and copying upon request at the locations listed above. All interested persons, including employers and employees, who believe they would be affected by the grant or denial of the applications for variance are invited to submit written data, views, and arguments relating to the applications no later than September 24, 1984. In addition, employers and employees who believe they would be adversely affected by the grant or denial of the variance may request a hearing on the application no later than September 24, 1984, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and request for a hearing should be in quadruplicate and must be addressed to the Office of Variance Determination at the above address.

Signed at Washington, D.C. this 20th day of August, 1984.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 84-22548 Filed 8-23-84; 8:45 am]
BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (41 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on September 6–8, 1984, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on July 26, 1984.

The agenda for the subject meeting will be as follows:

Thursday, September 6, 1984

8:30 a.m.–8:45 a.m.: ACRS Chairman's Report (Open)—The Chairman will briefly report on items of current interest.

8:45 a.m.–10:45 a.m.: USNRC Backfitting Requirements (Open)—The members will hear and discuss reports of its Subcommittee and representatives of the NRC Staff regarding the proposed final NRC Program for Mangement of Plant-Specific Backfitting of Operating Power Plants (NRC Manual Chapter 0514).

10:45 a.m.–12:30 p.m.: Consideration of Class 9 Accidents (Open)—The members will discuss proposed comments regarding the severity and frequency of severe nuclear power plant accidents.

1:30 p.m.–3:30 p.m.: Categorization of Generic and Licensing Issues Regarding Their Application to Standardized Nuclear Plants (Open)—The members will hear and discuss reports from its Subcommittee and representatives of the NRC Staff regarding proposed categorization of generic and licensing issues as applied to standardized nuclear plants.

3:30 p.m.–4:30 p.m.: Recent Operating Experience (Open)—The members will hear reports from members of the NRC Staff regarding recent events and occurrences at nuclear power plants.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

4:30 p.m.–5:30 p.m.: ACRS Subcommittee Report (Open)—The members will hear and discuss the report of its Subcommittee regarding consideration of an independent board to investigate/evaluate nuclear power plant incidents/accidents.

5:30 p.m.–6:00 p.m.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS Subcommittee activities and proposed items for consideration by the full Committee.

Friday, September 7, 1984

8:30 a.m.–9:39 a.m.: Meeting with NRC Executive Director for Operations (Open)—Discuss items of mutual interest.

9:30 a.m.–12:30 p.m. and 1:30 p.m.–3:30 p.m.: Millstone Nuclear Power Station, Unit 3 (Open)—The members will hear and discuss reports of its Subcommittee, members of the NRC Staff, and representatives of the applicant regarding the request for an Operating License for this facility.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this plant and information which involves detailed security arragements for this station.

3:30 p.m.–5:00 p.m.: Selection of New Unresolved Safety Issues (Open)—The members will hear and discuss reports of designated ACRS Subcommittees and representatives of the NRC Staff

regarding the evaluation of generic safety issues and their designation as unresolved safety issues (USIs).

5:00 p.m.–6:00 p.m.: ACRS Future Activities (Open)—The members will discuss the basis for and scope of long-range ACRS activities.

Saturday, September 8, 1984

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports to NRC (Open)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information related to the topics being discussed and information which includes detailed security arrangements for the Millstone Nuclear Power Station.

1:30 p.m.–3:30 p.m.: Concluding Session (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1983 (48 FR 44291). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information (5 U.S.C. 552b(c)(4)) and safeguards information which includes details of the applicant's security measures (5 U.S.C. 552b(c)(3)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 a.m. and 5:00 p.m. EDT.

Dated: August 20, 1984.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 84–22582 Filed 8–23–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on September 4, 1984, Room 1118, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows:

Tuesday, September 4, 1984—8:30 a.m. until the conclusion of business

The Subcommittee will review experience with the interim backfit procedures now in effect and any revisions resulting from public comments.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee members will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other invited persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Morton W. Libarkin (telephone 202/634–3265) between 8:15 a.m and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 21, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–22581 Filed 8–23–84; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Policies and Practices; Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on September 5, 1984, Room 1118, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting will be as follows:

Wednesday, September 5, 1984—9:30 a.m. until the conclusion of business

The Subcommittee will consider advice to the Commission concerning Congressional inquiry regarding the establishment of a NTSB-like body for nuclear reactor safety.

Oral statements may be presented by members of the public with concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee members will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other invited perons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements

and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Morton W. Libarkin (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m., EDT. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 21, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84–22584 Filed 8–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–317]

Baltimore Gas and Electric Co.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the granting of relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Baltimore Gas and Electric Company (the licensee), which would revise the inservice inspection program for Calvert Cliffs Nuclear Power Plant, Unit No. 1. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50.

Environmental Assessment

Identification of Proposed Action

The 1974 Edition of Section XI of the ASME Boiler and Pressure Vessel Code defines the inservice inspection (ISI) interval as the ten year period of time, in calendar years, commencing with the date of commercial operation of a facility. For Calvert Cliffs Unit 1, the date of commercial operation was May 8, 1975 and therefore the inservice inspection interval ends on May 7, 1985. By letter dated March 6, 1984, Baltimore Gas and Electric Company, the licensee, requested to extend the inspection interval for Unit 1 to April 1, 1987 in order that both Calvert Cliffs units could begin the second ten-year inservice inspection interval on the same date.

The Need for the Proposed Action

The granting of relief from the ISI interval requirements for Unit 1 would allow the licensee to update the Unit 1 and Unit 2 ISI programs to the same edition of the ASME Code, Section XI, and Addenda.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed request for relief from the ASME Code requirements indicates that the relief will not, in any way, reduce the integrity of safety systems. Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed relief otherwise affect radiological plant effluents, and there is no significant increase in occupational exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed relief.

With regard to potential non-radiological impacts, the proposed relief involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plants effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed relief.

Alternative to the Proposed Action

Since we have concluded that there is no measurable environmental impact associated with the proposed relief from the requirements of the ASME Code, any alternatives to this relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief. This would not reduce the environmental impacts of plant operation and would result in the duplication of procedures and the attendant difficulty of maintaining the Unit 1 and Unit 2 ISI programs in compliance with different editions of Section XI of the ASME Code.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Relating to Operation of Calvert Cliffs Nuclear Power Plant Units 1 and 2" dated April 1973.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed relief.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for relief dated March 6, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Calvert County Library, Prince Frederick, Maryland.

Dated at Bethesda, Maryland this 19th day of August, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84–22607 Filed 8–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power and Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR–23, issued to Carolina Power and Light Company (the licensee), for operation of the H.B. Robinson Steam Electric Plant Unit No. 2 located in Darlington County, South Carolina.

The amendment:

A. Involves a core reload and would permit operation with Exxon Fuel Assemblies with up to 3.9 weight percent U–235 and to extended burnups of 44,000 MWD/MTU maximum assembly average exposure in addition to Exxon Fuel during Cycle 9. Part Length Shielded Assemblies (PLSA) containing 1.24 weight percent U–235 are included in the core periphery (the "flats") as part of the pressurized thermal shock program to reduce the fast neutron fluence to the pressure vessel walls. The PSLA are mechanically identical to the reload XN–7 assemblies except that the bottom 42" of the fuel column is replaced with stainless steel rod for neutron shielding.

Numerical changes to the Technical Specifications are required due to the (1) addition of the PSLA and (2) utilizing a low leakage core. Specifically, hot channel factors (F_Q and $F_{\Delta H}$) limits and the beginning of cycle (BOC) moderator temperature coefficient are being increased. The overtemperature and overpower ΔT setpoints will be reduced as a result of increasing F_Q and $F_{\Delta H}$ limits. There is no request to increase

the authorized power of the facility. The changes, discussed above, are required to account for adding the PSLA in the core periphery ("flats") and due to improved fuel utilization resulting from a low leakage core.

B. Would modify the Technical Specification to add a requirement for the number of reactor coolant pumps operating at less than 2% reactor power. The revised specification would provide flexibility and cooldown of the plant by allowing operation, with less than two pumps, under one of three conditions which precludes the potential for the uncontrolled rod withdrawal transient. This change is required due to inconsistencies found between the FSAR analyzed uncontrolled rod withdrawal transient at low power or subcritical conditions and the Technical Specifications and to assure that the transients are bounding in the respective categories.

C. Would modify the Technical Specification to achieve consistency within the Technical Specifications and with current operating practices such as deleting references to N–1 loop operations, references to reduce T_{avg} programs, and references to the original FSAR, which is being updated annually.

These revisions to the technical specifications would be made in response to the licensee's application for amendment dated July 23, 1984.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). Examples of actions likely to involve no significant hazards considerations are:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

Change A—Reload

Although axially blanketed fuel and the part length shielded assemblies are significantly different from those previously found acceptable for previous cores, they are significantly more conservative. They produce much less power, therefore, fewer neutrons and lower temperature. Analyses submitted have supported a no significant hazards considerations.

Analyses have been performed and the results submitted to the Commission justify increasing the F_Q and $F_{\Delta H}$ as well as an increase in the BOC moderator temperature coefficient below full power. A reanalysis of the bounding Chapter 15 analyses has been performed which require changes to overtemperature and overpower ΔT setpoints. ENC's new XNB and DNB correlations were utilized in performing the reanalyses of the Chapter 15 events. The results of these analyses show that the changes are clearly within acceptable criteria. To preclude the continuous use of APDMS for Cycle 10 and future cores an improved approach (procedure) will be used. These procedures, "Exxon Nuclear Power Distribution Control for Pressurized Water Reactors, Phase II, or PDC–II have been generically approved. A safety analyses has been performed for this methodology to support the change in methodology for H.B. Robinson. The results show the change to be clearly within all acceptable criteria.

Based on the above review, the core reload application is similiar to example (iii) above, therefore, the staff proposes a no significant hazards consideration.

Change B

This change placed additional restrictions in the Technical Specifications regarding RC and RHR pump operability for various core conditions to assure that the uncontrolled rod withdrawal transient at low power or subscritical conditions are bounding in their respective categories.

This change is similar to example (ii) above. On this basis, the staff proposes a no significant hazards consideration.

Change C

This change to the Technical Specifications deletes out-of-date references that no longer apply, therefore, they are administrative in nature and provide consistency within the specifications and between the specifications and between the specifications in other documents.

This change matches example (i) above. Therefore, the staff proposes a no significant hazards consideration.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration.

Therefore, based on these considerations and the three criteria given above, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission has determined that failure to act in a timely way would result in extending the licensee's shutdown for steam generator repair and core reload. The licensee's startup is several months ahead of schedule. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the Federal Register at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the Federal Register and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to Steven A. Varga, Chief of Operating Reactors Branch No. 1, by

collect call to 301–492–8035 or submitted in writing to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch. All comments received by September 14, 1984 will be considered in reaching a final determination. A copy of the application may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Dated at Bethesda, Maryland, this August 17, 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 84–22606 Filed 8–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–409]

Dairyland Power Coop.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from the requirements of Appendix J to 10 CFR Part 50 to Dairyland Power Cooperative (DPC) (the licensee) for the LaCrosse Boiling Water Reactor, located ats the licensee's site near Genoa, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

The exemption would exempt the licensee from the Appendix J requirement of testing the reactor containment building airlock door seals within 72 hours of each opening. The proposed exemption is in accordance with the licensee's request dated September 26, 1980, as supported by additional commitments made on June 2, 1983 and December 19, 1983.

The Need for the Proposed Action

10 CFR 50.54(o) requires that all licensees meet the requirements of Appendix J—Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors. Section III.D.2(b)(iii) of Appendix J requires that airlocks opened during periods when containment integrity is required shall be tested for leakage within three days after each opening, or shall be tested every three days during periods of frequent openings. Section III.D.2(b)(i) of Appendix J requires that full pressure airlock leak tests be done every six months. In lieu of these requirements, the licensee has proposed to (1) perform full pressure leakage tests of airlocks every four months; (2) visually inspect airlock door seals after each opening but not required more often than every 72 hours, and (3) replace airlock door seals periodically in accordance with manufacturer's recommendations.

Environmental Impacts of the Proposed Action

The proposed exemption pertains to the frequency of testing the containment airlocks. The NRC staff evaluated containment airlock leak testing during the Integrated Assessment portion of the Systematic Evaluation Program. The staff conclusion, documented in Section 4.22 of NUREG–0827, was that the licensee's proposed leakage testing program including more frequent full pressure testing, visual inspection, and periodic replacement of airlock door seals would provide an acceptable alternative to strict compliance with the applicable Appendix J requirements. This conclusion is further supported by the past good performance of airlock door seals at the LaCrosse facility. The alternative actions proposed by the licensee will provide reasonable assurance that airlock leakage will not exceed acceptable levels. Thus the exemption does not affect the risk of facility accidents. Post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents, or any significant occupational exposures. The exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed exemption. Since we have concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative will either have no environmental impact or greater environmental impact. The principal alternative to the exemption would be to require literal compliance with Section III.D.2(b)(iii) of Appendix J to 10 CFR Part 50. This would likely require LaCrosse to leak-test the containment airlocks every three days. Such testing would not enhance the protection of the environment.

Alternative Use of Resources

The proposed exemption involves no use of resources not previously considered in the LaCrosse Final Environmental Statement, NUREG–0191.

Agencies and Person Consulted

The NRC staff has reviewed the licensee's request as discussed above. The NRC staff did not consult any other agencies or persons.

Findings of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated September 26, 1980 and supplemental submittals dated June 2, 1983 and December 19, 1983, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Dated at Bethesda, Maryland, this 20 day of August 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84–22608 Filed 8–23–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–346]

The Toledo Edison Co. and The Cleveland Electric Illuminating Co., Davis-Besse Nuclear Power Station, Unit No. 1 Exemption

I

The Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees) hold Facility Operating License No. NPF–3 which authorizes The Toledo Edison Company to operate the Davis-Besse Nuclear Power Station, Unit 1 (the facility), at steady-state power levels not in excess of 2772 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensees' site in Ottawa County, Ohio. The license is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

On November 19, 1980, the Commission published in the **Federal Register** (45 FR 76602) revised Section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants. The revised regulation and new appendix became effective on February 17, 1981. Section III of Appendix R identifies

specific fire protection requirements in fifteen subsections, A through O. This exemption relates to certain aspects of Sections III.G, III.L, and III.O, as follows, from which the licensees have requested exemption:

(a) A requirement of Subsection III.G.2 to provide a complete 3-hour rated fire barrier for the separation of redundant trains of equipment necessary for safe shutdown,

(b) A requirement of Subsection III.L.1 that alternative or dedicated shutdown capability be able to achieve cold shutdown conditions within 72 hours, and

(c) A requirement of Section III.O that the lube oil collection systems be capable of holding the entire lube oil system inventory.

III

By letter dated September 30, 1983, and as supplemented by letter dated December 30, 1983, the licensees requested exemptions from certain requirements of Section III.G, III.L, and III.O of Appendix R. The specific request and the acceptability of the exemption is addressed herein.

(a) Exemption From Section III.G

Subsection III.G.2 of Appendix R to 10 CFR Part 50 requires that redundant trains of equipment necessary for safe shutdown be separated by one of three specific methods to ensure that one of the redundant trains of equipment will be free of fire damage. One of the methods specified is separation by a fire barrier having a 3-hour rating including all piping, electrical, heating, ventilation, and air conditioning penetrations and personnel access doors. The licensees have requested an exemption from the requirement for a 3-hour rated barrier with respect to a door which separates rooms containing equipment necessary for safe shutdown.

The Davis-Besse Nuclear Power Station is equipped with two auxiliary feedwater (AFW) pumps located in adjacent rooms (Room 237 in Fire Area E, Fire Zone No. E–1 and Room 238 in Fire Area F, Fire Zone F–1) separated by a 3-hour rated firewall. Door 215 located in the fire wall separating the two rooms is designed as a pressure rated door (10 psi) to protect against the consequences of a high energy line break in either AFW pump room. The door, however, is not a UL rated fire door and has not been tested by the licensees. Instead, an engineering evaluation has been performed to determine the fire resistance of Door 215, simulating the fire test requirements of NFPA 251. The evaluation demonstrates that the door would permit a temperature rise on the unexposed face of 250°F when subjected to a 1300°F fire exposure for 25 minutes. The licensees have determined that the combustible material in either pump room would have a fire duration of less than 10 minutes. The licensees conclude that the door, if tested, would have a fire resistance significantly longer than the maximum postulated fire duration. We have reviewed the analysis and agree with the licensees. Due to the low fuel load in the area and installed smoke detection system, there is reasonable assurance that an incipient fire would be detected promptly, and the response of the fire brigade to the AFW pump room would be expected in less than 25 minutes. It is our opinion that this combination of features provides reasonable assurance that one train of AFW pumps will remain free of fire damage.

Based on our evaluation, Fire Door 215 provides a level of safety equivalent to the technical requirements of Section III.G and, therefore, the exemption requested is granted.

(b) Exemption From Section III.L

Subsection III.L.1 of Appendix R to 10 CFR part 50 states, in part, that the alternative shutdown capability shall be able to achieve cold shutdown conditions within 72 hours. Further, Subsection III.L.3 of Appendix R states that the alterntive shutdown capability must accommodate post-fire conditions where offsite power is available and where offsite power is not available for 72 hours. Thus, the alternative shutdown capability must be able to achieve cold shutdown conditions within 72 hours, independent of offsite power. The licensees have requested an exemption from the 72-hour requirement for achieving cold shutdown independent of offsite power.

The design of the Davis-Besse Nuclear Power Station is such that pressurizer spray capability is dependent upon operation of the reactor coolant pumps which, in turn, require offsite power. Without pressurizer spray availability, depressurization of the reactor and subsequent cooldown would be determined by the rate of heat loss from the pressurizer to the containment environment. Additionally, the licensees have imposed further restrictions on cooldown in order to avoid formation of steam in the upper reactor vessel head. The licensees limit the cooldown rate to no more than 1.5°F/hour under natural circulation conditions. Using this cooldown restriction, the licensees calculate that 193 hours would be required to achieve cold shutdown conditions, assuming offsite power was unavailable. The licensees assumed the cooldown to cold shutdown would commence one hour after reactor trip.

For plant cooldown, the AFW system in conjunction with the atmospheric dump valves provides initial decay heat removal independent of offsite power. The AFW system utilizes two steam turbine-driven feedwater pumps which are located in separate compartments. The AFW pumps take suction from two condensate storage tanks. The service water system provides an automatic backup AFW supply and the fire protection system can be manually aligned for an additional backup water supply. The service water system utilizes three 100% capacity pumps which take suction from Lake Erie. Each of the three service water pumps can be powered by the emergency onsite diesel generators. Each of the diesel generators are provided with sufficient fuel oil storage for seven days of continuous operation. For long term heat removal, the decay heat removal system will be utilized. The decay heat removal pumps can be powered by the diesel generators.

Since the capability to achieve cold shutdown utilizing onsite power is available, the licensees' proposed cooldown time period is acceptable. Therefore, the exemption requested from the requirement of Section III.L of Appendix R to 10 CFR Part 50 regarding the alternative shutdown capability to achieve cold shutdown within 72 hours independent of offsite power is granted.

(c) Exemption From Section III.O

Section III.O of Appendix R to 10 CFR Part 50 requires, in part, that the reactor coolant pump lube oil collection system be designed to collect lube oil leakage in a closed, vented container that can hold the entire lube oil system inventory. The licensees have requested exemption from this requirement.

The Davis-Besse Nuclear Power Station is designed with two reactor coolant loops. Each loop has two reactor coolant pumps (RCP). A high pressure and low pressure lube oil system is provided for each RCP motor. The high pressure system is used only during startup and shutdown. The low pressure system is used during normal operation. Each RCP motor contains 225 gallons of lube oil.

The licensees have provided one 250 gallon oil collection tank for each loop. This provides sufficient capacity to hold the total lube oil inventory of only one RCP motor in each loop with some margin. Any lube oil overflow will drain to the containment sump.

The RCP motor lube oil system does not comply with Section III.O because

the oil collection tank is not sized to contain the entire lube oil system inventory.

Since any lube oil overflow will drain to the containment building sump where there is no other flammable material or hot surfaces which may ignite the oil, the overflow oil will not present an exposure fire hazard to or otherwise endanger safety-related equipment, and since the RCP motor lube oil collection system is capable of withstanding the safe shutdown earthquake, we find the oil collection system acceptable.

Based on our evaluation as discussed above, we conclude the existing RCP motor lube oil collection system provides a level of safety equivalent to the technical requirements of Section III.O and, therefore, the exemption requested is granted.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions requested by the licensees' letter as referenced and discussed in II. and III. above are authorized by law, will not endanger life or property or the common defense and security, are otherwise in the public interest, and are hereby granted.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (49 FR 33071).

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 20th day of August, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-22605 Filed 8-23-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21257; File No. SR-DTC-84-6]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by the Depository Trust Co.

August 20, 1984.

On July 31, 1984, the Depository Trust Company ("DTC") filed a propsoed rule change (SR-DTC-84-6) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change provides two added settlement adjustment procedures for participants prior to 1:30 pm. First, when participants agree that a reclamation was made erroneously and that an original delivery should stand, DTC will make any necessary adjustments provided the requested adjustment is received by 1:30 pm. Second, under limited circumstances, DTC will permit participants to borrow securities and complete valued deliveries after the normal delivery cut-off time through a settlement adjustment process. Such loans must relate to deliveries that would otherwise not be completed because the participant's position is not sufficient to satisfy the original delivery instructions. DTC will allow such adjustments only if: the delivery has a value in excess of $500,000; the participant needs to borrow only a small percentage of the securities to be delivered; and the participant borrows all of those securities from one lender. Requests to deliver securities through settlement adjustments must be approved by the manager of the Settlement Department or a higher ranking officer.

The proposed rule change also alters DTC's procedures for settlement adjustments requested after 1:30 pm ("late settlement adjustments"). In order to provide participants more time to certify their daily settlement checks, DTC has moved the current cut-off time for accepting late settlement adjustments requests from 4:00 pm to 3:30 pm. Furthermore, from 1:30 to 3:30, DTC will accept only money adjustments and invalid reclamation adjustments that are for $100,000 or more. Other late settlement adjustments, except those caused by DTC error, will not be accepted.

The proposed rule change also establishes procedures concerning incomplete reclamations. Specifically, recipients of reclaims may file a complaint with DTC by 1:30 pm if the reclamation they received did not contain, at a minimum, the original settlement data; the account number and account description exactly as entered on the original delivery; and the reason for the reclamation. If DTC finds the complaint valid, the reclaimer will be charged $50.00; if DTC finds the complaint invlaid, the reclaim recipient will be charged $50.00.

The proposed rule change also amends DTC's fee schedule for late settlement adjustments, late deliver orders and incomplete reclamations. Specifically, the proposed rule change increases the fee DTC charges participants for settlement adjustments made after 1:30 pm from $2.50 to $25.00. The proposal also clarifies that this fee is charged to delivering participants. In addition, the proposed rule change increases the fee DTC charges participants for late deliver orders and incomplete reclamations from $5.00 to $50.00. Delivering participants will be charged $50.00 for submitting original deliveries during the reclamation period that are reversed and receiving participants will be charged $50.00 for requesting reversal of late deliver orders that subsequently are found valid.

DTC states in its filing that the settlement adjustments are consistent with the Act for several reasons. First, DTC maintains that the proposal promotes operational efficiency in the settlement of securities transactions. In addition, DTC states that the proposal reduces the risks of financial loss to DTC and its participants. Finally, DTC claims that the proposal establishes reasonable fees for services DTC provides its participants.

DTC received ten comment letters that specifically address this proposed rule change. Three commenters disagreed with the size of the fee increase for late settlement adjustments while seven commenters agreed with the proposed increase. Seven commenters agreed with the size of the increases for late deliver orders and incomplete reclamations. Of these seven, however three commenters expressed a desire for some type of appeals process since DTC officials must decide whether to charge the delivering or receiving participant $50.00. In addition, one commenter, while agreeing in principle with increasing DTC's current fee, believed that $50.00 was too high. Finally, two of the comment letters failed to comment on these provisions of the proposed rule change.

In response to several earlier comments,[1] DTC reduce the charge for incomplete reclamations and late deliver orders. Moreover, as a condition to full registration as a clearling agency, DTC undertook to establish suitable procedural due process protections for participants consistent with the Act.[2]

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagrah (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the

[1] In April, DTC initially notified participants of these and other proposed rule changes. In response, DTC received 35 letters of comment. As a result of these comments, DTC modified its proposed rule changes in June. To its modifications of these proposed rule changes, DTC received 10 comment letters.

[2] *See* Securities Exchanged Act Release No. 20221 (September 23, 1983), at pp. 57-59, 48 FR 45,167 (October 3, 1983).

Commission may summarily abrogate such rule change, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission in the Federal Register is expected during the week of August 13, 1984. Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons making written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–DTC–84–6.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments will also be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84–22539 Filed 8–23–84; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 21256; SR–NASD–84–17]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc.

August 20, 1984.

Pursuant to section 19 (b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 13, 1984, the National Association of Securities Dealers, Inc. ("NASD") 1735 K Street, NW., Washington, D.C. 20006, filed with the Securities and Exchange Commission a proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would make certain changes to the Trade Acceptance and Reconciliation Service ("TARS"). TARS currently permits its participants to reconcile and resolve uncompared trades in over-the-counter securities on an on-line basis. The NASD has modified TARS so that, as of June 1, 1984, participants can submit original trade data through TARS to clearing corporations on trade date plus one (T + 1). Accordingly, TARS participants will no longer need to submit trade data to their respective clearing corporations. TARS will maintain an activity file containing all information relating to the original trade data submission. As a result of the change, TARS also will validate all clearing and executing broker symbols and their respective relationships with the clearing corporations, the securities symbol, and other key data entered into the system. In addition, TARS will print a confirmation to each participant that is a party to the transaction and will maintain, on-line, a total of the subscriber's and the *contra* party's daily activities in the system. Finally, TARS will permit participants to delete any original trade data input until the data are transmitted by TARS to the clearing corporations at the close of the business day (currently 6 p.m.).

The NASD is in the process of modifying TARS further to allow all trades executed through the computer assisted execution system (*i.e.*, CAES) to be transmitted by TARS to the clearing corporations. The NASD has deleted the TARS function of maintaining totals of all actions taken by a subscriber or *contra* party on a security by security basis on trade records as they occur because few TARS participants use these functions.

The NASD states that the enhancements to TARS will improve the efficiency of the over-the-counter trade comparison process by further facilitation on-line trade reconciliation. Section 15A(b)(6) of the Act requires national securities associations, such as the NASD, to promulgate rules designed to foster cooperation and coordination among persons engaged in clearing and settling transactions. The NASD feels the proposed rule change is consistent with this section and with sections 17A(a)(1) (B) and (C) of the Act because it believes the TARS enhancements will increase the efficiency of the settlement process by applying data processing and communications techniques to the trade comparison process.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the *Federal Register*. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR–NASD–84–17.

Copies of the submission, all subsequent amendments, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the NASD.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

George A. Fitzsimmons;

Secretary.

[FR Doc. 84–22540 Filed 8–23–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of Task Group 3–4 of the Federal Aviation Administration National Airspace Review Advisory Committee. The agenda for the meeting is as follows: The organizational structure of FAAH 7610.4, Special Military Operations, will be reviewed and recommendations will

be made to make data easier to find. Additionally, specific content will be reviewed for relevance and clarity.

DATE: Beginning Monday, September 17, 1984, at 11 a.m., continuing daily, except Saturdays, Sundays, and holidays, not to exceed two weeks.

ADDRESS: The meeting will be held at the Federal Aviation Administration, conference room 7A/B, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: National Airspace Review Program Management Staff, room 1005, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, 426–3560.

Attendance is open to the interested public, but limited to the space available. To insure consideration, persons desiring to make statements at the meeting should submit them in writing to the Executive Director, National Airspace Review Advisory Committee, Associate Administrator for Air Traffic, AAT–1, 800 Independence Avenue, SW., Washington, D.C. 20591, by August 27. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, D.C., on August 20, 1984.

Karl D. Trautmann,

Manager, Special Projects Staff, Ofice of the Associate Administrator for Air Traffic.

[FR Doc. 84–22484 Filed 8–23–84; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 156—Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 156 on Potential Interference to Aircraft Electronic Equipment From Devices Carried Aboard to be held on September 18–19, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Third Meeting Held on June 12–13, 1984; (3) Review Data and Recommendations Concerning Radio Frequency Radiation from Computing and other Electronic Devices Submitted as a Result of Task Assignments from Previous Meeting; (4) Discuss Possible Affects of High Radio Frequency (HF) Aircraft Transmissions to Passenger Operated Devices; (5) Discuss Potential Affect of Passenger Operated Devices on Airborne OMEGA Navigation Equipment; (6) Discuss Possible Approaches to Solving the Problem of Interferrence from Passenger Operated Devices; and (7) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square. 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on August 17, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84–22486 Filed 8–23–84; 8:45 am]

BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on September 14, 1984, at Aeronautical Radio Incorporated, Administration Building, Conference Room 1–300, 2551 Riva Road, Annapolis, Maryland commencing at 10:00 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on July 20, 1984; (2) Chairman's Report on RTCA Administration and Activities; (3) Special Committee Activities Report for July and August, 1984; (4) Consideration of Establishing New Special Committees; (5) Review Report of the RTCA Future Planning Group; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005, (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on August 17, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 22485 Filed 8–23–84; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[BS–Ap–No. 2294]

Illinois Central Gulf Railroad Co. and Missouri Pacific Railroad Co.; Public Hearing

The Illinois Central Gulf Railroad Company and the Missouri Pacific Railroad Company have petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance of the manually controlled interlocking and the installation of an electrically locked gate, in lieu thereof, at the crossing-at-grade where one track of the Illinois Central Gulf Railroad Company crosses one track of the Missouri Pacific Railroad Company at Monroe, Louisiana. This proceeding is identified as FRA Block Signal Application Number 2294.

After examining the carriers' proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on October 16, 1984, in Room 204, Post Office Building, located at 501 Sterlington Road, Monroe, Louisiana.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C., on August 17, 1984.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 84-22492 Filed 8-23-84; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP84-5; Notice 2]

General Motors Corp.; Grant of Petition for Determination of Inconsequentiality

This notice grants the petition by General Motors Corp. of Warren, Michigan ("GM" herein), to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims for Passenger Cars*, on the basis that it is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on April 12, 1984, and an opportunity afforded for comment (49 FR 14624).

Approximately 4,406 1984 model Chevrolet Monte Carlo passenger cars equipped with bucket seats carry tire inflation placards (required by Standard No. 110) with an incorrect seating capacity and vehicle capacity weight. The placards indicate that the front seating capacity is three persons when the correct capacity is two, that the occupant capacity is six when actually it is five. The total vehicle capacity weight "corresponds to the incorrect front occupant listings." The converse situation obtains with respect to 3,876 1984 model Pontiac 6000 passenger cars. These vehicles have bench seats in the front with a capacity of three persons but their placards give occupant capacity as two.

GM argued that the noncompliances are inconsequential because both cars "are designed with load carrying capacity sufficient to accommodate either bench seats which can carry three front occupants or optional seating configurations accommodating two front occupants." The configuration of the front seats in each vehicle makes its capacity obvious to the observer, and the incorrect information will not result in overloading of either the Chevrolet or the Pontiac.

No comments were received on the petition.

Where the placard indicates a seating capacity of three when there are only two positions, the console area is unsuitable as a passenger seat and not likely to be used as such. The addition of another passenger, in any event, is unlikely to cause the vehicle capacity weight or tire loading to be exceeded. When a seating capacity of two is indicated, but the seat accommodates three people, the designated vehicle capacity limits will not be exceeded by the additional passenger.

Accordingly, petitioner has met its burden that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 21, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22580 Filed 8-23-84; 8:45 am]

BILLING CODE 4910-99-M

[Docket No. IP84-11; Notice 1]

Western Star Trucks Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Western Star Trucks Inc. of Kelowna, British Columbia, Canada, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.206, Motor Vehicle Safety Standard No. 206, *Door Latches and Door Hinge Systems*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph section 4.1.1.3 of Standard No. 206, *Inertia Load*, requires that: "The door latch shall not disengage from the fully latched position when a longitudinal or transverse inertia load of 30g is applied to the door latch system (including the latch and its actuating mechanism with the locking mechanism disengaged)." Pursuant to paragraph section 5.1.1.2 inertia load compliance "shall be demonstrated by approved tests or in accordance with paragraph 5 of SAE Recommended Practice J839b, May 1965." According to the petitioner, "a design change to the interior control handle resulted in a component exceeding the specifications necessary to insure conformance."

Western Star believes that its system meets all requirements ". . . except the rear impact as determined by J893b calculations. The suspect systems calculate to 32.3% less than the standard's requirements. Without frictional forces the system shows mathematical compliance at a 20.2g rearward loading. Western Star believes the system's capability exceeds 20.2g but was unsuccessful in obtaining test criteria and test facilities." The noncompliance exists in 2679 trucks manufactured between June 15, 1979, and October 1, 1982, with Gross Vehicle Weight Ratings in excess of 33,000 pounds.

Petitioner believes that the 30g inertial load appears realistic and achievable for passenger cars, but that if its trucks, in unladen condition at 18,000 pounds, are subject to the same force as a 3000 pound car at 30g, the truck will only experience 5g. Expressed differently, 30g load on an unladen truck is the equivalent of a 180g load on a 3000 pound passenger car. With respect to the 20.2g load that its system appears to withstand, Western Star states that this is the equivalent of a force of 363,000 pounds or, alternatively, the load that a passenger car would withstand at 121.2g. In petitioner's view, this shows that the forces necessary to theoretically unlatch the mechanism are unrealistically high.

Finally, petitioner argues that the system does not degrade in use and that most of the nonconforming trucks have been operated between 150,000 and 600,000 miles, a fleet total of over a billion miles without deaths, injuries, accidental door openings, or complaints.

Interested persons are invited to submit written data, views and arguments on the petition of Western Star described above. Comments should refer to the docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 24, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 20, 1984.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 84-22578 Filed 8-23-84; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 17, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department Clearance Officer, by calling (202) 535-6020. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Revenue Service

OMB Number: 1545-0443
Form Number: IRS 6331
Type of Review: Revision
Title: Volunteer Assistor's Instructor Guide

OMB Number: 1545-0601
Form Number: IRS Form 6745 (English) and 6743 (Spanish)
Type of Review: Revision
Title: Volunteer Assistor's Retest

OMB Number: 1545-0200
Form Number: IRS Form 5305, Short Form
Type of Review: Extension
Title: Application for Determination for Employee Benefit Plan

OMB Reviewer: Norman Frumkin (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joseph Maty,

Departmental Reports, Management Office.

[FR Doc. 84-22504 Filed 8-23-84; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES SYNTHETIC FUELS CORPORATION

Procedures for the Retrofit Projects Solicitation Pending the Appointment of a Board of Directors Quorum

AGENCY: Unites States Synthetic Fuels Corporation.

ACTION: Notice of Procedures for the Retrofit Projects Solicitation Pending the Appointment of a Board of Directors Quorum.

SUMMARY: The U.S. Synthetic Fuels Corporation's Solicitation for Coal or Lignite Gasifiction or Liquefaction Retrofit Projects provides that the Corporation shall designate by August 23, 1984 those projects which demonstrate to the satisfaction of its Board of Directors that they meet the Qualification Creiteria of the Solicitation ("Qualified Projects"). Since April 27, 1984, the Corporation has lacked the quorum of four Directors required under section 116(e) of the Energy Security Act (Pub. L. 96-294) to take action.

Under these circumstances, pending a quorum of the Board of Directors the Corporation staff will notify project sponsors of the staff's evaluation of each project's qualifications and the proposed staff recommendations to the Board once a quorum is restored. These recommendations will be based on the staff's evaluation of the proposal submitted on June 21, 1984 and subsequent clarifications requested by the staff. The recommendations will be made as of August 23, 1984 or as soon thereafter as all initial evaluations are complete and *not* as of the date of future Board meetings. To provide all projects with an overview of likely competition within the solicitation, the Corporation will announce which projects the staff intends to recommend to the Board as qualified and which as not qualified. Each project will be informed of the substance of the staff's findings and recommendations regarding that project.

Pending the availability of sufficient Directors as to allow the Board to take action, the Corporation's staff will also undertake to meet with all project sponsors who wish to initiate negotiation activities and who have the capability to undertake substantive discussions. The opportunity to participate in such negotiations will be available to all project sponsors regardless of staff recommendation. Because staff recommendtions are not binding on the Board, projects wishing to enter into negotiations and continue development do so at their own risk.

EFFECTIVE DATE: Auguat 23, 1984.

FOR FURTHER INFORMATION CONTACT: Ralph L. Bayrer, Vice President-Projects, U.S. Synthetic Fuels Corporation, 2121 K Street, NW., Washington, D.C. 20586, (202) 822-6436.

United States Synthetic Fuels Corporation.

Robert W. Gambino,

Group Vice President-Corporate.

[FR Doc. 84-22422 Filed 8-23-84; 8:45 am]

BILLING CODE 0000-00-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on September 26, 1984, at 1:00 p.m., the Veterans Administration Regional Office Station Committee on Educational Allowances shall at Estes Kefauver Federal Building—U.S. Courthouse, Room A-220, 110 Ninth Avenue, South, Nashville, Tennessee, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in Control Data Institute, 2640 Union Avenue, Extended, Suite 1120, Memphis, Tennessee 38112, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: August 15, 1984.

R. S. Bielak,

Director, VA Regional Office.

[FR Doc. 84-22528 Filed 8-23-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 166
Friday, August 24, 1984

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

	Item
Federal Reserve System	1

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 29, 1984.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., 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. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22576 Filed 8-21-84; 4:23 pm]
BILLING CODE 6210-01-M

federal register

Friday
August 24, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notices

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA83-5119	Sept. 16, 1983.
Connecticut: CT84-3016	June 8, 1984.
Florida: FL83-1084	Oct. 28, 1983.
Georgia: GA84-3032	Aug. 10, 1984.
Hawaii: HI84-5019	July 20, 1984.
Louisiana:	
LA84-4008	Feb. 17, 1984.
LA84-4010	Mar. 9, 1984.
LA84-4024	Apr. 20, 1984.
Michigan: MI83-2008	Feb. 11, 1983.
Nevada:	
NV84-5012	May 18, 1984.
NV84-5014	June 8, 1984.
NV83-5121	Sept. 23, 1983.
Pennsylvania:	
PA81-3091	Dec. 28, 1981.
PA82-3010	Mar. 5, 1982.
PA82-3027	Oct. 8, 1982.
PA83-3051	Nov. 25, 1983.
PA83-3053	Do.
PA84-3015	June 1, 1984.
Tennessee:	
TN83-1086	Nov. 25, 1983.
TN83-1087	Do.
Wisconsin: WI84-5016	June 22, 1984.
West Virginia: WV83-3022	Nov. 18, 1983.
Maryland: MD83-3010	June 3, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Kansas:	
KS83-4064 (KS84-4052)	Sept. 2, 1983.
KS83-4063 (KS84-4051)	Sept. 2, 1983.
KS83-4065 (KS84-4053)	Sept. 2, 1983.
Ohio: OH82-4040 (OH84-5024)	Sept. 24, 1982.
Wisconsin: WI83-2083 (WI84-5025)	Oct. 14, 1983.

Signed at Washington, D.C. this 17th day of August, 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CA83-5119-MOD #4
(48 FR 41702-September 16, 1983)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits
Change:		
Ironworkers:		
Frence Erectors	17.16	8.78
Reinforcing; Ornamental; Structural	18.05	8.78
POWER EQUIPMENT OPERATORS:		
Group 1	17.25	7.25
Group 2	17.53	7.25
Group 3	17.82	7.25
Group 4	17.96	7.25
Group 5	18.18	7.25
Group 6	18.29	7.25
Group 7	18.41	7.25
Group 8	18.58	7.25
Group 9	18.71	7.25
DREDGING (HYDRAULIC SUCTION DREDGES) & Clamshell Dredges Change Fringe Benefits to read $7.25		
Omit:		
Boilermakers	21.39	3.96
Add:		
Boilermakers:		
Boilermakers	21.60	4.25
Boilermaker-Blacksmith (storage tank erection)	17.25	4.00
Boilermaker-Blacksmith (storage tank repair)	16.05	4.00
Drywall Stocker, Scrapper & Cleanup man	9.57	1.37

DECISION NO. CT84-3016 - MOD. #16
(49 FR 23980 - June 8, 1984)
Statewide, Connecticut

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PAINTERS		
Area 4 & 5		
Painters, Brush, Roller and Tapers	16.55	2.73
Paperhangers	17.05	2.73
Riggers	17.60	2.73
Tanks, Towers, Swing Stage, Boatswain Chair, Riding Steel and Hazardous work of a similar nature	18.60	2.73
Sandblasters & Spraymen	20.60	2.73

DECISION NO. FL83-1084- MOD. #3
(48 FR 49999-October 28, 1983)
Cape Canaveral AFS, Patrick AFB, Kennedy Space Flight Center, & Melabar Radar Site in Brevard & Volusia Counties in Florida
BUILDING, HEAVY & HIGHWAY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Wireman	$14.40	4%+1.84
Cable Splicers	14.65	4%+1.84
LINE CONSTRUCTION:		
1. Line & Class A Opers. (hole boring machines, cranes, tracked equipment, fifth wheel tractors, tension, & wire pulling machines, mobile cranes & backhoe)	13.57	4%+1.00
2. Cable Splicers	13.82	4%+1.00

DECISION NO. GA84-3032
MOD. # 1
(49 FR 32165 August 10, 1984)
Dekalb, Fulton, Cherokee, Clayton, Cobb and Gwinnett Counties, Georgia

CHANGE:

Superseded Decision Number GA81-1305 to read GA81-1308

DECISION NUMBER HI84-5019 - MOD. #1
(49 FR 29518 - July 20, 1984)
Statewide, Hawaii

	Basic Hourly Rates	Fringe Benefits
Omit:		
Fence Erectors:		
Chain Link	$5.39	$.65

DECISION NO. LA84-4008 - MOD. #4
(49 FR 6205 - 2/17/84)
Calcasieu Par., Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Painters	$11.70	.60

DECISION NO. LA84-4010 - MOD. #10
(49 FR 9064 - 3/9/84)
Statewide Louisiana

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Painters:		
Zone 1:		
Work on apartments over 4 stories	11.70	.60
All other work	14.00	.60

DECISION NO. LA84-4024 - MOD. #2
(49 FR 16928 - 4/20/84)
Jefferson, Orleans, St. Bernard, Bossier, Caddo, Calcasieu, Cameron, Beauregard, Jefferson Davis, Allen, Plaquemines & St. Charles Pars., Louisiana

OMIT ALL CLASSIFICATIONS & WAGE RATES FOR PAINTERS ZONES 3, 4 & 5 and Allen Par. (except northeast corner)

	Basic Hourly Rates	Fringe Benefits
ADD:		
Painters:		
Zones 3, 4 & 5 & Allen Par. (except northeast corner):		
Painters	14.00	.60
Bridges	16.00	.60

DECISION NO. MD83-3010-MOD. # 5 (48 FR 25100-June 3,1983) ANNE ARUNDREL (EXCLUDING THE D.C. TRAINING SCHOOL) BALTIMORE & BALTIMORE CITY MARYLAND, & FOR HEAVY CONSTRUCTION IN HARFORD & HOWARD COUNTIES, MARYLAND	Basic Hourly Rates	Fringe Benefits
CHANGE:		
STEAMFITTERS	$16.53	4.21
LABORERS (HEAVY CONSTRUCTION)		
LABORERS	8.20	1.225
POWER TOOL OPERATORS,FORM SETTER TENDER	8.30	1.225
JACKHAMMER OPERATOR,80 POUNDS & OVER	8.46	1.225
FORM SETTER	8.51	1.225
PIPELAYERS,WAGON DRILL OPRS AIR TRACK DRILLERS,BURNERS (DEMOLITION) CONCRETE		
SURFACE TENDER	8.72	1.225
CONCRETE SURFACER	9.53	1.225
POWER EQUIPMENT OPERATORS:		
GROUP 1	15.50	3.15+e
GROUP 2	13.92	3.15+e
GROUP 3	13.19	3.15+e
GROUP 4	12.50	3.15+e
GROUP 5	11.10	3.15+e
POWER EQUIPMENT OPERATORS (PAVING, SITE CLEARANCE & UTILITIES):		
GROUP 1	12.80	3.15
GROUP 2	12.15	3.15
GROUP 3	11.40	3.15
GROUP 4	10.02	3.15
PAID HOLIDAYS:		
A-New Year's Day;B-Memorial Day;C-Independence Day;D-Labor Day;E-Thanksgiving Day;F-Christmas Day;G-Christmas Eve;H-Good Friday		
Footnotes:		
e-Holidays: A thru F		

DECISION NO. MI83-2008 MOD#7 (48 FR 6456-February 11, 1983) Alger, Baraga, Chippewa, etc., Counties, Michigan	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters, Millwrights, Piledrivermen & Soft Floor Layers:		
Remainder of Counties:		
Carpenters & Soft Floor Layers	14.29	2.12
Millwrights	16.19	2.12
Piledrivermen	13.99	2.12

DECISION NO.NV84-5012-MOD#1 (49 FR 21261-May 18, 1984) Nevada Test Site including Tonopah Test Range in Clark, Lincoln and Nye Counties, Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	$21.60	$4.25
Electricians:		
Electricians; Equipment Operators; Linemen	19.59	5.56+ 3%
Cable Splicers	19.92	5.56+ 3%
Groundman	15.672	5.56+ 3%
Painters:		
Brush; Roller	16.16	4.19
Paperhangers; Spray; Steel; Sandblasters; Swing Stage; Tapers	16.51	4.19
Buffing Steel; Sandblasters, Steel	16.76	4.19
Plumbers	22.20	4.48
Sheet Metal Workers	20.91	3.96

DECISION NO. NV84-5014 MOD#2 (49 FR 23988-June 8, 1984) Statewide (does not include the Nevada Test Site and Tonopah Test Range, and Highway construction in Douglas County), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	21.60	4.25
Bricklayers; Stonemasons:		
Area 2	15.30	2.06
Ironworkers:		
Area 2:		
Fence Erector	17.16	8.78
Ornamental; Reinforcing; Structural	18.05	8.78
Plaster Hod Carriers:		
Area 1:		
Plaster Hod Carrier serving Plasterers	15.21	2.65
Plaster Hod Carrier working on any type of gun except TM-30	15.81	2.65
Plaster Hod Carrier mixing on TM-30 machine	16.06	2.65
POWER EQUIPMENT OPERATORS (Except Piledriving and Steel Erection):		
Change Fringe Benefits only to $11.03.		
POWER EQUIPMENT OPERATORS:		
Piledriving:		
Group 1	15.03	11.03
Group 1A	15.55	11.03
Group 1B	15.85	11.03
Group 2A	15.85	11.03
Group 2B	16.67	11.03
Group 2C	16.99	11.03
Group 2D	17.22	11.03
Group 3	17.44	11.03
Group 3A	18.10	11.03
Group 4	18.92	11.03
Group 5	19.19	11.03
Group 6	20.90	11.03
POWER EQUIPMENT OPERATORS:		
Steel Erection:		
Group 1	15.74	11.03
Group 2	16.30	11.03
Group 3	17.86	11.03
Group 4	18.06	11.03
Group 4A	18.54	11.03
Group 5	19.30	11.03
Group 6	19.94	11.03
Group 7	20.40	11.03
Group 8	20.84	11.03
Group 9	22.42	11.03
Sheet Metal Workers:		
Area 1	20.45	6.16

DECISION NO. NV84-5014 (CONT'D):	Basic Hourly Rates	Fringe Benefits
Change the wording in Mod#1 published August 10, 1984, to read: "Agencies with construction projects pending to which building construction for Churchill, Lyon and Mineral Counties would have been applicable should utilize the project determination procedure by submitting a SF-308. Heavy and Highway construction will remain as previously published in the Federal Register."		

DECISION NO. NV83-5121-MOD #5 (48 FR 43532-September 23, 1983) Clark County (does not include the Nevada Test Site), Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Boilermakers	21.60	4.25
Ironworkers:		
Fence Erectors	17.16	8.78
Ornamental; Reinforcing; Structural	18.05	8.78
POWER EQUIPMENT OPERATORS: (Except Piledriving and Steel Erection):		
Group 1	17.25	7.35
Group 2	17.53	7.35
Group 3	17.82	7.35
Group 4	17.96	7.35
Group 5	18.18	7.35
Group 6	18.29	7.35
Group 7	18.41	7.35
Group 8	18.58	7.35
Group 9	18.71	7.35
Sheet Metal Workers	20.45	6.16

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA81-3091 - MOD. #11		
(46 FR 62761 - December 28 1981)		
Greene, Somerset & Potter Counties, Pennsylvania		
CHANGE:		
BRICKLAYERS & STONEMASONS		
Somerset County	14.00	3.42
DECISION NO. PA82-3010 - MOD. #14		
(47 FR 9684 - March 5, 1982)		
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania		
CHANGE:		
BRICKLAYERS & STONEMASONS		
Fulton & Huntingdon Cos.	14.00	3.42
ELECTRICIANS:		
Mifflin County	15.41	1.83+3 1/4%
SHEET METAL WORKERS:		
Centre, Huntingdon, Fulton & Mifflin Cos.	15.73	4.92
DECISION NO. PA82-3027 - MOD. #11		
(47 FR 44670 - October 8, 1982)		
Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford & Venango Counties, Pennsylvania		
CHANGE:		
BRICKLAYERS & STONEMASONS		
Zone 1	14.00	3.42
Zone 5	14.00	3.42
MARBLE SETTERS		
Zone 1	14.00	3.42
SHEET METAL WORKER		
Zone 2	15.73	4.92

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA83-3051 - MOD. #4		
(48 FR 53264 - November 25, 1983)		
Franklin County, Pennsylvania		
CHANGE:		
ELECTRICIANS	15.41	1.83+3 1/4%
PAINTERS:		
Brush		
Metal, Letterkenny, Hamilton, Green, South Hampton, Lurgan, Fanett, Shipensburg, Tounships and Boroughs, Washington, Antrin, Hamilton, Guilford, Montgomery, Warren, Peters, St. Thomas and Quincy, Chambersburg, Twps	11.97	1.30
SHEETMETAL WORKERS	15.73	4.92
DECISION NO. PA83-3053 - MOD #2.		
(48 FR 53268 - November 25, 1983)		
Blair County, Pennsylvania		
CHANGE:		
BRICKLAYERS	14.00	3.42
SHEET METAL WORKERS	15.73	4.92
STONEMASONS	14.00	3.42
TERRAZZO WORKERS	14.00	3.42
TILE SETTERS	14.00	3.42
DECISION NO. PA84-3015 - MOD. # 3		
(49 FR 22976 - June 1, 1984)		
Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania		
CHANGE:		
MILLWRIGHTS	16.57	2.55
PAINTERS		
Brush	11.97	1.30
Structural Steel	12.42	1.30
Spray	12.72	1.30
Tanks, Bridges, Stacks	13.22	1.30

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TN83-1086		
Mod # 5		
(48 FR 53269 - November 25, 1983)		
Anderson, Knox, Monroe & Roane Counties, Tennessee		
ADD:		
TRUCK DRIVERS:		
Trucks up to 3 tons, and including 4 yd, dump trucks, struck measure and pickup trucks	$8.37	.90 + b
Trucks 3 to 5 tons and including 5 yd. dump trucks, struck measure	8.79	.90 + b
Trucks 5 tons and over including dump trucks over 6 yds., struck measure, special equipment as Ready-Mix concrete trucks, tank trucks, floats, low-boys, winch trucks, semi-trailers, any type trucks pulling or towing equipment	9.15	.90 + b
Greaser, tire repairman, tire changer, oiler	8.49	.90 + b
FOOTNOTE:		
b - $41.00 per week, per employee.		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. TN83-1087		
Mod # 5		
(48 FR 53270 - November 25, 1983)		
Hamilton, Marion, Polk & Rhea Counties, Tennessee		
CHANGE:		
CARPENTERS, CARPET LAYERS & FLOOR LAYERS	$12.00	1.63
MILLWRIGHTS	12.40	1.63
PILEDRIVERMEN	12.125	1.63
PLUMBERS & PIPEFITTERS:		
New Construction	14.10	1.90
Maintenance (includes repair, remodeling & renovation work)	12.00	1.90
DECISION NO. WI84-5016-MOD #2 (49 FR-25829-June 22, 1984) Statewide, Wisconsin		
Change:		
Carpenters: Piledrivermen		
Zone 5		
Carpenters	$14.71	2.36
Piledrivermen	14.80	2.36
Zone 10		
Carpenters	15.11	1.96
Piledrivermen	15.20	1.96
DECISION NO. WV83-3022 - MOD. #11		
(48 FR 52547 - November 18, 1983)		
Statewide West Virginia excluding the counties of Berkley, Jefferson, and Morgan.		
CHANGE:		
ELECTRICIANS:		
Hardy & Pendleton Cos.:	13.95	3%+.50

SUPERSEDEAS DECISION

DECISION NO.: KS84-4052 PAGE 2

STATE: Kansas
DECISION NO: KS84-4052

COUNTY: Sedgwick
DATE: Date of Publication

Supersedes Decision No. KS83-4064, dated September 2, 1983, in FR 40087.
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.28	$2.10
BOILERMAKERS	16.125	3.10
BRICKLAYERS; STONEMASONS	13.00	1.78
CARPENTERS:		
Carpenters	11.00	1.08
Millwrights and Piledrivermen	11.30	1.08
CEMENT MASONS	11.10	
ELECTRICIANS	15.00	4% + 1.85
Cable Splicers	15.25	4% + 1.85
ELEVATOR CONSTRUCTORS	14.11	a+2.69
ELEVATOR CONSTRUCTOR HELPERS	9.88	a+2.69
GLAZIERS	12.90	4.53
IRONWORKERS	14.29	2.14
LABORERS (Building Construction):		
Group 1: General Laborers	7.60	1.55
Group 2: Concrete breakers, Mason Tenders, Plaster tenders, Mortar Mixers for plasterers, masons and cement finishers, All Stocking Scaffold, Clean up for Masons (Building and Wrecking), Sand and Concrete Gun Nozzleman, Powderman	7.80	1.55
LABORERS (Site Preparation and Grading):		
Group 1	6.05	2.30
Group 2	6.20	2.30
Group 3	6.30	2.30
Group 4	6.45	2.30

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Lineman	$ 16.45	$3⅛% + 1.00
Cable Splicers	17.27	3⅛% + 1.00
Groundman	9.96	3⅛% + 1.00
Powderman	13.59	3⅛% + 1.00
Line Truck & Equipment Operators	13.59	3⅛% + 1.00
PAINTERS:		
Brush	12.14	.70
Spray	12.84	.70
PLASTERERS	11.00	
PLUMBERS, PIPEFITTERS	15.30	2.48
POWER EQUIPMENT OPERATORS (Building Construction):		
Cranes with lifting ring	14.55	3.57
Cranes with shovels-100 ft. of boom or over including jib or 30 tons or over or 2 yard capacity, 3 drum hoist	13.80	3.57
Cranes & shovels - 200 ft. & over four (4) drum hoist, frankie-type pile driving machines, & tower cranes & derricks	14.05	3.57
Group 1	13.55	3.57
Group 2	13.15	3.57
Group 3:		
Class A	11.50	3.57
Class B	11.75	3.57
Group 4:		
Class A	10.95	3.57
Class B	11.20	3.57

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Site Preparation & Grading)		
GROUP 1	$12.87	2.70
GROUP 2	12.62	2.70
GROUP 3	12.37	2.70
GROUP 4	12.02	2.70
GROUP 4A	12.12	2.70
ROOFERS	11.35	1.27
KETTLEMEN	11.50	1.27
SHEET METAL WORKERS	14.51	3%+ 2.66
SPRINKLER FITTERS	16.47	3.23
TILE, MARBLE & TERRAZZO SETTERS	13.40	
TRUCK DRIVERS (BUILDING CONSTRUCTION):		
Group 1 - Pickups, station wagons, flat beds 12,000 & under GVW license capacity	8.90	.85
Group 2 - Flat beds - 16,000 GVW license capacity	8.975	.85
Group 3 - Flat beds - 20,000 over GVW license capacity, dump, batch & water truck, single axle	9.05	.85
Group 4 - Lowboys, semitrailers dumpstors, A-frame tandems winch truck when used as such & transit mix	9.15	.85
TRUCK DRIVERS (SITE PREPARATION & GRADING):		
Group 1	9.40	1.20
Group 2	9.50	1.20
Group 3	9.65	1.20

	Basic Hourly Rates	Fringe Benefits

CLASSIFICATION DEFINITIONS - LABORERS (SITE PREPARATION & GRADING)

Group 1 - Board mat weavers & cable tiers, georgia buggy (manually operated) mixerman-no skip, lift, salamander tenders, track men, tractor swamper, truck dumper, wire mesh setter, water pump up to 4 inches, & all other general laborers.
Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically operated), grade man, hot mastic kettlemen, crusher feeder, joint man, jute man, mason tenders, material batch hopper & scale man, mixer man, pier hole man working 10 ft. deep, pipelayer-drainage (concrete and/or corrugated metal), signal man (crane), truck dumper-dry batch, vibrator operator, wagon and churn drill operator.
Group 3 - Asphalt raker, barco tamper, concrete saw, creosote material--handling & applying, nozzle burner (cutting torch and burning bar).
Group 4 - Conduit pipe, tile & duct line setter, form setter & liner on concrete paving, powderman, sand-blasting & gunnite nozzleman, sanitary sewer layer, steel plate structure erectors, water and gas distribution lines.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)
Group 1 - Boiler (2), boom cat, boring machine, ditching machine, concrete ready mix plant, crane, truck crane, clamshell dragline, dozer, scraper, all types, patrol, firemen (when operating steam or air valve), gradall, hi-loaders (over 1 yard), hoist two drum, mechanic or welder, mixermobile, paver, or any other machine with power swing, piledriver operator, power shovel, pump, concerte or other material, locomotive.
Group 2 -A-frame truck, bob cat/hi-loaders (1 yard or under), barber-greene loader or similar type, boiler (1), ditching machine - small, elevator operator, fireman, forklift, hoist, one active drum, hydra hammer jeep ditcher, mixer, other than paver, power broom, pump 4" or larger, small machine engineer, welding machine (1), greaser equipment.
Group 3:
CLASS A - Farm tractor (without attachments).
CLASS B - Farm tractor (with attachments).
Group 4:
CLASS A - Oiler
CLASS B - Motor crane oiler.

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (SITE PREPARATION & GRADING)

Group 1 - Asphalt paver and spreader; backhoe, boring machine; blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader; all types; mechanic or welder; mixer-mobile; multi-unit scrapper; pile driver operator; power shovel operator scoop operator, all types; side boom-cherry picker; skimmer scoop operator; pushcat operator; quad track.
Group 2 - Asphalt plant operator; elevating grader operator.
Group 3 - A-frame truck, asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber-greene loader; boiler other than asphalt bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator, distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist-1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredege; screening and gas plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphons and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operator; vibrator machine operator, not hand.
Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; harrow, disc, seeder; oiler; tractor operator, 50 h.p. or less without attachments.
Group 4A - Oiler, motor crane
TRUCK DRIVER (SITE PREPARATION & GRADING)
Group 1 - Pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)
Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen.
Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tournarockers; atheys; dumptors and similar off-road equipment and mechanics on such equipment.

Unlsited classifications needed for work not included within the scope of the classifications listed my be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii).

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Shawnee
DECISION NO: KS84-4051 DATE: Date of Publication
Supersedes Decision No. KS83-4063, dated September 2, 1983 in 48 FR 40085
DESCRIPTION OF WORK: Building Construction Projects (including Residential)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.29	$4.26
BOILERMAKERS	16.125	3.10
BRICKLAYERS, STONEMASONS	14.14	1.25
CARPENTERS (Building)		
Carpenters, Lathers	12.45	1.80
Millwrights	13.45	1.80
Piledrivermen	12.825	1.80
Carpenters - Residential	8.715	1.80
CEMENT MASONS	12.60	1.05
ELECTRICIANS (Building)		
Electricians	15.55	3%+2.13
Cable Splicers	17.11	3%+2.13
Electricians - Residential	11.55	3%+1.35
GLAZIERS (Building)	12.83	5.54
IRONWORKERS	16.25	4.25
LABORERS (Building and Residential):		
Group 1		
General Laborers	9.30	2.30
Group 2		
Power tool Operators, Compactors, Concrete Breakers, Chipping Tools, Drilling Tools, Concrete Saws, Mechanically operated Georgia Buggy	9.50	2.30
Group 3		
Mason Tenders, Plaster Tenders, Mortar Mixers for Masons & Cement Finishers, All Stocking Scaffold, Clean up for Masons (Building and Wrecking	9.60	2.30
Group 4		
Sand and Concrete Gun Nozzleman & Powderman	9.70	2.30
LABORERS (Site Preparation & Grading: (Building & Residential):		
Group 1	8.45	2.30
Group 2	8.60	2.30
Group 3	8.70	2.30
Group 4	8.85	2.30
LATHERS (Building)	12.45	1.80
LINE CONSTRUCTION:		
Lineman	$16.45	$3½% + 1.00
Cable Splicers	17.27	3½% + 1.00
Groundman	9.96	3½% + 1.00
Powderman	13.59	3½% + 1.00
Line Truck & Equipment Operators	13.59	3½% + 1.00
PAINTERS (Building):		
Brush, drywall, tapers	13.60	1.25
Spray, Sandblast	14.10	1.25
PAINTERS (Residential):	10.50	1.25
PLASTERERS	15.70	.01
PLUMBERS; PIPEFITTERS	15.83	2.34
ROOFERS:		
Roofers	14.66	b+1.29
Pitch	15.76	b+1.29
SHEET METAL WORKERS	14.68	3%+3.03
SOFT FLOOR LAYERS	11.00	10% + 1.76
SPRINKLER FITTERS	16.47	3.23
TILE, TERRAZZO, & MARBLE SETTERS	15.00	
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION:		
Cranes with lifting ring	14.75	3.77
Cranes and Shovels 100 ft. of boom or over including jib or 30 tons or over 2 yd. capacity, 3 drum hoist	14.00	3.77
Cranes & Shovels booms 200 ft. & over, four (4) drum hoist, Frankie-Type Pile Driving Machines, & Tower Cranes & Derrick	14.25	3.77
Group 1	13.75	3.77
Group 2	13.35	3.77
Group 3:		
Class A	11.55	3.77
Class B	11.80	3.77
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION (Cont'd):		
Group IV:		
Class A	$11.00	3.77
Class B	11.25	3.77
POWER EQUIPMENT OPERATORS Site Preparation & Grading (Building & Residential Construction		
Group 1	12.87	2.70
Group 2	12.62	2.70
Group 3	12.37	2.70
Group 4	12.02	2.70
Group 4A	12.12	2.70
TRUCK DRIVERS - BUILDING & RESIDENTIAL CONSTRUCTION:		
TRUCK DRIVERS:		
Class 1 - Light Station Wagons, Pickups	11.32	1.20
TRUCK DRIVERS:		
Class 2 - Medium Flatbeds and Dump Five ton or less, Warehousemen & Partsmen	11.42	1.20
TRUCK DRIVERS:		
Class 3 - Heavy, Over 5 ton, Semi-Trailers, Fork Lifts, Industrial Tractors as used in Teamsters jurisdiction, Straddle Trucks, A-frame & Winch Trucks when used as such	11.67	1.20
Class 4		
Mechanics & Dispatchers	11.82	1.20
TRUCK DRIVERS (Site Preparation & Grading) Building & Residential Construction:		
Group 1	9.40	1.20
Group 2	9.50	1.20
Group 3	9.65	1.20

CLASSIFICATION DEFINITIONS

LABORERS (Site Preparation & Grading) Building & Residential:
Group 1 - Board mat weavers and cable tiers; Georgia Buggy (manually operated); mixerman - no skip; lift; nailers, salamander tenders; track men; tractor swamper; truck dumper, wire mesh setter, water pump up to 4 inches; all other general laborer
Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically, operated); grade man, hot mastic kettlemen, crusher feeder, joint man, jute man; mason tenders; material batch hopper and scale man, mixer man; pier hole man working 10 ft. deep; pipelayer-drainage (concrete and/or corrugated metal); signal man (crane); truck dumper-dry batch; vibrator operator; wagon and churn drill operator
Group 3 - Asphalt raker, barco tamper; concrete saw; creosote material-handling and applying; nozzle burner (cutting torch and burning bar)
Group 4 - Conduit pipe; tile and duct line setter; form setter and liner on concrete paving; powderman; sandblasting and gunite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution
POWER EQUIPMENT OPERATORS - Building Construction:
Group 1 - Boiler (2), boom cat, boring machine, ditching machine, concrete ready-mix plant, crane, truck crane, clam-shell dragline, dozer scrapper, all types, patrol, fireman (when operating steam or air valve), gradall, hi-loaders (over one yard), hoist, two drum, mechanic or welder, mixer-mobile, paver, or any other machine with power swing, piledriver operator, power shovel, pump, concrete or other material, locomotive
Group 2 - A-frame truck, bob cat/hi-loaders (1yard or under), barber-greene loader or similar type, boiler (1), ditching machine - small - elevator operator, fireman, forklift, hoist, or active drum, hydra hammer jeep ditcher, mixer, other than paver, power broom, pump 4" or larger, small machine engineer, welding machine (1), greaser equipment
Group 3 - Class A - Farm tractor (without attachments)
Class B - Farm tractor (with attachments)
Group 4 - Class A - Oiler
Class B - Motor crane oiler
POWER EQUIPMENT OPERATORS Site Preparation & Grading - Building & Residential Construction:
Group 1 - Asphalt paver and spreader, backhoe; boring machine, blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader, all types, mechanic or welder; mixer-mobile; track; scoop operator, all types; side boom cat-cherry picker; skimmer scoop operator; pushcat operator

POWER EQUIPMENT OPERATORS Site Preparation & Grading - Building & Residential Construction: (Cont'd)
Group 2 - Asphalt plant operator; elevating grader operator
Group 3 - A-frame truck; asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber greene loader; boiler other than asphalt; bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator; distributor operator; finish machine operator- concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist 1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredge; screening and wash plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphon and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operators; vibrating machine operator, not hand
Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc seeder; oiler; tractor operator, 50 h.p. or less without attachments
Group 4A - Oiler, motor crane
TRUCK DRIVERS (Site Preparation & Grading) Building & Residential Construction:
Group 1 - Pickups; panel trucks; station wagons; flat beds; dumps and batch trucks (single axle)
Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen
Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tournarockers; atheys; dumptors; and similar off-road equipment and mechanics on such equipment

FOOTNOTE :

b. After 6 months of employment $.26; after 5 years $.52

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Leavenworth
DECISION NO.: KS84-4053 DATE: Date of Publication

Supersedes Decision No. KS83-4065 dated September 2, 1983, in 48 FR 40089.
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.29	$4.26
BOILERMAKERS	16.125	3.10
BRICKLAYERS, STONEMASONS	15.94	2.60
CARPENTERS:		
Carpenters	16.05	2.67
Piledrivermen and Millwrights	16.05	2.67
CEMENT MASONS	15.775	1.95
ELECTRICIANS:		
Zone 1:		
Delaware, Kickapoo, High Prairie & Leavenworth Townships	16.18	10% + 2.51
Zone 2:		
Remainder of County	15.55	3% + 2.13
ELEVATOR CONSTRUCTORS	17.06	a + 4.00
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	a + 4.00
GLAZIERS	14.72	17.14% +2.44
IRONWORKERS	16.25	4.25
LATHERS	16.05	2.67
LINE CONSTRUCTION:		
Zone 1:		
Southwest 2/3 of Leavenworth County:		
Lineman	16.45	3⅛% + 1.00
Cable Splicers	17.27	3⅛% + 1.00
Groundman	9.96	3⅛% + 1.00
Powderman	13.59	3⅛% + 1.00
Line Truck and Equipment Operators	13.59	3⅛% + 1.00
LINE CONSTRUCTION (Cont'd)		
Zone 2:		
Remainder of Leavenworth County:		
Lineman	$18.28	$3⅛% + 1.06
Lineman Operators	17.02	3⅛% + 1.06
Groundman, Powderman	12.68	3⅛% + 1.06
Groundman	12.05	3⅛% + 1.06
MARBLE & TILE SETTERS	17.52	2.11
PAINTERS:		
Brush, Roller, & Tapers	16.49	1.55
Spray	17.49	1.55
PLASTERERS	17.60	
PIPEFITTERS	17.56	3.32
PLUMBERS	17.96	2.70
ROOFERS	16.48	2.91
SHEET METAL WORKERS	16.75	2.78
SOFT FLOOR LAYERS	12.44	1% + 3.34
SPRINKLER FITTERS	16.47	3.23
TERRAZZO WORKERS	15.31	10%
WELDERS: Receive rate prescribed for craft performing operation to which the welding is incidental.		

FOOTNOTE:
a-Employer contributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit. Also 7 paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day.

	Basic Hourly Rates	Fringe Benefits
LABORERS (Building Construction):		
General Laborers	$ 9.50	2.05
Power Tool Operators; Compactors; Concrete Breakers; Chipping Tools; Drilling Tools; Concrete Saws; Mechanically Operated Georgia Buggy	9.70	2.05
Mason Tenders; Plaster Tenders; Mortar Mixers for Plasterers, Masons & Cement Finishers; All Stocking Scaffold; Clean up for Masons (Building & Wrecking)	9.80	2.05
Sand and Concrete Gun Nozzlemen Powdermen	9.90	2.05
LABORERS (Site Preparation and Grading):		
Group 1	8.85	2.25
Group 2	9.00	2.25
Group 3	9.10	2.25
Group 4	9.25	2.25
POWER EQUIPMENT OPERATORS (Building Construction):		
Group 1	15.46	3.90
Group 2	15.11	3.90
Group 3		
a	12.71	3.90
b	13.21	3.90
c	13.21	3.90
d	13.46	3.90
Group 4	15.71	3.90
Group 5	15.36	3.90
Group 6	15.96	3.90
Group 7		
a	15.21	3.90
b	14.96	3.90
c	12.96	3.90
Group 8	16.46	3.90
Group 9	15.96	3.90
Site Preparation & Grading:		
Group 1	14.00	3.57
Group 2	13.75	3.57
Group 3	13.05	3.57
Group 4		
a	9.03	3.57
b	12.05	3.57
TRUCK DRIVERS:		
BUILDING CONSTRUCTION		
Group 1	$14.085	2.75
Group 2	14.135	2.75
Group 3	14.21	2.75
Group 4	14.335	2.75
Group 5	14.235	2.75
Group 6	14.435	2.75
Group 7	14.285	2.75
Group 8	14.185	2.75
Site Preparation & Grading:		
Group 1	12.76	3.75
Group 2	12.96	3.75
Group 3	13.27	3.75
Group 4	13.42	3.75
Group 5	12.54	3.75

DECISION NO. KS84-4053

LABORERS (Site Preparation & Grading). - Classifications:

Group 1: Board Mat Weavers and Cable Tiers; Georgia Buggy, Manually Operated; Mixermen - No Skip Lift; Salamander Tenders; Track Men; Tractor Swampers; Truck Dumpers; Wire Mesh Setters; Water Pump up to 4 inches; and all other General Laborers.
Group 2: Air Tool Operators; Cement Handlers (Bulk); Chain Saw; Georgia Buggy (Mechanically Operated); Grade Men; Hot Mastic Kettlemen; Crusher Feeders; Joint Men; Jute Men; Mason Tenders; Material Batch Hopper and Scale Men; Mixer Men; Pier Hole Men Working 10 ft. deep; Pipelayer - Drainage (Concrete and/or Corrugated Metal); Signal Men (Crane); Truck Dumper--Dry Batch; Vibrator Operator; Wagon & Churn Drill Operator.
Group 3: Asphalt Raker; Barco Tamper; Concrete Saw, Creosote Material--Handling and Applying; Nozzle Burner (Cutting Torch and Burning Bar).
Group 4: Conduit Pipe; Tile and Duct Line Setter; Form Setter and Liner on Concrete Paving; Powderman; Sand-blasting and Gunnite Nozzleman; Sanitary Sewer Pipe Layer; Steel Plate Structure Erectors; Water and Gas Distribution Lines.

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION

Group 1: Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derrick cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man
Group 2: Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine, form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; siphons, jets, and jennies, sub-grader; tractors over 50 h.p.; compressors (2) 125" ft. or over not more than 20' apart; compressors-tandem; compressors sigle, truck mounted; elevator; finishing machine

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION (Cont'd)

Group 3
(a) Oilers
(b) Fork lift masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

Group 4
Clamshells, 80 ft. of boom or over (incl. jib); crane or rigs, 80 ft. of boom or over (incl. jib); draglines, 80 ft. of boom or over (incl. jib); pile drivers, 80 ft., of boom or over (incl. jib)

Group 5
Hoists-each additional drum over 1 drum

Group 6
Crane or rigs, over 200 ft. of boom

Group 7
Ready Mixed Concrete Plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor Operator

Group 8
Master Mechanic

Group 9
Crane-tower or climbing

POWER EQUIPMENT OPERATORS - SITE PREPARATION & GRADING

Group 1 - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator - 2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoistline engine - 2 active drums; locomotive operator, standard gauge; mechanics and welders; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump - 2; push cat op.; quad-track; scoop operator - all types; scoops in tandem; self-propelled rotary drill (leroy or equal - not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slip - form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator - 2
Group 2 - A-frame truck, asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator;

POWER EQUIPMENT OPERATORS - SITE PREPARATION & GRADING (Cont'd)

Group 2 (Cont'd)

chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; chusher operator; elevating grader; greaser; hoisting engine - 1 drum; latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydrahammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.

Group 3 - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; disbributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator - 1

Group 4 -
(a) Oilers
(b) Oiler driver, all types

TRUCK DRIVERS - BUILDING CONSTRUCTION

Group 1 - Warehousemen and stock man

Group 2 - Flat beds; pick-ups; drum trucks, under 10 yds.

Group 3 - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers

Group 4 -Straddle trucks, steel tractors (when used for towing); hydro lift trucks, hydraulically operated serial lifts; heavy hauling, a-frame winch and fork lifts; heavy excavating (dumpter, euclid, etc.); double bottom units (20 tons capacity and over)

Group 5 - Distributor truck drivers and operators; oilers, greasers and mechanics' helpers

Group 6 - Mechanics

Group 7 - Transit mix, 5 yds. and over

Group 8 - Transit mix, under 5 yds.

TRUCK DRIVERS - Site Preparation & Grading

Group 1 - One Team; Station Wagons; Pickup Trucks; Material trucks, single axle, Tank Wagon Drivers, single axle

Group 2 - Material trucks, tandem; Two teams; Semi-trailer; Winch Truck, Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix; Tank Wagon Drivers; single axle; Tank Wagon Drivers, Tandem or Semi-Trailers; Insley Wagon; Dump Trucks; excavating, 5 cu. yds. and over, Dumpster, Half-trucks, Speedace, Euclids and other similar excavating equipment

TRUCK DRIVERS - Site Preparation & Grading (Cont'd)

Group 3 - A-Frame, Low Boy, and Boom Truck Drivers

Group 4 - Mechanics and Welders

Group 5 - Oilers and Greasers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses, (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Ohio
DECISION NO. OH84-5024
COUNTIES: Clermont & Hamilton
DATE: Date of Publication
Supersedes Decision No. OHS2-2040 dated September 24, 1982 in 47 FR 42256
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$10.65	
CARPENTERS	9.62	
CEMENT MASONS	8.51	
DRYWALL FINISHERS & TAPERS	8.62	
ELECTRICIANS	8.71	$1.48
LABORERS	7.01	
PAINTERS, Brush	10.11	
PLUMBERS & PIPEFITTERS	$9.50	
ROOFERS	10.94	
SHEET METAL WORKERS	10.52	
POWER EQUIPMENT OPERATORS:		
Bulldozers	10.07	
Front End Loaders	10.07	

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Wisconsin
DECISION NUMBER: WI84-5025
COUNTIES: La Crosse, Monroe, & Vernon
DATE: Date of Publication
Supersedes Decision No. WI83-2083 dated October 14, 1983, in 48 FR 46926
DESCRIPTION OF WORK: Building Construction and Residential Construction in La Crosse County Only

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.10	3.38
BOILERMAKERS	17.345	3.00
BRICKLAYERS	15.05	2.35
CARPENTERS	13.61	2.21
Millwrights & Pile-driversmen	14.01	2.21
CEMENT MASONS	13.68	2.20
ELECTRICIANS	15.79	1.70 + 3%
ELEVATOR CONSTRUCTORS:		
Constructors	15.03	2.69
Helper	10.52	2.69
Helper (Prob.)	7.515	
GLAZIERS	14.89	.88
IRONWORKERS:		
(All but the N. W. corner of county)	14.08	3.00
LABORERS:		
General, Mason Tenders	12.42	1.78
Mortar Mixers, Air Hammer Operator, Air Spade Operator, & Jack Hammer Operator	12.57	1.78
LATHERS	13.61	1.81
PAINTERS:		
Brush	13.68	1.00
Structural Steel	13.95	1.00
Spray & Sandblaster	14.37	1.00
PLASTERERS	12.79	1.46
PLUMBERS & STEAMFITTERS	16.50	2.80
ROOFERS	13.87	3%
SHEET METAL WORKERS	14.38	1.84
SOFT FLOOR LAYERS	12.61	3.16
TERRAZZO MECHANIC & TILE SETTERS	13.00	2.35
TRUCK DRIVERS:		
Dump Truck	10.77	a
POWER EQUIPMENT OPERATORS:		
Group 1	15.72	3.42
Group 2	15.22	3.42
Group 3	14.44	3.42
Group 4	13.88	3.42
Group 5	13.41	3.42

Footnote:
a. to read $181.90 per month Health & Welfare

POWER EQUIPMENT OPERATORS (Classifications)

Group 1: Cranes, shovels, draglines, backhoes,clamshells, derricks, caisson rigs, pile driver, skid rigs, dredge operator and traveling crane (bridge type), concrete paver (over 27E), concrete spreader and distributor.

Group 2: Concrete and grout pumps, material hoists, stack hoists, tractor or truck mounted hydraulic backhoe, tractor or truck mounted hydraulic crane (10 tons or under), manhoists, tractor (over 40 h. p.), bulldozer (over 40 h.p.), endloader (over 40 h.p.), motor patrol, scraper operator, sideboom, straddle carrier, mechanic and welder, bituminous plant and paver operator, roller (over 5 tons), rail level-machine (railroad), tie placer, tie extractor, tie tamper, stone leveler, rotary drill operator and blaster, percussion drilling machine, trencher (wheel type or chain type having over 8-inch bucket), elevator.

Group 3: Backfiller, concrete auto breader (large), concrete finishing machines (road type), roller (rubber tire), concrete batch hopper concrete mixers (14S or over), screw type pumps, and gypsum pumps, tractor, bulldozer, endloader (under 40 h.p.), pumps (well points), trencher (chain type having bucket 8- inch and under), industrial locomotives, roller (under 5 tons) and fireman (pile drivers and derricks), hoists (automatic), forklift (over 12'), tampers-compactors (riding type), assistant engineer, "A" frames and winch trucks, concrete auto breaker, hydrohammers (small), brooms and sweeper, hoists (tuggers), stump chipper (large), boats (tug, safety, work barges and launch).

Group 4: Shouldering machine operator, screed operator, farm or industrial tractor mounted equipment, post hole digger, stone crushers and screening plants, fireman (asphalt plants), air compressor (400 CFM or over), augers (vertical and horizontal), air, electric, hydraulic jacks (slip form), prestress machines,skid steer loader, boiler operators (temporary heat), forklift (12' and under).

Group 5: Generators over 150 KW, pumps over 3", combination small equipment operator: compressors (under 400 CFM), welding machines, heaters (mechanical), generators (under 150 KW), pumps (3" and under), winches (small electric), oiler and greaser, rotary drill, conveyor.

[FR Doc. 84-22320 Filed 8-23-84; 8:45 am]

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federal register

Friday
August 24, 1984

Part III

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 2, and 10

Practice Before the Patent and Trademark Office; Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 10

[Docket No. 40788-4088]

Practice Before the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In August 1983, the Patent and Trademark Office (PTO) proposed amendments to the rules governing standards of conduct and disciplinary proceedings for attorneys and agents who practice before the PTO. Two hearings were held. After reviewing written comments and oral presentations at the hearings, the PTO decided to withdraw, and not adopt, the rules as then proposed. In March 1984, an advance notice of proposed rulemaking was published. Comments were received. This notice of proposed rulemaking sets forth changes that the PTO is proposing to the rules governing admission to practice before the PTO, standards of conduct for those representing applicants and others before the PTO, and conduct of disciplinary proceedings. Interested individuals are invited to comment on the proposed rules.

DATES: Comments must be submitted on or before October 2, 1984. A public hearing will be held on October 10, 1984, at 9:30 a.m.; requests to present oral testimony at the hearing should be received on or before October 2, 1984.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington D.C. 20231 marked to the attention of Fred E. McKelvey.

The hearing will be held in the Commissioner's Conference Room, 11th Floor, Crystal Plaza Building 3, Room 11–C–10, 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and a transcript of the public hearing will be available for public inspection in Room 12B10, Crystal Gateway II, 1225 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey by telephone at (703) 557–4025 (if no answer, message may be left at 703–557–4103) or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Attorneys and agents practice before the Patent and Trademark Office (PTO) in patent cases. 35 U.S.C. 31. Attorneys also practice before the PTO in trademark and other non-patent cases. 5 U.S.C. 500(b). A limited number of agents also practice before the PTO in trademark cases under rules in force prior to January 1, 1957.

A notice of proposed rulemaking for attorney and agent conduct and disciplinary procedure was published on August 11, 1983 in the **Federal Register,** 48 FR 36478, and on September 20, 1983 in the *Official Gazette,* 1034 O.G. 39, 1034 TMOG 33. A notice extending the comment period and setting a second hearing was published on October 5, 1983 in the **Federal Register,** 48 FR 45424, and on October 18, 1983, in the *Official Gazette,* 1035 O.G. 19, 1035 TMOG 17. The PTO decided to withdraw, and not adopt, the rules proposed in the **Federal Register** notice of August 11, 1983. There were numerous objections to the proposed rules and the public indicated that a longer period for study and review of a code of conduct and disciplinary procedures was necessary.

An advance notice of proposed rulemaking setting out revised rules being considered for standards of conduct and disciplinary proceedings was published on March 16, 1984, in the **Federal Register,** 49 FR 10012, and on April 10, 1984, in the *Official Gazette,* 1041 O.G. 15, 1041 TMOG 13. Numerous organizations and individuals filed comments in response to the advance notice.

This notice of proposed rulemaking sets out rules being proposed in three areas:

(1) Rules governing practice of attorneys and agents before the PTO in patent, trademark, and other non-patent cases (§§ 10.2 through 10.19);

(2) Rules setting out a PTO Code of Professional Responsibility (§§ 10.20 through 10.112); and

(3) Rules governing (a) investigation of possible violations of the PTO Code of Professional Responsibility and (b) disciplinary proceedings to reprimand, suspend, or exclude (disbar) individuals practicing before the PTO who, after notice and opportunity for a hearing, are found to have violated a disciplinary rule of the PTO Code of Professional Responsibility (§§ 10.130 through 10.170).

Familiarity with the advance notice is assumed. Changes in the text of the rules proposed in this notice from the text of the rules published for comment in the advance notice are discussed.

The comments received in response to the advance notice are analyzed.

Tables 1, 2, and 3 are included in this notice to assist readers in correlating present rules with the proposed rules and to find the principal source for the proposed rules. An indication in Tables 1, 2, and 3 that a section is "new" means that a corresponding section does not currently appear in Title 37 of the Code of Federal Regulations.

Table 1 shows the principal sources of the proposed rules which relate to (1) admission to practice of attorneys and agents in patent cases and (2) practice in trademark and other non-patent cases.

Table 2 shows the principal sources of the proposed rules for the PTO Code of Professional Responsibility.

Table 3 shows the principal sources of the proposed rules for disciplinary proceedings.

Other sources for, and rationale in support of, the proposed rules were set and discussed in the Supplementary Remarks of the advance notice. 49 FR 10012–10022.

Changes in Text of Advance Notice

Several changes have been made in the text of the rules being proposed from the text of the rules which were published for comment in the advance notice. Those changes are discussed below.

Section 1.21(a) is proposed to be revised by adding a requirement for a $60.00 fee for seeking review of a decision of the Director of Enrollment and Discipline under proposed § 10.2(c) and for requesting regrading of an examination under proposed § 10.7(c). No specific fee was set out in the advance notice.

The preamble to proposed § 10.1 is being changed by adding a provision which makes clear the PTO's intent to limit Subpart 10 solely to the practice of patent, trademark, and other law before the PTO. The preamble is also being changed to indicate that Subpart 10 shall *not* be construed to preempt the authority of any State to maintain control over the practice of law within its borders, *except* to the extent necessary for the PTO to accomplish its federal objectives. These changes are being made to make clear that the PTO intends to regulate only conduct related on relevant to the practice of law before the PTO. See *Sperry* v. *Florida ex rel. Florida Bar,* 373 U.S. 379, 402 (1963).

The definition of "practitioner" has been changed in proposed § 10.1(r). The amendment defines a practitioner as an individual registered to practice before the PTO in patent cases or an individual qualified under 5 U.S.C. 500(b) or otherwise to practice before the PTO in trademark and other non-patent cases. This definition is necessary in order to give a proper meaning to other proposed sections, e.g., proposed §§ 10.48 and

10.49. The original definition was confined to individuals who actually practice before the PTO in trademark and other non-patent cases. The definition was intended to limit the regulatory effect of PTO rules to those who in fact practice before the PTO. An amendment made to the preamble of proposed § 10.1, however, makes clear the intent of the PTO to limit its regulation of attorneys and agents only to the extent necessary for the PTO to accomplish its federal objectives.

Proposed § 10.2(a) is being changed to require that the Director shall be an active member in good standing of the bar of a State.

Proposed § 10.2(c) has been changed by deleting the last sentence which appeared in the text of the advance notice and read as follows: "The Commissioner may delegate to appropriate Office employees the determination of a petition under this section."

Several changes have been made to proposed § 10.4 in response to comments received. In proposed § 10.4(a), the Committee on Discipline will consist of at least three employees of the PTO, none of whom reports directly or indirectly to the Director or the Solicitor. Each member of the Committee on Discipline would be a member in good standing of the bar of a State. Proposed § 10.4(b) would prohibit the Director, an employee under the direction of the Director, or an associate solicitor or assistant solicitor from participating in deciding a disciplinary proceeding. Related changes have also been made to proposed § 10.140(b) which would provide that the Commissioner shall designate at least two associate solicitors in the Office of the Solicitor of the PTO to act as counsel for the Director in prosecuting disciplinary cases. In prosecuting disciplinary cases, the designated associate solicitors shall not involve the Solicitor or Deputy Solicitor. The purpose for this non-involvement is to leave the Solicitor and Deputy Solicitor insulated from the investigation and prosecution phases of a disciplinary case in order that they shall be available as counsel to the Commissioner in deciding disciplinary cases.

The word "applicants" in the first sentence of § 10.14(c) immediately prior to the word "provided" is being changed to "applications" to correct a typographical error.

The reference in proposed § 10.15 to "§ 10.156(b)" has been changed to "Subchapter" inasmuch as suspension or exclusion can occur under various proposed sections, such as §§ 10.133(b), 10.154(a), and 10.156(b).

In § 10.22, the word "court" is being added after "State" in both sections (a) and (b) to clarify the fact that membership in the bar of a State court is what is intended in proposed § 10.22.

Proposed § 10.23(c)(8) has been changed to alter the conditions under which a practitioner must forward correspondence he or she receives on behalf of a client or former client. As proposed, § 10.23(c)(8) would require a practitioner to forward to a client or former client, or to timely notify the PTO of an inability to so forward, correspondence received from the PTO or an opponent in an *inter partes* case when the correspondence (1) could have a significant effect on a matter pending before the Office, (2) is received by the practitioner on behalf of a client or former client, and (3) is correspondence which a reasonable practitioner would believe under the circumstances should be forwarded to the client or former client.

The language "knows, or should have reasonably known" in proposed § 10.23(c)(17) has been changed to "knows, or has been advised by the Office" in response to a comment.

Paragraph (c) of § 10.31 of the advance notice is being replaced by two new paragraphs (c) and (d). The change is necessary to permit non-lawyers authorized to practice in trademark cases before January 1, 1957, to hold themselves out as authorized to so practice. See e.g. *Holmgren* v. *Watson*, 110 USPQ 174 (D.D.C. 1956) and proposed § 10.14(b). Paragraph (c) of proposed § 10.31 covers this situation. Paragraph (d) of § 10.31 precludes a non-lawyer from holding himself or herself as being an attorney or lawyer. It also precludes a non-lawyer from holding himself or herself out as authorized to practice before the Office in non-patent and trademark cases, e.g., representing a respondent in a disciplinary case or representing a party in an *inter partes* disqualification proceeding.

Paragraph (b) of proposed § 10.32 as it appeared in the advance notice has been deleted. Paragraphs (c) and (d) have been redesignated as paragraphs (b) and (c), respectively. As it appeared in the advance notice, paragraph (b) would have required practitioners to preserve for two years copies and recordings of advertisements. While no comment criticized the new recordkeeping requirement of proposed § 10.32(b), the PTO nevertheless believes, consistent with the policy of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, that the recordkeeping requirements which proposed § 10.32 would have imposed are not necessary. Practitioners may, however, wish to voluntarily maintain copies and recordings of any advertising inasmuch as the copy or recording would be the best evidence of the content of the advertisement.

Proposed § 10.34 is being changed to add in paragraph (b) the language "except that any practitioner who was registered prior to November 15, 1938, may refer to himself or herself as a 'patent attorney.' " This change is needed to continue the PTO practice of permitting all individuals registered prior to November 15, 1938, to refer to themselves as patent attorneys. See McCrady, *Patent Office Practice*, pp. 454 and 459 (4th Ed. 1959).

In proposed § 10.40(a), the language "his or her client, allowing time for employment of" has been added. This language is needed to conform proposed § 10.40(a) to DR 2–110(A)(2) of the Code of Professional Responsibility of the American Bar Association (1980). The language of proposed § 10.40(c)(1)(vi) has been changed pursuant to a suggestion received in a comment. Proposed § 10.40(c)(1)(vi) now reads "has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services."

In proposed § 10.57(d), the language "practitioner's employee's associates" appearing in the advance notice has been corrected to read "practitioner's emplyees, associates". This change corrects a typographical error.

The text of proposed § 10.64(a) has been changed to permit a practitioner to acquire a proprietary interest in the subject matter of a patent proceeding before the PTO. As originally proposed, acquisition of such an interest would have been prohibited. The text of proposed §10.64(a) is now consistent with Informal Opinion No. 280 of the American Bar Association which states: "A lawyer may acquire an interest in a patent for his [or her] fee."

Paragraph (b) of proposed § 10.65 as it appeared in the advance notice has been deleted in response to a suggestion in a comment.

Subparagraphs (1) and (2) of proposed § 10.68(c) as set out in the advance notice have been deleted in response to comments received.

Subparagraph (7) of proposed § 10.85(a)(7) as it appeared in the advance notice has been deleted and subparagraphs (8) and (9) have been renumbered as (7) and (8) respectively.

In proposed § 10.85(b)(1), the language "except when the information is protected as a privileged

communication" which appeared in the test of the advance notice is being deleted in view of comments which were received.

The word "controlling" has been inserted before "legal authority" in proposed § 10.89(b)(1) to make clear that only controlling legal authority need be cited.

Proposed § 10.93(b)(2) has been changed to correct an incorrect reference to "practitioner" with "the adverse party." "Counselor" has been changed to "counsel or" in proposed § 10.93(b)(3).

Paragraph (b) of § 10.133 in the advance notice has been re-written and replaced with proposed paragraphs (b), (c), and (d). Paragrah (c) as it appeared in the advance notice is now paragraph (e). The changes are being made to provide for resignation from practice before the Office and that the Commissioner be authorized to enter an order excluding a practitioner "on consent" when a resignation is filed during the pendency of an investigation under proposed § 10.131 or after charges have been filed under proposed §§ 10.132(b) and 10.134. The changes are being made pursuant to a comment which is discussed later in this notice.

In proposed § 10.134(a)(2) the word "alleged" has been inserted before "violations" in response to a suggestion.

Pursuant to a suggestion in a comment, the word "of" has been inserted after "period" in the second sentence of proposed § 10.135(c).

The language "any new matter" in proposed § 10.136(e) has been changed to "any affirmative defense" in response to a suggestion in a comment.

The language "facts of law" in § 10.139(b)(7) has been changed to "facts or law" in response to two comments.

Changes have been made to proposed § 10.140(b). See the discussion above under the changes to proposed § 10.4(b).

Proposed § 10.141 as set out in the advance notice has been changed by adding a paragraph (c) to provide that the administrative law judge (ALJ) or the Director may provide for filing papers and other matter by hand or by "Express Mail."

In response to a suggestion in a comment, "or" has been added after the semicolon at the end of paragraphs (a)(1), (a)(2), and (c)(1) of proposed § 10.142.

Three changes have been made to proposed § 10.144(c) in response to a suggestion made in a comment: (1) "A hearing in a disciplinary proceeding" has been changed to "A hearing under this section"; (2) "and subject to 10.159(c)" has been added after "If a disciplinary proceeding results in disciplinary action against a practitioner"; and ", including any settlement agreement," has been added after "the record of the entire disciplinary proceeding".

In response to a comment, proposed § 10.149 has been added and sets out the burden of proof for the Director and the respondent. The Director must prove his or her case by a preponderance of evidence. A respondent must prove any affirmative defense by a preponderance of evidence.

In response to two comments, proposed § 10.150(c) is being changed to make clear that objection to evidence and rulings on the objections will be part of the record.

The language "to the" has been inserted after "shall transmit a copy to the representative of the Director and" in proposed § 10.154(a). This change is being made pursuant to a suggestion received in a comment. The word "reprimand" has been inserted after "the administrative law judge shall explain the reason for any penalty of" in proposed § 10.154(b). This change is also made in response to a comment.

Paragraph (c) has been added to proposed § 10.155 to permit reopening of disciplinary proceedings. The change is being made in response to a comment.

The fifth sentence of proposed § 10.156(a) has been changed to read: "The Commissioner shall transmit a copy of the final decision to the Director and to the respondent." This change is being made in response to a comment.

The reference to Local Rule 1–26 of the U.S. District Court for the District of Columbia has been corrected in proposed § 10.157(a).

A paragraph (b) has been added to proposed § 10.157 to make explicit the authority of the Commissioner to grant a stay of a final decision pending judicial review under 35 U.S.C. 32.

Proposed § 10.158(b)(1) has been amended to read: "Within 30 days of entry of the order of suspension or exclusion, notify all bars of which he or she is a member and all clients of the practitioner in separate written communications of the suspension or exclusion and shall file a copy of each written communication with the Director." This change has been made in response to two separate comments addressing different issues.

The language "the practitioner" in the second sentence of proposed § 10.159(b) has been changed to "any practitioner" in response to a suggestion.

Section 10.170 is being added to expressly authorize the Commissioner to suspend or waive requirements of Part 10 in extraordinary situations when justice requires. The term "Commissioner" in proposed § 10.170 is intended to mean the Commissioner, the Deputy Commissioner, or an Assistant Commissioner appointed under 35 U.S.C. 3. Section 10.170 would not permit the routine filing of petitions seeking suspension or waiver of a rule. For example, § 10.170 would not contemplate the filing of a petition to enlarge the type of discovery authorized by the rules or to interfere with the ALJ's conduct of disciplinary proceeding except in truly extraordinary situations. It is contemplated that if § 10.170 is adopted that there would be relatively few, if any, circumstances in which it would be appropriate to suspend or waive a provision of Part 10.

Response to and Analysis of Comments

Thirty-one (31) written comments were timely received in response to the advance notice. The comments have been analyzed. Some suggestions made in comments have been adopted and others have been rejected. A detailed analysis of the timely received comments follows. Some comments were received on July 9, 1984, but were not properly addressed to Box 8 as requested in the advance notice. As a result, these comments did not reach appropriate PTO officials for timely consideration. These comments, as well as comments received on or after July 10, 1984, will be considered as comments received in response to this notice and will be analyzed in connection with any rules which may be issued based on this notice.

Several comments were received which suggested that the rules as set out in the advance notice purport to regulate attorney conduct beyond that necessary or proper for administration of federal programs by the PTO. It is not, and has never been, the intention of the PTO to regulate conduct except to the extent necessary for the accomplishment of federal objectives. Thus, only that conduct which is relevant to the practice of patent, trademark, or other law *before the PTO* is what the PTO seeks to regulate. The premble of proposed § 10.1 has been amended to indicate that Subpart 10 governs solely the practice of patent, trademark, and other law before the PTO. As noted in the preamble to proposed § 10.1, "[n]othing in this subpart shall be construed to preempt the authority of each State to maintain control over the practice of law within its borders, except to the extent necessary for the Patent and Trademark Office to accomplish its federal objectives." See *Sperry* v. *Florida ex rel. Florida Bar*, 373 U.S. 379, 402 (1963). See also *Michigan Canners and Freezers*

Ass'n. v. *Agricultural Marketing and Bargaining Board*, 104 S.Ct. 2518, 2523 (1984) (State Law is preempted when it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress) and *Fidelity Federal Savings and Loan Ass'n.* v. *de la Cuesta*, 102 S.CT. 3014, 3022 (1982) (federal regulations have no less pre-emptive effect than federal statutes).

One comment suggested that the definition of application in proposed § 10.1(b) include papers relating to a request for or a reexamination of a patent. This suggestion is not being adopted. Reexaminations fall with definition of proceedings before the Office in Proposed § 10.1(s).

One comment suggested that the definition of "attorney" in § 10.1(c) be changed to require an attorney to be in good standing in the "venue" of his or her "office." The suggestion in the comment would exclude from the definition of "attorney" an individual in good standing in State A but living in State B and excluded in State B. The Suggestion has not been adopted inasmuch as it is believed to be in conflict with the provisions of 5 U.S.C. 500(b).

One comment suggested that the Commissioner should not delegate to other PTO employees for decision petitions from the Director under § 10.2. This suggestion is being adopted and the last sentence of proposed § 10.2(c) as it appeared in the advance notice is being deleted. It is contemplated that petitions seeking review of a decision of the Director will be decided by the Commissioner, the Deputy Commissioner, or one of the two Assistant Commissioners appointed pursuant to 35 U.S.C. 3. These employees would, of course, be able to obtain legal advice from the Solicitor or Deputy Solicitor.

One comment suggested that the definition of "law firm" in proposed § 10.1(k) be extended to corporate legal departments. This suggestion is not being adopted. It is not readily apparent from the comment why the definition of law firm should be expanded as suggested.

One comment suggested that the Director should be a member of good standing of the bar of a State. This suggestion is being adopted and proposed § 10.2(a) will require any Director to be an active member in good standing of the bar of a State or the District of Columbia.

Two comments were received with respect to proposed § 10.4 which indicated that the Director and associate solicitors should not be members of the Committee on Discipline. The PTO believes that these comments have merit. Accordingly, it is proposed to create a Committee on Discipline composed of at least three employees of the PTO who do not report to either the Director or the Solicitor and who are members of the bar in good standing of a State. The Committee on Discipline would determine whether there is probable cause for the Director to file charges. See proposed §§ 10.4(b) and 10.132. Related changes are also being made in proposed § 10.140. The same comment suggested that the proposed rules do not articulate a separation of functions between the investigation (done by the Director) and prosecution (done by an associate solicitor) on the one hand and the decision making function (done by the Commissioner with advice as necessary from the Solicitor or Deputy Solicitor) on the other hand. The PTO believes this comment also has merit. Accordingly, proposed § 10.140(b) has been changed to make clear that the Commissioner will designate two associate solicitors in the Office of the Solicitor to act as representative for the Director in disciplinary proceedings. In proscecuting disciplinary proceedings, the designated associate solicitors shall not involve the Solicitor and Deputy Solicitor. The purpose of insulating the Solicitor and Deputy Solicitor from the designated associate solicitors handling disciplinary cases is to maintain a clear line of distinction between the investigative/prosecutorial function and the deciding function. The designated associate solicitors would report directly to the Director insofar as their disciplinary prosecutorial functions are concerned. The Solicitor and Deputy Solicitor would be available to act as legal counsel to the Commissioner in deciding appeals from decisions of an ALJ and would not be responsible in any manner for supervising the designated associate solicitors in the performance of their disciplinary/prosecutorial functions.

One comment suggested that individuals be appointed to the Committee on Discipline who are not employees of the Department of Commerce. The comment recognized that such an appointment would create difficulties in view of 35 U.S.C. 122. The PTO had given specific consideration to appointing practitioners to the Committee on Discipline prior to issuance of the advance notice. The idea was rejected for two reasons. Problems under 35 U.S.C. 122 make such an appointment difficult. Administrative delays would take place because it would be more difficult to arrange times for the Committee to meet.

Another comment recognized the administrative difficulty in having a "committee" of more than one individual. By having the Committee on Discipline composed of PTO employees, there would be minimal administrative problems in arranging for and holding meetings of the Committee. Accordingly, the PTO proposes to adhere to its prior view that members of the Committee on Discipline should be PTO employees.

Another comment suggested, in effect, that the PTO should consider and adopt the general procedures set out in the Standards for Lawyer Discipline and Disability Proceedings of the American Bar Association (1979). The "Standards" were considered prior to issuance of the advance notice. After considering the Standards then, and reconsidering the Standards in view of the comments received, the PTO has decided not to propose the "Standards."

One comment suggested that every attorney be required to designate under § 10.5 the "venue" of his or her office. The rationale in support of the comment suggested that an attorney disbarred in State A, but in good standing in State B, should not be registered as an attorney if he or she resides in State A. The suggestion is not being adopted, because of administrative problems which would be raised with determining "venue" in those cases where an attorney has offices in two states and spends considerable time in both offices. Attorneys who are members of multi-state law firms might also have difficulty selecting an appropriate "venue." Moreover, it is believed that introduction of a "venue" concept might lead to lack of uniform treatment of patent and trademark attorneys in view of the provisions of 5 U.S.C. 500(b) relating to practice of non-patent law before the PTO.

One comment suggested that § 10.6 should be changed to permit a non-citizen registered under paragraph (a) to remain registered even if the non-citizen ceases to reside in the United States. The suggestion is not being adopted. The registration of non-citizens residing in a foreign country is presently governed by 37 CFR 1.341(e) and under the proposed rules would be governed by § 10.6(c). There is no known legal requirement or other public policy which compels or makes desirable the registration or continued registration of non-citizens residing in a foreign country other than under the conditions specified in proposed § 10.6(c).

One comment suggested that after the word "Office" in proposed § 10.6(b) that

the following be inserted: "only in patent matters." The purpose of the suggestion was to make clear that patent agents are authorized to practice only in patent cases. The definition of "registration" in proposed § 10.1(u) limits "registration" of patent agents in accordance with the suggestion.

One comment suggested that the requirement of proposed § 10.7(a)(2)(i) that an individual seeking registration establish to the satisfaction of the Director that he or she is of good moral character should be deleted. According to the comment, moral character "does not concern patent practice and, hence, should be outside the scope of the rules for the Office." The contrary is readily apparent from 35 U.S.C. 31 which states that the Commissioner may require applicants for registration "to show that they are of good moral character and reputation * * *."

One comment agreed that limited recognition under proposed § 10.9 is justified in certain cases. The comment went on to suggest that limited recognition may be appropriate in a re-examination proceeding when the patent sought to be re-examined is also involved in litigation and the litigation is being handled by a non-registered attorney. Whether limited recognition would be granted under these circumstances would depend on the particular facts involved.

One comment suggested that a definition be included in proposed § 10.1 for the term "firm" which appears in proposed § 10.14(e). This suggestion is not being adopted. The term "firm" currently appears in 37 CFR 2.12(e) and has not created any known problems in the PTO's administration of the trademark statute. The comment expressed a belief that "firm" includes "partnership." The term has been given a broad construction in the past and would continue to be given a broad construction under proposed § 10.14(e). The term would include, among other things, a partnership.

Two comments suggested that a non-attorney should not be permitted to represent a firm, corporation, or association. One comment accurately pointed out that a non-lawyer may not represent a juristic entity before the U.S. Court of Appeals for the Federal Circuit. *Richdel, Inc.* v. *Sunspool Corp.*, 699 F.2d 1366, 217 USPQ 8 (Fed. Cir. 1983). Inasmuch as prosecution of trademark matters by non-attorneys (those qualified prior to January 1, 1957) has not created any undue administrative problems to date, the suggestion is not being adopted and it will be proposed to permit non-attorneys to continue to represent firms, corporations, and associations as set forth in proposed § 10.14(e).

One comment suggested that proposed § 10.14(e) would not permit an individual to represent himself or herself in a trademark case. Any individual is entitled to represent himself or herself in any patent, trademark, or other case before the PTO. Proposed § 10.14(e) relates to " practice" before the PTO. The comment suggests that proposed § 10.14(c) limit recognition of foreigners to practice in *ex parte* cases only. This suggestion is not being adopted. No reason was given in the comments as to why a foreigner, otherwise qualified to practice in trademark cases, should be restricted to *ex parte* cases.

While the PTO did not receive any comments concerning proposed § 10.18, it should be noted that under the rules being proposed an attorney would be required to personally sign papers he or she files in the PTO. In the past, there has been some confusion as to whether someone other than the practitioner may sign a paper on his or her behalf and whether a stamp or a facsimile of the practitioner's signature may be used. Proposed § 10.18 is intended to clarify the requirement of a personal signature. Thus, under proposed § 10.18, a practitioner's secretary could not properly sign a paper to be filed in the PTO on behalf of an attorney. Likewise, an associate of an attorney could not properly sign on behalf of the attorney—the associate would sign his or her own name to the paper. Under proposed § 10.18 a stamp of a facsimile of an attorney's signature would not be acceptable. Compare *Ex parte Minehan*, 1908 Dec. Comm'r. Pat. 137 (Comm'r Pat. 1908).

One comment suggested that the PTO had not justified its authority to establish its own Code of Professional Responsibility and that, in any event, the PTO should incorporate by reference the Model Rules of Professional Conduct of the American Bar Association (1983). The Commissioner has authority to establish regulations governing the conduct of those practicing law before the PTO. See 35 U.S.C. 31. See also 35 U.S.C. 6. Inasmuch as the PTO has authority to establish a PTO Code of Professional Responsibility, it may elect to set the Code out in the Code of Federal Regulations or it may—as it has in the past—incorporate a code of conduct by reference. 37 CFR 1.344 and 2.13. Many comments have encouraged the PTO to set out its Code of Professional Responsibility in the CFR. The proposed PTO Code of Professional Responsibility is based primarily on the Model Code of Professional Responsibility of the American Bar Association (1980). While the comment urged that the Model Rules of Professional Conduct be adopted as the standard, this suggestion is not being adopted because it has not been established that the Model Rules are the standard of conduct throughout the States.

One comment suggested that the word "court" be added in proposed § 10.22 after "State" in both sections (a) and (b). This suggestion has been adopted in order to clarify that membership in the bar of a State court is what is intended.

One comment, which is not being adopted, suggested that "knowingly or recklessly" be inserted in proposed § 10.22(a) before "made." When one makes a "false" statement or "deliberately" fails to disclose a material fact, one does so knowingly or recklessly. Accordingly, the suggested change is unnecessary.

One comment suggested that proposed § 10.22(b) "which subjects a practitioner to disciplinary sanction for furthering the application for registration of membership of another who is not qualified in a bar, administrative agency or the like should be shown and explained." Any practitioner who furthers the application of another to any bar knowing the other not to be qualified demonstrates that the practitioner is not capable of objectively representing those who have business before the Office. Moreover, any such practitioner would have shown himself or herself to be "disreputable" within the meaning of 35 U.S.C. 32.

Some comments were received which suggested that the PTO should not adopt a provision which defines misconduct engaging in illegal conduct involving moral turpitude. See proposed §10.23(b)(3). The PTO is not adopting this suggestion. The Patent Statute provides that the Commissioner may suspend or exclude practitioners who are shown to be disreputable or who engage in gross misconduct. 35 U.S.C. 32. Some States continue to provide for disciplinary action for attorneys who engage in illegal conduct involving moral turpitude. To the extent that illegal conduct involving moral turpitude is disreputable or gross misconduct, no cogent reason has been presented why the Commissioner should not be able to take appropriate disciplinary action based on that conduct. For the most part, individuals and organizations making the suggestion not to adopt a provision which defines misconduct as including illegal conduct involving moral turpitude also urged that the Model Rules of Professional Conduct of the American Bar Association (1983) be

adopted as the PTO Code of Professional Responsibility. It was argued that adoption of the Model Rules would make the PTO Code of Professional Responsibility consistent with the State codes. Those making the suggestion, however, failed to demonstrate that the State have uniformly adopted the Model Rules or that they are likely to do so. Virginia, for example, in 1984 declined to adopt the Model Rules. Accordingly, the PTO is proposing to adopt a PTO Code of Professional Responsibility which is modeled for the most part on the Code of Professional Responsibility of the American Bar Association (1980).

One comment suggested that all reference to "moral turpitude" be deleted from proposed § 10.23. This suggestion is not being adopted. Contrary to the argument in the comment, the PTO believes that there are situations where moral turpitude may be related to the characteristics needed for an individual to practice before the PTO. While it is not always easy to articulate the relationship, nevertheless it does exist. For example, a practitioner convicted of rape is not the type of practitioner which should properly represent women. See e.g., *In re Robertson*, 429 A.2d 345 (D.C. App. 1982). Each disciplinary case will have to be handled on the basis of its own facts. Accordingly, the references to "moral turpitude" are not being deleted from proposed § 10.23.

Several comments suggested that scienter or knowledge be made a requirement for violation of the various provisions of proposed § 10.23(c). These comments have been reviewed along with the provisions of proposed § 10.23(c). It is concluded that the language of the various paragraphs of proposed § 10.23(c) inherently require scienter or knowledge or that scienter or knowledge is irrelevant.

One comment suggested that proposed § 10.23(c)(5) be amended to make clear that suspension or exclusion from a State bar for failure to pay bar dues not be a basis for suspension before the Office. While no change will be made to proposed § 10.23(c)(5) in response to the comment, it seems obvious that failure to pay State bar dues is not a basis for suspension or exclusion before the PTO because failure to pay the dues has no relationship to the federal objectives which the PTO seeks to accomplish.

Three comments were received addressing proposed § 10.23(c)(8). One comment suggested that in addition to clients and former clients, the rule should cover correspondence received on behalf of a former partner or former associated attorney. This suggestion is being rejected inasmuch as the PTO believes that the principal thrust to which the rules should be directed is the practitioner-client relationship. The proposed rules do not purport to solve problems which may arise between former partners and associates. Normally, that is a matter left to state law. One comment suggested that subparagraphs (i) and (ii) of § 10.23(c)(8) were not relevant. This comment has been adopted and the proposed section has been revised. Two comments suggested that § 10.23(c)(8) as proposed required the forwarding to clients of miscellaneous papers which a client might not normally wish to receive. These two comments are considered to have merit. The PTO recognizes that a practitioner may receive papers which need not, and should not necessarily, be forwarded to a client. On the other hand, the PTO has experienced cases where a practitioner did not forward to a client a paper received from the PTO when the client should have been notified of the decision rendered by the paper. In one case, the client lost his right to appeal a final decision of the Board of Patent Interferences. The precise facts were these. After receiving an adverse decision on priority, the client without informing his retained counsel ("first" practitioner), sought the advice of a "second" practitioner. The second practitioner, sought an extension of time to file a request for reconsideration. See 37 CFR 1.34(b). The request was denied by the board and was mailed to the first practitioner at the address of record in the interference file. See 37 CFR 1.33(a). The first practitioner assumed that the second practitioner knew of the denial and did not notify the client of the denial. Under proposed § 10.23(c)(8), the first practitioner would have been obligated to forward the denial to the client because the denial (1) obviously has a significant effect on a matter pending before the PTO, (2) was received on behalf of a client, and (3) was correspondence which a reasonable attorney under the circumstances would have forwarded to a client. Having not made the request for an extension of time, the first practitioner would reasonably presume that someone filed the request and should know that the client needs to know the request has been denied.

One comment suggested that proposed § 10.23(c)(9) would include as misconduct the use of a certificate of mailing on an item excluded under 37 CFR 1.8(a)(2)(ix). The comment further suggests that proposed § 10.23(c)(9) be limited to use of "false declarations" of a date of mailing. The suggestion is not being adopted, because § 10.23(c)(9) is limited to those instances wherein a practitioner "knowingly" misuses a certificate of mailing. An innocent use of a certificate of mailing on a paper excluded by § 1.8 is not "knowingly" misusing a certificate of mailing.

One comment suggested that proposed § 10.23(c)(12) is in conflict with Standard 8.3 of the Standards for Lawyer Discipline and Disability Proceedings of the American Bar Association (1979). As noted above, the PTO has not proposed to adopt those standards. The comment goes on to suggest that 29 of 54 disciplinary jurisdictions provide for immunity for complainants. Proposed § 10.23(c)(12) is limited to practitioners who file complaints and is designed to prevent the filing of a frivolous complaint by one practitioner against another.

One comment suggested that § 10.23(c)(17) is not appropriate. The commentator apparently believes that if the various conditions set out in § 10.23(c)(17) exist, the practitioner must cease representing the inventor. The commentator did not understand the purpose behind the proposed section. When the conditions mentioned in § 10.23(c)(17) exist, there is a potential conflict of interest between the inventor and the practitioner. This conflict of interest was recognized in *Lefkowitz* v. *Lawrence Peska Associates, Inc.*, 393 N.Y.S.2d 650, 652 (Sup. Ct. N.Y. 1977) (attorneys who receive business regularly from an invention developer might not always act in the best interests of the inventors as opposed to the interests of the invention developer). Proposed § 10.23(c)(17) would not require a practitioner to cease working for an inventor. It would require the practitioner to advise the inventor of certain facts and permit the inventor to determine, after being advised of any possible conflict, whether the practitioner should continue to represent the inventor or a joint venture consisting of the inventor and the invention promoter.

One comment suggested that the "knows, or should have reasonably known" standard in proposed § 10.23(c)(17) of the advance notice is too stringent. Upon consideration, the PTO is inclined to agree with the comment. The "should have reasonably known" was originally intended to cover situations where the PTO has advised a practitioner of specific facts. Accordingly, an amendment to conform proposed § 10.23(c)(17) to the original intent has been made. The language

proposed reads: "knows, or has been advised by the Office."

One comment made the following statement: "Since under" proposed § 10.23(c)(18) "an unreasonable allegation of fraud constitutes an act of misconduct, would an allegation of fraud, which is considered by a tribunal to be completely meritless, constitute a violations?" The finding by a tribunal, such as the U. S. Court of Appeals for the Federal Circuit, that an allegation of fraud is frivolous could result in an investigation by the Director. The holding of the tribunal normally would not be "considered conclusive," where the practitioner was not party before the tribunal. Hence, the practitioner would not have had an opportunity to present his or her views or to defend against the allegation. At best, the holding of the tribunal would constitute *stare decisis*. It could be predicted, however, that if the ultimate record before the ALJ is essentially the same as the record before the tribunal then the likelihood of finding a disciplinary violation is very high.

One comment suggested that proposed § 10.23(d) should not appear in the rules. According to the comment, proposed § 10.23(d) would establish "a negligence standard as a basis of misconduct" and ignores the basic advocacy role of the practitioner and his duty to a client. The suggestion is not being adopted. Proposed § 10.23(d) is designed to advise practitioners that they cannot act with reckless indifference to whether a representation is true or false and that "deceitful statements of half-truths" shall be deemed actual fraud. The proposed rule is nothing more than a statement of what evidence might support a charge of fraud against the attorney. The standard articulated in the proposed rule exists in criminal law. See *United States* v. *Beecroft*, 608 F.2d 753, 757 (9th Cir. 1979) wherein the court says: "[o]ne who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity. Deceitful statements of half-truths or the concealment of material facts is actual fraud under the statute" (footnotes omitted).

Four comments were received which argued that proposed § 10.24 should not appear in the rules. One comment argued that it might be difficult to determine whether another practitioner had violated a disciplinary rule. The comment went on to submit "that the rules of the State bars adequately already cover this area." The rules of the various State bars do not govern proceedings before the PTO and would not cover non-lawyers who practice before the PTO. Moreover, proposed § 10.24 is identical to the current rules (37 CFR 1.344 and DR 1–103 of the Code of Professional Responsibility of the American Bar Association (1970)) and the 1980 Code of Professional Responsibility of the American Bar Association.

The second comment also voiced objection to proposed § 10.24 and argued that "[a] practitioner should be under a duty not to engage in unlawful conduct, but he or she should not be under a duty to 'turn in' his [or her] associates or partners." The comment did not articulate a reason why a practitioner should not be under a duty to "turn in" his or her associates or partners. If an associate or partner is engaging in unprofessional conduct and does not cease such conduct when it is called to his or her attention, there is no known reason why the rules should not require a practitioner to notify the PTO of the conduct of the associate or partner. Compare 18 U.S.C. 4 relating to concealment of knowledge of the actual commission of a felony.

One comment suggested that proposed § 10.30 amounts to slavery. Proposed § 10.30 is a "Canon." A similar Canon exists in the current rules (37 CFR 1.344 and Canon 2 of the Code of Professional Responsibility of the American Bar Association (1970)). There are similar canons in states. See e.g., Canon 2 of the Virginia Code of Professional Responsibility (1984). A "canon" is defined in proposed § 10.20 as a statement of an axiomatic norm expressing in general terms the standards of professional conduct expected of practitioners in their relationships with the public, the legal system, and the legal profession. Proposed §§ 10.31 through 10.40 set forth the proposed mandatory conduct which would be expected of practitioners under proposed § 10.30.

Three comments suggested that a change be made in proposed § 10.31(c) to permit non-lawyers authorized to practice before the PTO in trademark cases to hold themselves out as authorized to do so. The comments are being adopted and an appropriate change has been made to proposed § 10.31(c). Paragraph (c) of the advance notice is replaced with paragraphs (c) and (d) as set out herein. Paragraph (c) of proposed § 10.31 permits a practitioner authorized to practice in trademark cases to hold himself or herself out as authorized to so practice. Paragraph (d) of proposed § 10.31 precludes a non-lawyer from holding himself or herself out as authorized to practice in non-patent and trademark cases, e.g., representing a respondent in a disciplinary case or representing a party in an *inter partes* disqualification proceeding.

One comment was received which suggested that proposed §§ 10.31, 10.32, and 10.33 "incorporate a requirement that a practitioner be prohibited from issuing communications which were [are ?] false, fraudulent, or misleading." This suggestion is not being adopted inasmuch as it is believed proposed § 10.31(a) prohibits such communications. Compare 35 U.S.C. 32.

One comment suggested that proposed § 10.33 be re-written to completely conform to Rule 7.3 of the Model Rules of Professional Conduct of the American Bar Association (1983). Proposed § 10.33 is based partly on Rule 7.3, but contains the additional language "under circumstances evidencing undue influence, intimidation, or overreaching." Proposed § 10.33 is designed to prohibit so-called "ambulance chasing." In *Ohralik* v. *Ohio State Bar Ass'n.*, 436 U.S. 447 (1978), the Supreme Court held that a state could lawfully regulate ambulance chasing. In its opinion, the Supreme Court said:

> "We need not discuss or evaluate each of these interests in detail as appellant has conceded that the State has a legitimate and indeed 'compelling' interest in preventing those aspects of solicitation that involve fraud, undue influence, intimidation, overreaching, and other forms of 'vexatious conduct.' We agree that protection of the public from these aspects of solicitation is a legitimate and important state interest."

436 U.S. at 462. The additional language appearing in proposed § 10.33 is designed to limit the application of proposed § 10.33 to those situations in which the PTO has a legitimate interest. See also 35 U.S.C. 32 and proposed § 10.31(a). Accordingly, the change suggested in the comment is not being adopted.

One comment suggested that proposed § 10.34 should make clear that a practitioner registered prior to November 15, 1938, may call himself or herself a "patent attorney." This suggestion is being adopted by adding to paragraph (b) an appropriate exception. All individuals registered prior to November 15, 1938, "were registered as attorneys, whether they were attorneys at law or not, and such registrations have not been changed." McCrady, *Patent Office Practice*, pp. 454 and 459 (4th Ed. 1959). By adopting the suggestion, the proposed rules will reflect current practice.

Two comments were received which indicated that proposed § 10.37 would forbid what one comment referred to as "the extremely common practice of 'farming out' work." Proposed § 10.37 does not change current practice. See 37 CFR 1.344 and DR 2–107 of the Code of Professional Responsibility of the American Bar Association (1970). Accordingly, if there is a "common practice" of farming out legal service, the practice is contrary to 37 CFR 1.344. Neither individual suggested that farming out occurs without knowledge by the client. Upon consideration of the comments, it has been decided not to change the text of proposed § 10.37. Accordingly, if proposed § 10.37 is adopted, "farming out" of legal services could be done ethically only under the conditions specified in § 10.37. The present view of the PTO is that clients retain practitioners on an individual or firm basis and that a client ought to know who is doing legal services on its behalf. It should be noted that proposed § 10.37 covers only "legal services." It does not cover non-legal services such as searching for patents or trademark registrations, preparing patent or trademark application drawings, obtaining copies of documents, etc.

Eight comments were received with respect to proposed § 10.40. One comment suggested that the language "his or her client, allowing time for employment of" be inserted after "giving due notice to." The suggested change has been adopted. A second comment suggested that the language of proposed § 10.40(c)(1)(vi) be changed to read: "has failed to pay one or more bills rendered by the petitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of services." The suggested change is being adopted with two minor modifications: The word "practitioner" is being used in place of "petitioners" and the word "legal" is being inserted in front of "services." Proposed § 10.40 as it appeared in the advance notice would have required that a practitioner establish that the client deliberately disregarded an agreement or obligation to the practitioner concerning expenses or fees. This would have required proof of a fact which really has nothing to do with the heart of the matter. Whether the failure to pay was "deliberate" in the sense that the client has the money but chooses not to pay it really should not be relevant. What the practitioner should be required to establish is that, for whatever reason, the client has failed to pay his or her bills or has failed to pay an advance which the client agreed to pay prior to the performance of legal services.

Several comments suggested that under proposed § 10.40 a practitioner would have to state his reason for wanting to withdraw and that the practitioner might have to reveal that his or her client is engaged in unlawful activity. Under proposed § 10.40, a practitioner would normally not have to reveal practitioner/client secrets in support of a petition to withdraw, but a practitioner is obligated to disclose "[t]he intention of a client to commit a crime and the information necessary to prevent the crime." (See proposed § 10.57(c)(3). A fourth comment was concerned that when a practitioner and a client cannot agree on the merits of a client's case and/or a proposed amendment whether the disagreement has to be stated on the record. Under proposed § 10.40, only the fact (but not the nature) of the disagreement need be stated as a basis for petitioning to withdraw. A fifth comment suggested that there is no need for a petition to withdraw "when there is already a substitute attorney." The comment did not define a "substitute attorney." If a power of attorney is revoked (37 CFR 1.36) when a "substitute attorney" is appointed, a petition to withdraw is not necessary. If a revocation is not filed, any attorney of record continues to be an attorney of record until the power is revoked or the attorney withdraws. The suggestion made in the fifth comment is not being adopted.

One comment was concerned with timing of a decision on a petition to withdraw and suggested that a time be given for the PTO to act. It was further suggested that if the PTO fails to act within a specified time, that failure to act is to be construed as approval of the petition. This suggestion is not being adopted. In patent cases, it is presently contemplated that action will be taken by the Director in the Examining Group in which the patent application is pending or by the Chairman of the Board of Patent Interferences, if the application is involved in an interference. In trademark cases, it is presently contemplated that a decision on a petition to withdraw would be made by the Director, if an application is pending before a trademark attorney (examiner), or by the Chairman of the Trademark Trial and Appeal Board in those cases where the application is before the board on an ex parte appeal or for *inter partes* proceedings.

One comment suggested that proposed § 10.40 does not address the situation where an attorney resigns as member of a corporate legal department. Under current practice (37 CFR 1.36) and proposed § 1.40, leave to withdraw would ordinarily be granted to any practitioner who resigns as a member of a corporate patent and/or trademark legal department.

One comment suggested that proposed § 10.48 would not permit a registered patent attorney and a general lawyer to share legal fees even when the patent attorney and general lawyer are members of the same firm. Two comments suggested that proposed § 10.49 would not permit formation of partnership between a patent attorney and a general attorney. It was not the intent of the rules published in the advance notice to prevent such sharing of legal fees or to preclude formation of such partnerships. In view of the changed definition of "practitioner" in proposed § 10.1(r), the concerns expressed in the three comments should no longer exist. See also the change made to the preamble of proposed § 10.1 Another comment suggested that proposed § 10.49 would make it impossible for a patent attorney and a suspended or excluded practitioner to remain partners. This would be true if the suspended or excluded practitioner continues to practice law before the Office. If the suspended or excluded practitioner does not practice law before the PTO, then no problem is foreseen. As pointed out in discussing the comments concerning proposed § 10.158, however, when a partner is suspended or excluded from practice before the PTO, business may not be able to continue as usual.

One comments suggested that the reporting requirements of proposed § 10.57 may be different than those imposed by the Code of Professional Responsibility of a given State. This may be true. However, the reporting requirements of the States are not uniform. It follows that the PTO cannot propose a rule which will be consistent with rules in all States.

One comment suggested that proposed § 10.62 should specifically authorize a registered patent practitioner to testify concerning attorney diligence in patent cases. This suggestion is not to be adopted. However, it should be clear that in most cases, the exception of proposed § 10.62(b)(3) would apply. As pointed out in the advance notice, however, the weight to be given testimony by a practitioner on behalf of his or her client would be determined on a case-by-case basis. *Wilder* v. *Snyder*, 201 USPQ 927, 934 (Bd.Pat.Int. 1979). The same comment suggested that permission by a client should be made the basis for

permitting a practitioner to testify. This suggestion is not being adopted. Virtually all clients would give permission and such permission would not obviate the rationale behind the rule.

Three comments were received which suggested that a patent attorney or agent should be able to acquire a proprietary interest in the subject matter of a patent proceeding before the PTO. There are inventors who would not be able to apply for a patent and secure the assistance of a registered practitioner unless the practitioner may take an interest in the patent as part or all of his or her fee. The text of proposed § 10.64(a) is being changes to permit a practitioner to acquire an interest in a patent case. Acquiring an interest in trademark and other non-patent cases would continue to be prohibited. Proposed § 10.64(a) is now consistent with Informal Opinion No. 280 of the American Bar Association which states: "A lawyer may acquire an interest in a patent for his [or her] fee." Newly proposed § 10.64(a)(3) would not change PTO policy which prohibits a practitioner from obtaining a proprietary interest for the sole purpose of obtaining a filing date under 37 CFR 1.47(b). See *Manual of Patent Examining Procedure*, § 409.03(f) (5th Ed. Aug. 1983).

Two comments questioned the need for proposed § 10.65(b) as it appeared in the advance notice. In response to these comments, it has been decided to delete paragraph (b) from proposed § 10.65.

One comment suggested that Rules 5.1 and 5.2 of the Model Rules of Professional Conduct of the American Bar Association (1983) "are more in tune [than proposed § 10.66(a)] with the present day practice of law." It is said that the ABA rules "account for supervisory relationships found in law firms and in corporate legal departments." Proposed § 10.66(d) permits the Director or the Commissioner to authorize the creation of "Chinese Walls." In determining whether a "Chinese Wall" can, or should, be erected, the Commissioner should be free to take into account all factors. Compare *Plus Products* v. *Con-Stan Industries, Inc.*, 221 USPQ 1071 (Comm'r.Pat. 1984) and *Sunkist Growers, Inc.* v. *The Benjamin Ansehl Co.*, 221 USPQ 1077 (Comm'r.Pat. 1984).

Two comments were received which indicated, in the words of one comment, that "[u]nder many local jurisdictions, it is permissible for a non-lawyer to own stock in a professional corporation or to be a director or officer thereof." Accordingly, subparagraphs (1) and (2) of proposed § 10.68(c) as they appeared in the advance notice have been deleted. Paragraph (c) of proposed § 10.68(c) has been revised to limit its application to those situations where the non-practitioner has the right to direct or control the professional judgment of the practitioner. The ownership of professional corporations or associations and the directors and officers thereof are matters which are deemed better left to state law.

One comment was received with respect to proposed § 10.85(a)(7) as it appeared in the advance notice. Section 10.85(a)(7) as it appeared in the advance notice has been deleted as being unnecessary. See Fedders, 56 Notre Dame Law. 5, 59–60 (1980).

Several comments were received discussing proposed § 10.85(b)(1). Some comments suggested the entire subparagraph should be deleted. Others suggested it should be strengthened. It has been decided to delete from the text of § 10.85(b)(1) as it appeared in the advance notice the language "except when the information is protected as a privileged communication." This amendment was suggested by the Statewide Grievance Committee of Connecticut and the Patent, Trademark, and Copyright Section of the Indiana State Bar Association.

Three comments relative to proposed § 10.87 were received. All three pointed out a misspelling of the word "advice." One comment questioned whether a practitioner could tell a party who refuses to retain counsel that "I don't think you have a leg to stand on." Proposed § 10.87 covers those cases in which the party is represented by counsel. If a party refuses to retain counsel, then a practitioner may deal with that party as he would with a lawyer for that party. In response to another comment, proposed § 10.87 would not preclude a practitioner from recommending direct negotiations between the parties, without counsel present, or from having private investigators make appropriate field investigations in the marketplace, e.g., to determine the likelihood of confusion.

Several comments were received with respect to proposed § 10.89. One comment, which is being adopted, suggested that "controlling" be inserted before "legal authority" in proposed § 10.89(b)(1). This suggestion is being adopted because the PTO believes that a practitioner should be required to cite only controlling authority. The practitioner, of course, will assume the obligation of determining among known precedents which may be a controlling precedent. One comment suggested that failure to cite controlling authority "should be viewed as a disciplinary violation only under the most grievous circumstances." Failure to cite known controlling authority to the PTO can be a serious matter, particularly in *ex parte* patent and trademark cases. Recently, the Ninth Circuit had occasion to comment on failure of counsel to cite what the court felt was known controlling authority. *Southern Pacific Transportation Co.* v. *Public Utilities Commission of the State of California*, 716 F.2d 1285, 1291 (9th Cir. 1983). Suffice it to say here, any decision to bring disciplinary action based on an alleged violation of proposed § 10.89(b)(1) will depend on the precise facts. Another comment suggested that proposed § 10.89(b)(2) "appears to be contrary to the practice of filing anonymous requests for reexamination and anonymous protests." There is no conflict because the identity of a client filing such requests for reexamination and protests is "irrelevant" as a matter of law. See e.g., 35 U.S.C. 301; 37 CFR 1.501.

One comment suggested that proposed § 10.89(c)(2) "would have a chilling effect on a practitioner who is attempting to determine what is relevant in the course of discovery and/or who is attempting to impeach a witness." Paragraph (c)(2) is based on DR 7–106(c)(2) of the Code of Professional Responsibility of the American Bar Association (1970), which is currently applicable to practitioners, including trademark practitioners. There is no evidence that the current rule has any chilling effect. Hence, no change is being made in proposed § 10.89(c)(2).

One comment suggested that proposed § 10.89(c)(3) might preclude asking on cross-examination a question along the lines: "I understand Mr. Doe that you previously were convicted of perjury." Suffice it to say, proposed § 10.89(c)(3) would not prohibit such a question.

In response to suggested changes, proposed § 10.89(b)(2) has been changed to correct an incorrect reference to "practitioner" with "the adverse party," and "counselor" in proposed § 10.89(b)(3) has been changed to "counsel or" to correct a typographical error. One comment suggested a provision be added to the proposed rules to authorize certain conferences with the interlocutory examiners at the Board of Patent Interferences and the Trademark Trial and Appeal Board. This suggestion is not being adopted. Such a provision is not necessary, because (1) interlocutory examiners routinely handle questions regarding procedure and will not entertain improper questions and (2) interlocutory examiners can insist that all parties

participate, e.g., through a telephone conference call.

One comment suggested that the language "under circumstances where the practitioner knows or it is obvious that such action is not in the public interest" in proposed § 10.101(a)(1) be deleted or that some indication be given of what it means. It is believed that proposed paragraph (a)(1) is sufficiently clear without further definition. The paragraph merely restates the current rules. See 37 CFR 1.344 and DR 8–101(a)(1) of the Code of Professional Responsibility of the American Bar Association (1970).

Two comments were received with respect to proposed § 10.112. Neither comment was fully understood. A response to the comments has been mailed to the individuals who submitted the comments and it is hoped that each individual will file additional comments in response to this notice. Any additional comments will be addressed in any notice promulgating rules which may be issued based on this notice.

Several comments on proposed § 10.130 were received. One comment suggested that "who is guilty of gross misconduct" be deleted because "gross misconduct" is "undefined." The suggestion its not being adopted, because "gross misconduct" is a basis for suspension or exclusion in 35 U.S.C. 32. There have been cases where a practitioner has been disciplined for engaging in "gross misconduct." See *In re Wedderburn*, 1897 Dec. Comm'r. Pat 77, 117 (Comm'r. Pat 1897), particularly headnotes 15 and 26. Another comment suggested deletion of the word "disreputable" from proposed § 10.130. According to the comment, disreputable conduct "does not have anything to do with the concerns of the" PTO. Congress has indicated otherwise, because it has specifically authorized the Commissioner to suspend or exclude those who are shown to be disreputable. 35 U.S.C. 32. The Secretary of the Treasury has the same authority to suspend or exclude those who practice before the Internal Revenue Service. See 31 U.S.C. 1026. Accordingly, the suggestion is not being adopted.

Proposed § 10.130(b) would provide that petitions to disqualify counsel in *inter partes* proceedings (i.e., patent interferences and contested cases before the Trademark Trial and Appeal Board) would not be governed by proposed §§ 10.130 through 10.170. One comment suggested that proposed § 10.130(b) is inconsistent with proposed §§ 10.24 and 10.85 which require that certain ethical violations be reported to the PTO. There is no inconsistency between proposed § 10.130 and §§ 10.24 and 10.85 when all three sections are read in *pari materia*. When a petition for disqualification is proper in an *inter partes* case, a petition to disqualify should be filed and no further report to the PTO is necessary.

Two comments were received discussing proposed § 10.131. One comment suggested that the Director should receive a complaint from a non-practitioner only if it is "received as a public record." This suggestion is not being adopted. The investigative stage of disciplinary proceedings has been, and would continue to be, a non-public proceeding. While any practitioner may reveal to the public any complaint filed against him or her, the PTO believes that it is desirable to make a disciplinary proceeding public only when the proceeding results in a finding that a practitioner has been guilty of a violation of the PTO Code of Professional Responsibility. See *Snider v. Mossinghoff*, Civil Action No. 82–2903 (D.D.C. Sept. 14, 1983) (request for material related to investigation of possible patent attorney misconduct was properly denied under FOIA where attorney has not been disciplined). Another comment suggested that the Director require non-practitioners to submit complaints in the form of an affidavit or declaration. Proposed § 10.131(c) is presently permissive. The suggestion is not being adopted, because there is not always a need for an affidavit.

For example, disciplinary action may be based solely on PTO records. There would be no reason to require a non-practitioner to make affidavit as to the content of PTO records.

One comment was received which addressed the possibility that proposed §§ 10.132, 10.140, 10.155, and 10.156 as set out in the advance notice did not provide for sufficient separation of the investigative/prosecutorial functions on the one hand from the deciding functions on the other hand. Proposed § 10.140 has been changed in response to this comment. The comment is addressed on the merits under the discussion above in connection with proposed § 10.4.

One comment was received which suggested that proposed § 10.133(b) be changed to provide for resignation from practice before the Office and that the Commissioner be authorized to enter an order excluding a practitioner "on consent." The suggestion is being adopted. In accordance with the suggestion, a practitioner would be permitted to resign and be excluded "on consent" by filing an affidavit stating that (1) the resignation is freely and voluntarily proferred, (2) the practitioner is not acting under duress or coercion from the PTO, (3) the practitioner is fully aware of the implications of filing the resignation, and (4) the practitioner is aware of (a) a pending investigation or (b) charges arising from a complaint alleging that the practitioner is guilty of a violation of the PTO Code of Professional Responsibility. The comment contains the following statement, with which the PTO is in full accord:

> "This proposal is similar to a practice in New York and one recommended by the ABA Special Committee on Evaluation of Disciplinary Enforcement. The resignation 'on consent' serves two functions. First, it distinguishes resignations filed in the face of a pending investigation or pending charges from those filed for other reasons. *Gresham v. Superior Court*, 44 Cal. App. 2d 644, 112 P.2d 965 (1941). Second it informs other jurisdictions that the exclusion involved matters which may warrant their own disciplinary action. *Nolan v. Brawley*, 244 N.E. 2d 918 (Ind. 1969)."

One comment suggested that "alleged" be inserted before "violations" in proposed § 10.134(a)(2). The suggestion is being adopted.

Two comments were received with respect to proposed § 10.135(c). One comment suggested addition of "of" after "period." This suggestion is being adopted. A second comment suggested that the period for answering an inquiry under proposed § 10.135(c) should be set at a minimum of 30 days. The proposed rules provide that the Director may set a period of not less than 15 days. This suggestion is not being adopted. The period of time to be set by the Director may vary depending on the location of, and the circumstances surrounding, the need for the inquiry. An attorney located in Washington, D.C. can adequately respond within 15 days. On the other hand, an attorney located on the West coast may need more time for response in view of the distance involved.

Two comments with respect to proposed § 10.136 were received. One comment suggested that after "thirty days" the phrase "after service" be inserted. According to the comment, the thirty-day limitation should explicitly run from a defined event. The suggestion is not being adopted, because it is contemplated that under proposed § 10.136(a) a specific date will be set out in the complaint indicating the date on or before which an answer must be filed. For example, a complaint filed on February 1 might indicate that "an answer is due on or before March 15." Hence, there is no need to set the thirty-day period to run from service. Another comment suggested that the language

"any new matter" in proposed § 10.136(e) was not definite. "Any new matter" was intended to mean any affirmative defense. Proposed § 10.136(e) as it appears in this notice uses the language "any affirmative defense" in place of "any new matter."

Two comments were received which argued that approval of an ALJ should not be necessary prior to issuing a subpoena under 35 U.S.C. 24. The comments have been considered, but the suggestions made therein are not being adopted. One comment argues that "[r]equiring the granting of leave by the administrative law judge to take depositions will create many problems." One the contrary, the PTO believes that prior ALJ approval will minimize problems and will prevent (1) unwarranted issuance of subpoenas to obtain evidence which the ALJ would not consider in any instance and (2) unnecessary work on the part of federal courts. The comment states that "[i]f the administrative law judge refuses to give permission to take certain depositions, the result may very well be a long drawn-out proceeding based upon a claim by the respondent that the denial of leave by the administrative law judge was an abuse of discretion." The same argument can be made for every interlocutory order entered by an ALJ. Moreover, as in the case of a refusal by a district judge to permit a deposition, the decision by an ALJ refusing to permit a deposition may be subject to review before the Commissioner and thereafter under 35 U.S.C. 32.

The PTO agrees with the comment to the extent that it argues that "[t]he respondent [or the Director] should be permitted to . . . take whatever depositions are appropriate." The PTO disagrees with the comment, however, as to how "appropriate" is to be determined. The PTO believes that the ALJ, on motion of the respondent or Director, should make the decision of whether a subpoena should issue. The other comment suggested that "[t]the general rule governing the issuance of subpoenas in [federal] litigation should be followed." For reasons advanced above, the PTO does not presently accept this suggestion.

Four comments regarding proposed § 10.139 were received. Two comments pointed out that "facts of law" in paragraph (b)(7) should be "facts or law." An appropriate change has been made. One comment suggested that the Federal Rules of Evidence should be made applicable to PTO disciplinary proceedings. This comment is discussed in connection with the comments filed with respect to § 10.150. One comment suggested that the rules as proposed in the advance notice did not provide for making a record of objections to evidence and rulings on those objections. The comment argues that due process problems may be created. A change to proposed § 10.150 makes clear that objections to evidence and rulings on objections will be part of the record. Another comment argued that certain stays of proceedings should be permitted. According to the argument, "[a] stay for the resolution of collateral litigation relating to allegations of misconduct would prevent the use of disciplinary proceedings as a vehicle for discovery not otherwise available in the collateral litigation." The comment does not specify what is meant by "collateral litigation." If the comment refers to allegations of fraud on the PTO by a practioner raised in a patent infringement action, it is (and would continue to be) the *general* policy of the PTO to wait until termination of the infringement action before proceeding with disciplinary proceedings. See e. g., *Kingsland* v. *Dorsey*, 338 U.S. 318 (1949).

One comment suggested that proposed § 10.141 be changed to provide that the ALJ or the Director "may provide for filing by hand or by U.S. Express Mail" papers required to be filed in disciplinary proceedings. This suggestion is being adopted. In addition to papers, proposed § 10.141(c) will provide for filing papers "and other matter."

Three comments were received which discussed proposed § 10.144(c). One comment pointed out that proposed § 10.144(c), which provided that if a disciplinary proceeding results in disciplinary action against a practitioner, the record of the entire disciplinary proceeding will be available for public inspection, was not consistent with proposed § 10.159(c), which provided that the Commissioner could order a disciplinary proceeding to be kept confidential. The added language "and subject to § 10.159(c)" in proposed § 10.144(c) obviates the inconsistency. It should be pointed out that the instances in which a disciplinary proceeding resulting in discipline can be ordered kept confidential will be rare. Before a file in a disciplinary proceeding may be kept confidential, a practitioner would have to demonstrate that the records in the disciplinary file fall within an exemption to the Freedom of Information Act, 5 U.S.C. 552(b). One comment asked whether settlement agreements would be made available. The language "including any settlement agreement" has been added to proposed § 10.144(c) in response to the comment. One comment felt that the language "disciplinary proceeding" should be defined. The PTO has viewed the disciplinary proceeding to include the complaint and all papers filed thereafter. The PTO will continue to regard disciplinary proceedings as beginning with the filing of a complaint. Another comment suggested that keeping the record of a disciplinary proceeding closed until disciplinary action occurs in inconsistent with Standard 8.25 of the Standards for Lawyer Discipline and Disability Proceedings of the American Bar Association (1979). The PTO has not adopted Standard 8.25. Moreover, the provisions of 35 U.S.C. 122 impose different requirements on the PTO which are not necessarily applicable to the States. A third comment suggested that the rules should provide for delaying opening of the record in a disciplinary proceeding until "collateral litigation involving allegations of the misconduct" is completed. This suggestion is not being adopted. Once a practitioner has been reprimanded, suspended or excluded by the PTO, the public is entitled to know that such action has been taken. The comment failed to state any compelling reason why the public should be precluded from knowing about disciplinary action pending resolution of some private controversy which may involve the same or similar issue.

Several comments suggested that the burden of proof in disciplinary proceedings should be specified in the rules. Some comments further suggested that the burden should be by clear and convincing evidence. The suggestion to include a rule stating the burden of proof is being adopted. Proposed § 10.149 specifies that the Director shall prove his or her case by a preponderance of evidence and that a respondent shall prove any affirmative defense by a preponderance of evidence. The preponderance test has been adopted in view of *Steadman* v. *Securities and Exchange Commission*, 450 U.S.C. 91 (1981) and *Charlton* v. *Federal Trade Commission*, 543 F.2d 903 (D.C. Cir. 1976) which approve the use by agencies of the preponderance test. To establish a fact by preponderance of evidence means to prove that the fact is more likely so than not so. In other words, a preponderance of the evidence in a case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in the mind of the trier of facts that what is sought to be proved is more likely true than not true.

Devitt, *Federal Jury Practice and Instructions*, § 71.01 (2d Ed. 1970).

Two comments were received which suggested that objections to evidence and rulings on objections should be made part of the record. These comments are believed to have merit and have been adopted. An appropriate change to proposed § 10.150(e) makes clear that objections to evidence and rulings on objections become part of the record. Several comments suggested that the PTO adopt the Federal Rules of Evidence as the rules applicable to disciplinary proceedings. The PTO pointed out in the advance notice (49 FR 10020, col. 2 (Mar. 16, 1984)) that adjudications, such as a disciplinary proceeding, are not controlled by the Federal Rules of Evidence. See, e.g., *Klinestiver* v. *Drug Enforcement Administration*, 606 F.2d 1128, 1130 (D.C. Cir. 1979). No comment has suggested authority which would authorize the PTO to use the Federal Rules of Evidence in disciplinary proceedings. The controlling law is set out in 5 U.S.C. 556(d) which provides in part: "Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." It appears to be the concern of some of the comments that the Administrative Procedure Act does not articulate an appropriate standard of evidence and that hearsay may be admitted. Suffice it to say that many adjudications occur daily under the Administrative Procedure Act, including disciplinary proceedings. The following language appearing in an opinion of the Eleventh Circuit in *TRW-United Greenfield Division* v. *National Labor Regulations Board*, 716 F.2d 1391, 1394 (11th Cir. 1983), may be helpful:

> "At the hearing the ALJ refused to allow five additional employees to testify that other employees told them that such a statement had been made. TRW contends it was denied a full and fair hearing by the exclusion of this testimony. The general rule is that administrative tribunals are not bound by the strict rules of evidence governing jury trials. *Opp Cotton Mills, Inc.* v. *Administrator of Wage & Hour Div.*, 312 U.S. 126, 155, 61 S.Ct. 524, 537, 85 L.Ed. 624 (1971). Thus, the admission of testimony which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. *Tagg Bros. & Moorhead* v. *United States*, 280 U.S. 420, 442, 50 S.Ct. 220, 225, 74 L.Ed. 524 (1930). But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. *Consolidated Edison Co.* v. *N.L.R.B.*, 305 U.S. 197, 230, 59 S.Ct. 206, 217, 83 L.Ed. 126 (1938). Therefore, the hearsay testimony of other employees would not have amounted to substantial evidence sufficient to support a finding for the company. We find that TRW was not denied a full and fair hearing by the judge's refusal to admit hearsay testimony."

See also *Steadman* v. *Securities and Exchange Commission*, 450 U.S. 91, 98 n. 17 (1981).

One comment argued that the Federal Rules of Evidence should apply in disciplinary cases, because the PTO is proposing to use the Federal Rules of Evidence in interference cases. See proposed 37 CFR 1.671(c) as set out in 49 FR 3768, 3798 (January 30, 1984). Unlike disciplinary proceedings, interference proceedings are not governed by the Administrative Procedure Act. Thus, while 5 U.S.C. 556(d) applies to disciplinary proceedings, it does not apply to interference cases. Another comment argued that the rules of evidence in the jurisdiction in which a practitioner is located should govern PTO disciplinary proceedings. Such a provision would make it exceedingly difficult for an ALJ to rule on evidence and might make proof of a violation or proof of an affirmative defense turn on the jurisdiction where a practitioner resides. The standards for federal conduct and the evidence used to prove or defend against allegations of misconduct involving federal matters should be uniform throughout the United States. Accordingly, the argument in this comment is not being adopted.

Two comments argued that approval of the ALJ should not be required prior to taking a deposition under proposed § 10.151(a). One of the two comments further argued that depositions should be taken by a respondent pursuant to the Federal Rules of Civil Procedure. The PTO is not adopting the suggestion made in these comments. The PTO believes that the taking of depositions should be left to the sound discretion of the ALJ upon motion made by the party wishing to take the deposition. Practice under the Federal Rules of Civil Procedure leaves too much control over litigation to the parties, whereas the procedure being the proposed in § 10.151 leaves the ALJ in full control of the proceedings. The procedure proposed in § 10.151(b) is similar to that used by the Internal Revenue Service in disciplinary proceedings under 31 U.S.C. 1026. See also 31 CFR 10.67.

Three comments regarding proposed § 10.152 were received. One comment suggested that "administrative representatives" be defined. The PTO believes that the term does not need to be defined in the rules per se, but will explain the term herein for the benefit of further comment. Administrative representatives would include any PTO employee who investigates or prosecutes a disciplinary matter. The term also includes the Director, his investigative staff, and his prosecutorial staff. Two comments suggested that discovery should be commensurate with discovery authorized by the Federal Rules of Civil Procedure. The PTO is not adopting this suggestion because discovery under the Federal Rules of Civil Procedure is expensive and does not permit an ALJ to control proceedings to the extent necessary to conclude procedings with reasonable dispatch. Discovery is not required as a matter of due process as set out in the advance notice. 49 FR 10020 (March 16, 1984). No compelling rationale has been presented to date which would cause the PTO to change its views presented in the advance notice. The PTO is receptive to further comment in response to this notice. One comment suggested that awarding costs could be a meaningful way of preventing discovery abuse. The PTO, however, has no statutory authority to award costs. While costs and attorney fees might be awarded to a prevailing respondent, there would be not authority to require a respondent who abuses discovery to pay costs.

Two changes have been made to proposed § 10.154 in response to comments. The changes are discussed above. One change is editorial in nature. The other would require the ALJ to explain the reasons for any "reprimand" as well as for any suspension or exclusion. The suggestion is being adopted, because the rationale for penalties will form the basis of *stare decisis*. Indeed, one of the principal reasons for having the ALJ articulate reasons in support of penalties is to avoid the situation existing today where various penalties have been handed out, but no rationale in support of the penalties has been articulated. The lack of articulated rationale has made it more difficult to prosecute, defend, and settle disciplinary proceedings.

One comment suggested that the rules provide no vehicle for reopening disciplinary proceedings. While the PTO believes that the Commissioner has inherent authority to reopen disciplinary proceedings upon a proper showing, paragraph (c) is being added to proposed § 10.155 to make explicit the authority of the Commissioner to "grant new trials." The standard is the same as

that set forth in 37 CFR 1.184. Thus, the granting of a request to reopen a disciplinary proceeding will be controlled by the principles which govern the granting of new trials. Compare Rules 59 and 60 of the Federal Rules of Civil Procedure. One comment asks who will determine whether an appeal should be taken on behalf of the Director. The answer is that the Director will make that decision. In deciding to appeal to the Commissioner, the Director would not have to seek or obtain approval of the Committee on Discipline. One comment expressed the view that there might be an appearance of impropriety if appeals are to be filed with the Director since he is a party. The proposed practice is believed to be the easiest administrative manner for handling appeals. The proposed practice is similar to that which occurs with the Director of Practice of the Internal Revenue Service (31 CFR 10.71). It has presented no problem to the IRS. Accordingly, the PTO will continue to propose filing appeals in the Office of the Director. The PTO solicits further comment on this matter.

One comment voiced an objection to the Commissioner forwarding his or her decision to the Director who would in turn forward a copy of the decision to the respondent. The fifth sentence of proposed § 10.156(a) has been changed to state that the Commissioner will forward a copy of the final decision to both the Director and to the respondent.

Two comments were received which suggested that a stay should be automatically entered whenever a practitioner seeks judicial review of a final decision of the Commissioner. The PTO believes that stays should be entered in the discretion of the Commissioner. Accordingly, the suggestion is being adopted to the extent that a paragraph (b) has been added to proposed § 10.157 to give the Commissioner discretion to enter stay orders. Whether a stay would be entered would depend on the particular facts. For example, it is unlikely that any stay would be entered where the practitioner has been found guilty of a violation of the PTO Code of Professional Responsibility *and* is presently incarcerated.

Three comments were received which addressed proposed § 10.158. This section is designed to set out, for the first time, the restrictions on suspended or excluded practitioners. The present intent of the PTO is to effect the maximum lawful isolation of a suspended or excluded practitioner from the practice of law before the PTO. The PTO is attempting to do so through § 10.158. One comment suggested that a suspended or excluded practitioner should be required to notify the bars of which he or she is a member of the fact of the PTO suspension or exclusion. The PTO believes this comment has merit. The language "bars of which he or she is a member" would include the bar of a State and the bar of a federal court, such as the Supreme Court, the United States Court of Appeals for the Federal Circuit, and any other federal court bar in which the suspended or excluded practitioner is a member. One comment believed that the firm of a suspended or excluded practitioner would have to give up its clients when the practitioner is suspended or excluded. That was not the intent of proposed § 10.158. Nevertheless, proposed § 10.156(b)(1) has been changed to make clear that a suspended or excluded practitioner must notify his or her clients. The clients of other members of the firm would not have to be notified. The same comment felt that the PTO was attempting to preclude a suspended or excluded practitioner from appearing before State courts. Such was not, and is not, the intent of the PTO. See the preamble to proposed § 10.1. One comment suggested insertion of the words "by a final decision" after the word "Office" in proposed § 10.158 (a) and (b). This suggestion is not being adopted. The provisions of proposed § 10.158 would apply unless a stay is granted by the Commissioner under proposed § 10.157(b). The same comment suggested eliminating the word "law" or "legal" from subparagraphs (b)(3), (b)(5), (b)(6), and (b)(7). This suggestion is not being adopted. The comment would apparently have the Commissioner exclude from any contact with the PTO a practitioner who is suspended or excluded. The PTO does not believe the Commissioner has authority to do so. For example, a suspended or excluded practitioner could deliver a paper to the PTO. Hence, what the PTO proposes to do is prevent a suspended or excluded practitioner from practicing *law* before the Office or from rendering *legal* services to those having immediate, actual, or prospective business before the PTO. The comment went on to suggest that paragraphs (c) and (d) should be deleted, arguing that a suspended or excluded practitioner should not be permitted to do what is authorized in the paragraphs. The PTO perceives that suspended and excluded practitioners are entitled—like other citizens—to do certain things. Proposed § 10.158 sets out what a suspended or excluded practitioner may do without running the risk of being denied readmission after a suspension. The comment failed to address the holdings of the various cases cited in the advance notice, 49 FR at 10021, second and third columns. One comment discussed proposed § 10.158 extensively. The comment has been considered in its entirety, but none of the suggestions made therein are being adopted. The comment argued that "in any way" in proposed § 10.158(c) might prevent a suspended partner from buying paper for the firm. Such is not the intent of the proposed rule inasmuch as it merely prevents a suspended or excluded practitioner from aiding another in the *practice of law* before the Office. The comment states that it would be impossible for a suspended or excluded practitioner to avoid discussions with clients and witnesses. The PTO does not agree. If the comment were correct, disqualification of all members of a firm would occur every time an associate is disqualified. However, "Chinese Walls" can be erected. The point is, when a practitioner is suspended or excluded and the practitioner is a member of a firm, the firm will have to decide whether to retain the suspended or excluded practitioner with appropriate insulation from PTO clients or whether to effect a separation. The comment also argued that the PTO was attempting to preclude a suspended or excluded practitioner from practicing State law. As pointed out above, such is not the case. The comment states that when a partner of a firm is suspended or excluded there are many contractual and economic ties between the partners which will make compliance with proposed § 10.158 difficult. The PTO appreciates the difficulty which may in fact result. However, such is the fate of a firm in which a member is suspended or disbarred. Similar contractual and economic ties are disrupted when a State disbars a member of a firm. The argument is also made that a contract may prevent a firm or professional corporation from making a partner or majority stockholder an employee. What happens when a State bar suspends such a partner or majority stockholder? Fortunately, most partnerships and professional corporations do not encounter a need to deal with some of the difficult issues raised in the comment. However, when a suspension or exclusion occurs, business cannot be permitted to go on as usual. Those who are suspended cannot represent others, directly or indirectly, in their patent, trademark, and other legal business before the PTO.

One comment suggested that "the practitioner" in the second sentence of

proposed § 10.159(b) be changed to "any practitioner." The suggestion is being adopted. Another comment suggested that proposed § 10.159(a) should be amended to insert after "be" the language "or have been." The suggestion is not being adopted in view of the change to proposed § 10.158(b)(1).

With respect to proposed § 10.160(d) one comment made the following statement: "That's no punishment! In this situation, it would seem to me that the period of actual suspension should be at least significantly greater than the initial period which the suspended practitioner failed to honor." Proposed § 10.160(d) is believed to give the Director discretion in considering an application for readmission by a suspended or excluded practitioner and to take into account any activity in which a suspended or excluded practitioner may have engaged. If a suspended or excluded practitioner has violated proposed § 10.158, he or she will not be readmitted until an appropriate suspension or exclusion has taken place. If the Director is of the opinion that a longer suspension is in order, he may deny the application for readmission and the suspended or excluded practitioner may seek review to the Commissioner under proposed § 10.2(c).

Table 1

Principle Source of §§ 10.2 through 10.19

Sec.
10.2(a) New.
10.2(b)(1) New, but see 37 CFR 1.341(i) (1983).
10.2(b)(2) New, but see 37 CFR 1.348(a) (1983).
10.2(c) New, but see 37 CFR 1.341(i) (1983).
10.3 37 CFR 1.341(i) (1983).
10.4(a) New.
10.4(b) New, but see 37 CFR 1.348(a) (1983).
10.4(c) New.
10.5 37 CFR 1.341 (1983).
10.6(a) 37 CFR 1.341(a) (1983).
10.6(b) 37 CFR 1.341(b) (1983).
10.6(c) 37 CFR 1.341(e) (1983).
10.6(d) 37 CFR 1.341(f) (1983).
10.6(e) 37 CFR 1.341(g) (1983).
10.7(a), (b) 37 CFR 1.341(c) (1983).
10.7(c) New.
10.8 37 CFR 1.341(h) (1983).
10.9(a) 37 CFR 1.342 (1983).
10.9(b) New.
10.10 37 CFR 1.343 (1983).
10.11 37 CFR 1.347 (1983).
10.12 [Reserved]
10.13 [Reserved]
10.14 5 U.S.C. 500(b) and 37 CFR 2.12 (1983).
10.15 35 U.S.C. 32; 5 U.S.C. 500(d)(2); 37 CFR 1.343 (1983); and 37 CFR 2.12(f) (1983).
10.16 [Reserved]
10.17 [Reserved]
10.18(a) 37 CFR 1.348 (1983) and 37 CFR 2.15 (1983), see also Rule 11, FRCP.
10.18(b) 35 U.S.C. 32 and Rule 11, FRCP.
10.19 [Reserved]

Table 2

Principal Source of §§ 10.20 through 10.112, the PTO Code of Professional Responsibility

Abbreviations:
FRCP means Federal Rules of Civil Procedure
MCPR means Model Code of Professional Responsibility of the ABA (1980)
MRPC means Model Rules of Professional Conduct of the ABA (1983)
VCPR means the Virginia Code of Professional Responsibility (1984)

Sec.
10.20 Preamble to MCPR (1980).
10.21 MCPR Canon 1 (1980).
10.22 MCPR DR 1–101 (1980).
10.23(a) 35 U.S.C. 32
10.23(b)(1) 35 U.S.C. 32 and MCPR DR 1–102(A)(1) (1980).
10.23(b)(2)–(6) MCPR DR 1–102(A) (2)–(6) (1980).
10.23(c) (1)–(14) PTO created.
10.23(c)(15) Rule 11, FRCP.
10.23(c) (16)–(18) PTO created.
10.23(d) *U.S.* v. *Beecroft*, 608 F.2d 753 (9th Cir. 1979).
10.24 MCPR 1–103 (1980).
10.25 through 10.29 [Reserved]
10.30 MCPR Canon 2 (1980).
10.31(a) 35 U.S.C. 32.
10.31(b) 5 U.S.C. 501.
10.31(c) 37 CFR 1.345(c) (1983).
10.31(d) Newly created.
10.32 MRPC Rule 7.2 (1983).
10.33 MRPC Rule 7.3 (1983).
10.34 MRPC Rule 7.4 (1983).
10.35(a) 5 U.S.C. 501 and MRPC Rule 7.5 (1983).
10.35(b) MRPC Rule 7.5 (1983).
10.36 MCPR DR 2–106 (1980).
10.37 MCPR DR 2–107 (1980).
10.38 MCPR DR 2–108 (1980).
10.39 MCPR DR 2–109 (1980).
10.40 MCPR DR 2–110 (1980).
10.41 through 10.45 [Reserved]
10.46 MCPR Canon 3 (1980).
10.47 (a), (c) MCPR DR 3–101 (1980).
10.47(b) New (but see e.g., *Crawford* v. *State Bar of California*, 7 Cal. Rptr. 746, 355 P.2d 490 (Cal. 1960))
10.48 MCPR DR 3–102 (1980).
10.49 MCPR DR 3–103 (1980).
10.50 through 10.55 [Reserved]
10.56 MCPR Canon 4 (1980).
10.57 MCPR DR 4–101 (1980).
10.58 through 10.60 [Reserved]
10.61 MCPR Canon 5 (1980).
10.62 MCPR DR 5–101 (1980).
10.63 MCPR DR 5–102 (1980).
10.64 MCPR DR 5–103 (1980).
10.65 MCPR DR 5–104 (1980).
10.66 MCPR DR 5–105 (1980).
10.67 MCPR DR 5–106 (1980).
10.68 MCPR DR 5–107 (1980).
10.69 through 10.75 [Reserved]
10.76 MCPR Canon 6 (1980).
10.77 MCPR DR 6–101 (1980).
10.78 MCPR DR 6–102 (1980).
10.79 through 10.82 [Reserved]
10.83 MCPR Canon 7 (1980).
10.84 MCPR DR 7–101 (1980).
10.85 MCPR DR 7–102 (1980).
10.86 [Reserved].
10.87 MCPR DR 7–104 (1980).
10.88 MCPR DR 7–105 (1980).
10.89 MCPR DR 7–106 (1980).
10.90 [Reserved]
10.91 [Reserved]
10.92 MCPR DR 7–109 (1980).
10.93 VCPR DR 7–109 (1984).
10.94 through 10.99 [Reserved]
10.100 MCPR Canon 8 (1980).
10.101(a) MCPR DR 8–101 (1980).
10.101(b) 37 CFR 1.341(f) (1983) and 41 Op. Att'y Gen. 21 (1949), *reprinted in* 1949 Dec. Comm'r. Pat. 1.
10.102 MCPR DR 8–102 (1980).
10.103 MCPR DR 8–103 (1980).
10.104 through 10.109 [Reserved]
10.110 MCPR Canon 9 (1980).
10.111 MCPR DR 9–101 (1980).
10.112 MCPR DR 9–102 (1980).

Table 3

Principal Source of §§ 10.130 through 10.161 Sec. and Source

10.130 35 U.S.C. 32.
10.131(a) New, but see 37 CFR 1.348 (a).
10.131(b) MCPR DR 1–103 (1980).
10.131(c) New.
10.132 (a), (c) New.
10.132(b) New, but see 37 CFR 1.348 (b) (1983).
10.133 New.
10.134 37 CFR 1.348 (b) (1983).
10.135(a)(1) New.
10.135(a)(2) 37 CFR 1.348 (b) (1983).
10.135(a)(3) New.
10.135(b) New.
10.135(c) New.
10.135(d) 5 U.S.C. 500 (f).
10.136(a) 37 CFR 1.348 (c) (1983).
10.136(b) New.
10.136(c) 37 CFR 1.348 (c) (1983).
10.136(d) 37 CFR 1.348 (c) (1983).
10.136(e) New.
10.137 37 CFR 1.348 (c) (1983).
10.138 New.
10.139(a) 5 U.S.C. 3105.
10.139(b) 5 U.S.C. 556(c).
10.139(c) New.
10.139(d) New.
10.139(e) New.
10.140(a) 5 U.S.C. 500(b).
10.140(b) New.
10.141 New.
10.142 New.
10.143 New.
10.144 New.
10.145 New.
10.146–10.148 [Reserved]
10.149 New, see *Steadman* v. *SEC*, 450 U.S. 91 (1981).
10.150(a) 5 U.S.C. 556(d).
10.150(b) 37 CFR 1.348 (d)(3) (1983).
10.150(c) New.
10.150(d) New.
10.150(e) New.
10.151 37 CFR 1.348 (d)(3) (1983).
10.152 New, see *Silverman* v. *CFTC*, 549 F.2d 28 (7th Cir. 1977).
10.153 New, but see 5 U.S.C. 557(c).
10.154 See 5 U.S.C. 557(b) and 35 U.S.C. 32.
10.155 New.
10.156 New.
10.157 35 U.S.C. 32, Local Rule 1–26 (D.D.C.).
10.158 New.
10.159 New.
10.160 New.
10.161 New.

Sec. and Source
10.162–10.169 [Reserved]
10.170 New, but see 37 CFR 1.183.

Other Considerations

The proposed rules will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rules are in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rules will not have a significant adverse economic impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The proposed rules would regulate the conduct of attorneys and agents who represent individuals and juristic entities before the Patent and Trademark Office and, if adopted, the proposed rules would not be expected to result in an increase of fees charged by attorneys and agents to entities, including small entities.

The Patent and Trademark Office has determined that the proposed rules are 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, individuals industries, federal, state, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The registration information reporting requirements contained in the proposed rules, have been approved by the Office of Management and Budget, OMB Control No. 0651–0012.

The collection of information requirement for preserving client records, and identity of clients' funds and property, contained in the proposed rules, is being submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Direct comments relating to this requirement to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Commerce, Patent and Trademark Office.

List of Subjects in 37 CFR Parts 1, 2, and 10

Administrative practice and procedure, Authority delegations, Conflict of interests, Courts, Inventions and patents, Tradmarks, Lawyers.

Notice is hereby given that, pursuant to the authority granted to the Commissioner of Patents and Tradmarks by 35 U.S.C. 6, 31, and 41, the Patent and Tradmark Office proposes to amend Title 37 of the Code of the Federal Regulations as set forth below:

It is proposed to amend 37 CFR, Chapter 1, as follows wherein removals are indicated by brackets and additions by arrows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. Section 1.8 is proposed to be amended by adding a new paragraph (a)(2)(xxi) to read as follows:

§ 1.8 Certificate of mailing.

(a) * * *
(2) * * *
(xiii) Papers filed in connection with a disciplinary proceeding under Part 10 of this Subchapter.
* * * * *

2. Section 1.21 is proposed to be amended by adding paragraphs (a) (5) and (6) to read as follows:

§ 1.21 Miscellaneous fees and charges.

(a) * * *

(5) For review of a decision of the Director of Enrollment and Discipline under §10.2(c)	60.00
(6) For requesting regrading of an examination under §10.7(c)	60.00

* * * * *

3. Section 1.31 is proposed to be revised to read as follows:

§ 1.31 Applicants may be represented by [an] ►a registered◄ attorney or agent.

An applicant for patent may file and prosecute his ►or her◄ own case, or he ►or she◄ may be represented by [an] ►a registered◄ attorney ►,◄ [or] agent, ►or other individual◄ authorized to practice before the Patent and Trademark Office in patent cases. ►See §§ 10.6 and 10.9 of this Subchapter.◄ The Patent and Trademark Office cannot aid in the selection of [an] ►a registered◄ attorney or agent.

4. Section 1.34 is proposed to be amended by revising paragraph (a) as follows:

§ 1.34 Recognition for representation.

(a) When a registered attorney or agent acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a patent case, his or her personal appearance or signature shall constitute a representation to the Patent and Trademark Office that under the provisions of this [part] ►Subchapter◄ and the law, he or she is authorized to represent the particular party in whose behalf he or she acts. In filing such a paper, the ►registered◄ attorney or agent should specify his or her registration number with his or her signature. Further proof of authority to act in a representative capacity may be required.
* * * * *

§§ 1.341—1.348 [Amended]

5. The center heading preceding § 1.341 is proposed to be removed.

6. Sections 1.341 through 1.348 are proposed to be deleted.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

7. Section 2.11 is proposed to be revised to read as follows:

§ 2.11 Applicants may be represented by an attorney.

The owner of a trademark may file and prosecute his ►or her◄ own application for registration of such trademark, or he ►or she◄ may be represented by an attorney or other [person] ►individual◄ authorized to practice in trademark cases ►under § 10.14 of this Subchapter◄. The Patent and Trademark Office cannot aid in the selection of an attorney or other representative.

§§ 2.12—2.16 [Removed]

8. Sections 2.12 through 2.16 are proposed to be removed.

9. Section 2.17 is proposed to be amended by revising paragraph (a) as follows:

§ 2.17 Recognition for representation.

(a) When an attorney [at law] ►as defined in § 10.1(c) of this Subchapter◄ acting in a representative capacity appears in person or signs a paper in practice before the Patent and Trademark Office in a trademark case, his ►or her◄ personal appearance or signature shall constitute a representation to the Patent and Trademark Office that ►,◄ under the provisions of [these rules] ►§ 10.14◄ and the law ►,◄ he ►or she◄ is authorized [, and qualified under § 2.12(a),] to represent the particular party in whose behalf he ►or she◄ acts. Further proof of authority to act in a representative capacity may be required.
* * * * *

10. Section 2.19 is proposed to be revised to read as follows:

§2.19 Revocation of power of attorney or of other authorization to represent ►, withdrawal◄.

►(a)◄ Authority to represent an applicant or a party to a proceeding may be revoked at any stage in the proceedings of a case upon notification to the Commissioner; and when it is so revoked, the Office will communicate directly with the applicant or party to the proceeding or with such other qualified person as may be authorized. The Patent and Trademark Office will notify the person affected of the revocation of his ►or her◄ authorization.

►(b) An individual authorized to represent an applicant or party in a trademark case may withdraw upon application to and approval by the Commissioner.◄

11. The following Part 10 is proposed to be added:

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

Sec.

10.1 Definitions.
10.2 Director of Enrollment and Discipline.
10.3 Committee on Enrollment.
10.4 Committee on Discipline.

Individuals Entitled to Practice Before the Patent and Trademark Office

10.5 Register of attorneys and agents in patent cases.
10.6 Registration of attorneys and agents.
10.7 Requirements for registration.
10.8 Oath and registration fee.
10.9 Limited recognition in patent cases.
10.10 Individuals not registered or recognized to practice in patent cases.
10.11 Removing names from the register.
10.12–10.13 [Reserved]
10.14 Individuals who may practice before the Office in trademark and other non-patent cases.
10.15 Refusal to recognize a practitioner.
10.16–10.17 [Reserved]
10.18 Signature and certificate of practitioner.

Patent and Trademark Office Code of Professional Responsibility

10.19 [Reserved]
10.20 Canons and Disciplinary Rules.
10.21 Canon 1.
10.22 Maintaining integrity and competence of the legal profession.
10.23 Misconduct.
10.24 Disclosure of information to authorities.
10.25–10.29 [Reserved[
10.30 Canon 2.
10.31 Communications concerning a practitioner's services.
10.32 Advertising.
10.33 Direct contact with prospective clients.
10.34 Communication of fields of practice.
10.35 Firm names and letterheads.
10.36 Fees for legal services.
10.37 Division of fees among practitioners.
10.38 Agreements restricting the practice of a practitioner.
10.39 Acceptance of employment.
10.40 Withdrawal from employment.
10.41–10.45 [Reserved]
10.46 Canon 3.
10.47 Aiding unauthorized practice of law.
10.48 Sharing legal fees.
10.49 Forming a partnership with a non-practitioner.
10.50–10.55 [Reserved]
10.56 Canon 4.
10.57 Preservation of confidences and secrets of a client.
10.58–10.60 [Reserved]
10.61 Canon 5.
10.62 Refusing employment when the interest of the practitioner may impair the practitioner's independent professional judgment.
10.63 Withdrawal when the practitioner becomes a witness.
10.64 Avoiding acquisition of interest in litigation or proceeding before the Office.
10.65 Limiting business relations with a client.
10.66 Refusing to accept or continue employment if the interests of another client may impair the independent professional judgment of the practitioner.
10.67 Settling similar claims of clients.
10.68 Avoiding influence by other than the client.
10.69–10.75 [Reserved]
10.76 Canon 6.
10.77 Failing to act competently.
10.78 Limiting liability to client.
10.79–10.82 [Reserved]
10.83 Canon 7.
10.84 Representing a client zealously.
10.85 Representing a client within the bounds of the law.
10.86 [Reserved]
10.87 Communicating with one of adverse interest.
10.88 Threatening criminal prosecution.
10.89 Conduct in proceedings.
10.90–10.91 [Reserved]
10.92 Contact with witnesses.
10.93 Contact with officials.
10.94–10.99 [Reserved]
10.100 Canon 8.
10.101 Action as a public official.
10.102 Statements concerning officials.
10.103 Practitioner candidate for judicial office.
10.104–10.109 [Reserved]
10.110 Canon 9.
10.111 Avoiding even the appearance of impropriety.
10.112 Preserving identity of funds and property of client.
10.113–10.129 [Reserved]

Disciplinary Proceedings

10.130 Reprimand, suspension or exclusion.
10.131 Investigations.
10.132 Initiating a disciplinary proceeding; reference to an administrative law judge.
10.133 Conference between Director and practitioner; resignation.
10.134 Complaint.
10.135 Service of complaint.
10.136 Answer to complaint.
10.137 Supplemental complaint.
10.138 Contested case.
10.139 Administrative law judge; appointment; responsibilities; review of interlocutory orders; stays.
10.140 Representative for Director or respondent.
10.141 Filing of papers.
10.142 Service of papers.
10.143 Motions.
10.144 Hearings.
10.145 Proof; variance; amendment of pleadings.
10.146–10.148 [Reserved]
10.149 Burden of proof.
10150 Evidence.
10.151 Depositions.
10.152 Discovery.
10.153 Proposed findings and conclusions; post-hearing memorandum.
10.154 Initial decision of administrative law judge.
10.155 Appeal to the Commissioner.
10.156 Decision of the Commissioner.
10.157 Review of Commissioner's final decision.
10.158 Suspended or excluded practitioner.
10.159 Notice of suspension or exclusion.
10.160 Petition for reinstatement.
10.161 Savings clause.
10.162–10.169 [Reserved]
10.170 Suspension of rules.

Authority: 5 U.S.C. 500, 35 U.S.C. 6, 31, 32.

PART 10—REPRESENTATION OF OTHERS BEFORE THE PATENT AND TRADEMARK OFFICE

§ 10.1 Definitions.

This part governs solely the practice of patent, trademark, and other law before the Patent and Trademark Office. Nothing in this subpart shall be construed to preempt the authority of each State to maintain control over the practice of law within its borders, except to the extent necessary for the Patent and Trademark Office to accomplish its federal objectives. Unless otherwise clear from the context, the following definitions apply to this part:

(a) "Affidavit" means affidavit, declaration under 35 U.S.C. 25 (see § 1.68 and § 2.20 of this subchapter), or statutory declaration under 28 U.S.C. 1746.

(b) "Application" includes an application for a design, plant, or utility patent, an application to reissue any patent, and an application to register a trademark.

(c) "Attorney" or "lawyer" means an individual who is a member in good standing of the bar of any United States court or the highest court of any State. A "non-lawyer" is a person who is not an attorney or lawyer.

(d) "Canon" is defined in § 10.20(a).

(e) "Confidence" is defined in § 10.57(a).

(f) "Differing interests" include every interest that may adversely affect either

the judgment or the loyalty of a practitioner to a client whether it be a conflicting, inconsistent, diverse, or other interest.

(g) "Director" means the Director of Enrollment and Discipline.

(h) "Disciplinary Rule" is defined in § 10.20(b).

(i) "Employee of a tribunal" includes all employees of courts, the Office, and other adjudicatory bodies.

(j) "Giving information" within the meaning of § 10.23(c)(2) includes making (1) a written statement or representation or (2) an oral statement or representation.

(k) "Law firm" includes a professional legal corporation or a partnership.

(l) "Legal counsel" means practitioner.

(m) "Legal profession" includes the individuals who are lawfully engaged in practice of patent, trademark, and other law before the Office.

(n) "Legal service" means any legal service which may lawfully be performed by a practitioner before the Office.

(o) "Legal System" includes the Office and courts and adjudicatory bodies which review matters on which the Office has acted.

(p) "Office" means Patent and Trademark Office.

(q) "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(r) "Practitioner" means (1) an attorney or agent registered to practice before the Office in patent cases or (2) an individual authorized under 5 U.S.C. 500(b) or otherwise as provided by this Subchapter, to practice before the Office in trademark cases or other non-patent cases. A "suspended or excluded practitioner" is a practitioner who is suspended or excluded under § 10.156. A "non-practitioner" is an individual who is not a practitioner.

(s) A "proceeding before the Office" includes an application, a reexamination, a protest, a public use proceeding, a patent interference, an *inter partes* trademark proceeding, or any other proceeding which is pending before the Office.

(t) "Professional legal corporation" means a corporation, authorized by law to practice law for profit.

(u) "Registration" means registration to practice before the Office in patent cases.

(v) "Respondent" is defined in § 10.134(a)(1).

(w) "Secret" is defined in § 10.57(a).

(x) "Solicit" is defined in § 10.33.

(y) "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

(z) "Tribunal" includes courts, the Office, and other adjudicatory bodies.

(aa) "United States" means the United States of America, its territories and possessions.

§ 10.2 Director of Enrollment and Discipline.

(a) *Appointment.* The Commissioner shall appoint a Director of Enrollment and Discipline. In the event of the absence of the Director or a vacancy in the office of the Director, the Commissioner may designate an employee of the Office to serve as acting Director of Enrollment and Discipline. The Director and any acting Director shall be an active member in good standing of the bar of a State.

(b) *Duties.* The Director shall: (1) Receive and act upon applications for registration, prepare and grade the examination provided for in § 10.7(b), maintain the register, and perform such other duties in connection with enrollment and recognition of attorneys and agents as may be necessary.

(2) Conduct investigations into possible violations by practitioners of Disciplinary Rules, with the consent of the Committee on Discipline initiate disclipinary proceedings under § 10.132(b), and perform such other duties in connection with investigations and disciplinary proceedings as may be necessary.

(c) *Review of Director's decision.* Any final decision of the Director refusing to register an individual under § 10.6, recognize an individual under § 10.9 or 10.14(c), or reinstate a suspended or excluded petitioner under § 10.160, may be reviewed by petition to the Commissioner upon payment of the fee set forth in § 1.21(a)(5). A petition filed more than 30 days after the date of the decision of the Director may be dismissed as untimely. Any petition shall contain (1) a statement of the facts involved and the points to be reviewed and (2) the action requested. Briefs or memoranda, if any, in support of the petition shall accompany or the embodied therein. The petition will be decided on the basis of the record made before the Director and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record before the Director shall not be submitted with the petition. An oral hearing on the petition will not be granted except when considered necessary by the Commissioner.

(OMB Control No. 0651–0012)

§ 10.3 Committee on Enrollment.

(a) The Commissioner may establish a Committee on Enrollment composed of one or more employees of the Office.

(b) The Committee on Enrollment shall, as necessary, advise the Director in connection with the Director's duties under § 10.2(b)(1).

§ 10.4 Committee on Discipline.

(a) The Commissioner shall appoint a Committee on Discipline. The Committee on Discipline shall consist of at least three employees of the Office, none of whom reports directly or indirectly to the Director or the Solicitor. Each member of the Committee on Discipline shall be a member in good standing of the bar of a State.

(b) The Committee on Discipline shall meet at the request of the Director and after reviewing evidence presented by the Director shall, by majority vote, determine whether there is probable cause to bring charges under § 10.132 against a practitioner. When charges are brought against a practitioner, no member of the Committee on Discipline, employee under the direction of the Director, or associate solicitor or assistant solicitor in the Office of the Solicitor shall participate in rendering a decision on the charges.

(c) No discovery shall be authorized of, and no member of the Committee on Discipline shall be required to testify about, deliberations of the Committee on Discipline.

Individuals Entitled To Practice Before the Patent and Trademark Office

§ 10.5 Register of attorneys and agents in patent cases.

A register of attorneys and agents is kept in the Office on which are entered the names of all individuals recognized as entitled to represent applicants before the Office in the preparation and prosecution of applications for patent. Registration in the Office under the provisions of this part shall only entitle the individuals registered to practice before the Office in patent cases.

§ 10.6 Registration of attorneys and agents.

(a) *Attorneys.* Any citizen of the United States who is an attorney and who fulfills the requirements of this part may be registered as a patent attorney to practice before the Office. When appropriate, any alien who is an attorney, who lawfully resides in the United States, and who fulfills the requirements of this part may be registered as a patent attorney to practice before the Office, *provided:* Registration is not inconsistent with the

terms upon which the alien was admitted to, and resides in, the United States and *further provided:* The alien may remain registered only: (1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States or (2) if the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. See also § 10.9(b).

(b) *Agents.* Any citizen of the United States who is not an attorney and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office. When appropriate, any alien who is not an attorney, who lawfully resides in the United States, and who fulfills the requirements of this part may be registered as a patent agent to practice before the Office, *provided:* Registration is not inconsistent with the terms upon which the alien was admitted to, and resides in, the United States, and *further provided:* The alien may remain registered only: (1) If the alien continues to lawfully reside in the United States and registration does not become inconsistent with the terms upon which the alien continues to lawfully reside in the United States or (2) if the alien ceases to reside in the United States, the alien is qualified to be registered under paragraph (c) of this section. See also § 10.9(b).

Note.—All individuals registered prior to November 15, 1938, were registered as attorneys, whether they were attorneys or not, and such registrations have not been changed.

(c) *Foreigners.* Any foreigner not a resident of the United States who shall file proof to the satisfaction of the Director that he or she is registered and in good standing before the patent office of the country in which he or she resides and practices and who is possessed of the qualifications stated in § 10.7, may be registered as a patent agent to practice before the Office for the limited purpose of presenting and prosecuting patent applications of applicants located in such country, *provided:* The patent office of such country allows substantially reciprocal privileges to those admitted to practice before the United States Patent and Trademark Office. Registration as a patent agent under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) *Government employees.* Any officer or employee of the United States who is disqualified by statute (18 U.S.C. 203, 205) from practicing as an attorney or agent in proceedings or other matters before Government departments or agencies, may not be registered to practice before the Office. If any registered attorney or agent becomes an officer or employee of the United States who is disqualified by statute from practicing as an attorney or agent in proceedings and other matters before Government departments or agencies, his or her name shall be endorsed as inactive on the register during the period of any employment by the United States. An officer or employee of the United States whose official duties require the preparation and prosecution of applications for patent and who fulfills the requirements of this part may be registered to practice before the Office to the extent necessary to carry out his or her official duties. A written statement describing the official duties of the officer or employee and signed on behalf of the agency employing the officer or employee may be required by the Director.

(e) *Former Office employees.* No individual who has served in the Office will be registered after termination of his or her services, nor if registered before such service, be reinstated, unless he or she signs a written statement indicating that he or she has read 18 U.S.C. 207. No individual who has served in the patent examining corps of the Office will be registered after termination of his or her services, nor if registered before such service, be reinstated, unless he or she signs a written undertaking (1) not to prosecute or aid in any manner in the prosecution of any patent application pending in any patent examining group during his or her period of service therein and (2) not to prepare or prosecute or to assist in any manner in the preparation or prosecution of any patent application of another (i) assigned to such group for examination and (ii) filed within two years after the date he or she left such group, without written authorization of the Director. Associated and related classes in other patent examining groups may be required to be included in the undertaking or designated classes may be excluded from the undertaking. When an application for registration or reinstatement is made after resignation from the Office, the applicant will not be registered or reinstated if he or she has prepared or prosecuted or assisted in the preparation or prosecution of any any patent application as indicated in this paragraph.

(OMB Control No. 0651–0012)

§ 10.7 Requirements for registration.

(a) No individual will be registered to practice before the Office unless he or she shall:

(1) Apply to the Commissioner in writing on a form supplied by the Director and furnish all requested informaiton and material and

(2) Establish to the satisfaction of the Director that he or she is:

(i) Of good moral character and repute;

(ii) Possessed of the legal, scientific, and technical qualifications necessary to enable him or her to render applicants for patents valuable service; and

(iii) Is otherwise competent to advise and assist applicants for patents in the presentation and prosecution of their applications before the Office.

(b) In order that the Director may determine whether an individual seeking to have his or her name placed upon the register has the qualifications specified in paragraph (a) of this section, satisfactory proof of good moral character and repute and of sufficient basic training in scientific and technical matters must be submitted to the Director. Except as provided in this paragragh, each applicant for registration must take and pass an examination which is held from time to time. Each application for admission to take the examination for registration must be accompanied by the fee set forth in § 1.21(a)(1) of this Subchapter. The taking of an examination may be waived in the case of any individual who has actively served for at least four years in the examining corps of the Office. The examination will not be administered as a mere academic exercise.

(c) Within two months from the date an applicant is notified that he or she failed an examination, the applicant may request regrading of the examination upon payment of the fee set forth in § 1.21(a)(6). Any applicant requesting regrading shall particularly point out the errors which the applicant believed occurred in the grading of his or her examination.

(OMB Control No. 0651–0012)

§ 10.8 Oath and registration fee.

Before an individual may have his or her name entered on the register of attorneys and agents, the individual must, after his or her application is approved, subscribe and swear to an oath or make a declaration prescribed by the Commissioner and pay the registration fee set forth in § 1.21(a)(2) of this subchapter.

(OMB Control No. 0651–0012)

§ 10.9 Limited recognition in patent cases.

(a) Any individual not registered under § 10.6 may, upon a showing of circumstances which render it necessary or justifiable, be given limited recognition by the Director to prosecute as attorney or agent a specified application or specified applications, but limited recognition under this paragraph shall not extend further than the application or applications specified.

(b) When registration of an alien under paragraphs (a) or (b) of § 10.6 is not appropriate, the alien may be given limited recognition as may be appropriate under paragraph (a) of this section.

§ 10.10 Individuals not registered or recognized to practice in patent cases.

Only practitioners who are registered under § 10.6 or individuals given limited recognition under § 10.9 will be permitted to prosecute patent applications of others before the Office.

§ 10.11 Removing names from the register.

(a) Registered attorneys and agents shall notify the Director of any change of address. Any notification to the Director of any change of address shall be separate from any notice of change of address filed in individual applications.

(b) A letter may be addressed to any individual on the register, at the address of which separate notice was last received by the Director, for the purpose of ascertaining whether such individual desires to remain on the register. The name of any individual failing to reply and give any information requested by the Director within a time limit specified will be removed from the register and the names of individuals so removed will be published in the *Official Gazette*. The name of any individual so removed may be reinstated on the register as may be appropriate and upon payment of the fee set forth in § 1.21(a)(3) of this Subchapter.

(OMB Control No. 0651–0012)

§§ 10.12–10.13 [Reserved]

§ 10.14 Individuals who may practice before the Office in trademark and other non-patent cases.

(a) *Attorneys.* Any individual who is an attorney may represent others before the Office in trademark and other non-patent cases. An attorney is not required to apply for registration or recognition to practice before the Office in trademark and other non-patent cases.

(b) *Non-lawyers.* Individuals who are not attorneys are not recognized to practice before the Office in trademark and other non-patent cases, except that individuals not attorneys who were recognized to practice before the Office in trademark cases under this chapter prior to January 1, 1957, will be recognized as agents to continue practice before the Office in trademark cases.

(c) *Foreigners.* Any foreigner not a resident of the United States who shall prove to the satisfaction of the Director that he or she is registered and in good standing before the patent or trademark office of the country in which he or she resides and practices, may be recognized for the limited purpose of representing applicants located in such country before the Office in the presentation and prosecution of trademark applications, *provided:* The patent or trademark office of such country allows substantially reciprocal privileges to those permitted to practice in trademark cases before the United States Patent and Trademark Office. Recognition under this paragraph shall continue only during the period that the conditions specified in this paragraph obtain.

(d) Recognition of any individual under this section shall not be construed as sanctioning or authorizing the performance of any act regarded in the jurisdiction where performed as the unauthorized practice of law.

(e) No individual other than those specified in paragraphs (a), (b), and (c) of this section will be permitted to practice before the Office in trademark cases. Any individual may appear in a trademark or other non-patent case in his or her own behalf. Any individual may appear in a trademark case for (1) a firm of which he or she is a member or (2) a corporation or association of which he or she is an officer and which he or she is authorized to represent, if such firm, corporation, or association is a party to a trademark proceeding pending before the Office.

§ 10.15 Refusal to recognize a practitioner.

Any practitioner authorized to appear before the Office may be suspended or excluded in accordance with the provisions of this part. Any practitioner who is suspended or excluded under this subpart or removed under § 10.11(b) shall not be entitled to practice before the Office.

§§ 10.16–10.17 [Reserved]

§ 10.18 Signature and certificate of practitioner.

(a) Every paper filed by a practitioner representing an applicant or party to a proceeding in the Office must bear the signature of, and be personally signed by, such practitioner except those papers which are required to be signed by the applicant or party. The signature of practitioner to a paper filed by him or her, constitutes a certificate that:

(1) The paper has been read;

(2) The paper's filing is authorized;

(3) To the best of his or her knowledge, information, and belief, there is good ground to support the paper, including any allegations of improper conduct contained or alleged therein; and

(4) It is not interposed for delay.

(b) Any practitioner knowingly violating the provisions of this section is subject to disciplinary action. See § 10.23(c)(15).

§ 10.19 [Reserved]

Patent and Trademark Office Code of Professional Responsibility

§ 10.20 Canons and Disciplinary Rules.

(a) Canons are set out in §§ 10.21, 10.30, 10.46, 10.56, 10.61, 10.76, 10.83, 10.100, and 10.110. Canons are statements of axiomatic norms, expressing in general terms the standards of professional conduct expected of practitioners in their relationships with the public, with the legal system, and with the legal profession.

(b) Disciplinary Rules are set out in §§ 10.22–10.24, 10.31–10.40, 10.47–10.57, 10.62–10.68, 10.77, 10.78, 10.84, 10.85, 10.87–10.89, 10.92, 10.93, 10.101–10.103, 10.111, and 10.112. Disciplinary Rules are mandatory in character and state the minimum level of conduct below which no practitioner can fall without being subjected to disciplinary action.

§ 10.21 Canon 1.

A practitioner should assist in maintaining the integrity and competence of the legal profession.

§ 10.22 Maintaining integrity and competence of the legal profession.

(a) A practitioner is subject to discipline if the practitioner has made a materially false statement in, or if the practitioner has deliberately failed to disclose a material fact requested in connection with, the practitioner's application for registration or membership in the bar of any United States court or any State court or his or her authority to otherwise practice before the Office in trademark and other non-patent cases.

(b) A practitioner shall not further the application for registration or membership in the bar of any United States court, State court, or administrative agency of another person known by the practitioner to be

unqualified in respect to character, education, or other relevant attribute.

§ 10.23 Misconduct.

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

(1) Conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust.

(2) Knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to:

(i) A client in connection with any immediate, prospective, or pending business before the Office.

(ii) The Office or any employee of the Office.

(3) Misappropriation of, or failure to properly or timely remit, funds received by a practitioner or the practitioner's firm from a client to pay a fee which the client is required by law to pay to the Office.

(4) Directly or indirectly improperly influencing, attempting to improperly influence, offering or agreeing to improperly influence, or attempting to offer or agree to improperly influence an official action of any employee of the Office by:

(i) Use of threats, false accusations, duress, or coercion,

(ii) An offer of any special inducement or promise of advantage, or

(iii) Bestowing of any gift, favor, or thing of value.

(5) Suspension or disbarment from practice as an attorney or agent by any duly constituted authority of a State or the United States or, in the case of a practitioner who resides in a foreign country or is registered under § 10.6(c), suspension or disbarment as an attorney or agent by any duly constituted authority of:

(i) A State,

(ii) The United States, or

(iii) The country in which the practitioner resides.

(6) Knowingly aiding or abetting a practitioner, suspended or excluded from practice before the Office in engaging in unauthorized practice before the Office under § 10.158.

(7) Knowingly withholding from the Office information identifying a patent or application of another from which one or more claims have been copied.

(8) Failing to forward, or failing to timely notify the Office of an inability to forward, to a client or former client correspondence received from the Office or the client's or former client's opponent in an *inter partes* proceeding before the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client and (iii) is correspondence which a reasonable practitioner would believe under the circumstances should be forwarded to the client or former client.

(9) Knowingly misusing a certificate of mailing under § 1.8 of this subchapter or a certificate of "Express Mail" under § 1.10 of this subchapter.

(10) Violating the duty of candor or good faith requirements of § 1.56(a) of this subchapter.

(11) Knowingly filing, or causing to be filed, an application which is subject to being stricken under § 1.56(c) of this subchapter.

(12) In the absence of information sufficient to establish a reasonable belief in the existence of probable cause that a practitioner is in violation of, or has violated, a Disciplinary Rule, causing a disciplinary investigation to be made, or a disciplinary proceeding to be brought, against the practitioner by a court, a state, or an administrative agency.

(13) Knowingly preparing or prosecuting a patent application in violation of an undertaking signed under § 10.6(e).

(14) Knowingly failing to advise the Director in writing of any change which would preclude continued registration under § 10.6.

(15) Knowingly signing a paper filed in the Office in violation of the provisions of § 10.18 or including scandalous or indecent matter in a paper filed in the Office.

(16) Willfully refusing to reveal or report knowledge or evidence to the Director contrary to § 10.24 or paragraph (b) of § 10.131.

(17) Representing before the Office in a patent case either a joint venture comprising an inventor and an invention developer or an inventor referred to the registered practitioner by an invention developer when: (i) The registered practitioner knows, or has been advised by the Office, that a formal complaint filed by a federal or state agency, based on any violation of any law relating to securities, unfair methods of competition, unfair or deceptive acts or practices, mail fraud, or other civil or criminal conduct, is pending before a federal or state court or federal or state agency, or has been resolved unfavorably by such court or agency, against the invention developer in connection with invention development services and (ii) the registered practitioner fails to fully advise the inventor of the existence of the pending complaint or unfavorable resolution thereof prior to undertaking or continuing representation of the joint venture or inventor. "Invention developer" means any person, and any agent, employee, officer, partner, or independent contractor thereof, who is not a registered practitioner and who advertises invention development services in media of general circulation or who enters into contracts for invention development services with customers as a result of such advertisement. "Invention development services" means acts of invention development required or promised to be performed, or actually performed, or both, by an invention developer for a customer. "Invention development" means the evaluation, perfection, marketing, brokering, or promotion of an invention on behalf of a customer by an invention developer, including a patent search, preparation of a patent application, or any other act done by an invention developer for consideration toward the end of procuring or attempting to procure a license, buyer, or patent for an invention. "Customer" means any individual who has made an invention and who enters into a contract for invention development services with an invention developer with respect to the invention by which the inventor become obligated to pay the invention developer less than $5,000 (not to include any additional sums which the invention developer is to received as a result of successful development of the invention). "Contract for invention development services" means a contract for invention development services with an invention developer with respect to an invention made by a customer by which the invention becomes obligated to pay the invention developer less than $5,000 (not to include any additional sums which the invention developer is to receive as a result of successful development of the invention).

(18) In the absence of information sufficient to establish a reasonable

belief that fraud or inequitable conduct has occurred, alleging before a tribunal that anyone has committed a fraud on the Office or engaged in inequitable conduct in a proceeding before the Office.

(d) A practitioner who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity. Deceitful statements of half-truths or concealment of material facts shall be deemed actual fraud within the meaning of this part.

§ 10.24 Disclosure of information to authorities.

(a) A practitioner possessing unprivileged knowledge of a violation of a Disciplinary Rule shall report such knowledge to the Director.

(b) A practitioner possessing unprivileged knowledge or evidence concerning another practitioner, employee of the Office, or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of practitioners, employees of the Office, or judges.

(OMB Approval pending)

§§ 10.25–10.29 [Reserved]

§ 10.30 Canon 2.

A practitioner should assist the legal profession in fulfilling its duty to make legal counsel available.

§ 10.31 Communications concerning a practitioner's services.

(a) No practitioner shall with respect to any prospective business before the Office, by word, circular, letter, or advertising, with intent to defraud in any manner, deceive, mislead, or threaten any prospective applicant or other person having immediate or prospective business before the Office.

(b) A practitioner may not use the name of a Member of either House of Congress or of an individual in the service of the United States in advertising the practitioner's practice before the Office.

(c) Unless authorized under § 10.14(b), a non-lawyer practitioner shall not hold himself or herself out as authorized to practice before the Office in trademark cases.

(d) Unless a practitioner is an attorney, the practitioner shall not hold himself or herself out:

(i) To be an attorney or lawyer or

(ii) As authorized to practice before the Office in non-patent and trademark cases.

§ 10.32 Advertising.

(a) Subject to § 10.31, a practitioner may advertise services through public media, including a telephone directory, legal directory, newspaper, or other periodical, radio, or television, or through written communications not involving solicitation as defined by § 10.33.

(b) A practitioner shall not give anything of value to a person for recommending the practitioner's services, except that a practitioner may pay the reasonable cost of advertising or written communication permitted by this section and may pay the usual charges of a not-for-profit lawyer referral service or other legal service organization.

(c) Any communication made pursuant to this section shall include the name of at least practitioner responsible for its content.

§ 10.33 Direct contact with prospective clients.

A practitioner may not solicit professional employment from a prospective client with whom the practitioner has no family or prior professional relationship, by mail, in-person or otherwise, when a significant motive for the practitioner's doing so is the practitioner's pecuniary gain under circumstances evidencing undue influence, intimidation, or overreaching. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not specifically known to need legal services of the kind provided by the practitioner in a particular matter, but who are so situated that they might in general find such services useful.

§ 10.34 Communication of fields of practice.

A registered practitioner may state or imply that the practitioner is a specialist as follows:

(a) A registered practitioner who is an attorney may use the designation "Patents," "Patent Attorney," "Patent Lawyer," "Registered Patent Attorney," or a substantially similar designation.

(b) A registered practitioner who is not an attorney may use the designation "Patents," "Patent Agent," "Registered Patent Agent," or a substantially similar designation, except that any practitioner who was registered prior to November 15, 1938, may refer to himself or herself as a "patent attorney."

§ 10.35 Firm names and letterheads.

(a) A practitioner shall not use a firm name, letterhead, or other professional designation that violates § 10.31. A trade name may be used by a practitioner in private practice if it does not imply a current connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of § 10.31.

(b) Practitioners may state or imply that they practice in a partnership or other organization only when that is the fact.

§ 10.36 Fees for legal services.

(a) A practitioner shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(b) A fee is clearly excessive when, after a review of the facts, a practitioner of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the practitioner.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the practitioner or practitioners performing the services.

(8) Whether the fee is fixed or contingent.

§ 10.37 Division of fees among practitioners.

(a) A practitioner shall not divide a fee for legal services with another practitioner who is not a partner in or associate of the practitioner's law firm or law office, unless:

(1) The client consents to employment of the other practitioner after a full disclosure that a division of fees will be made.

(2) The division is made in proportion to the services performed and responsibility assumed by each.

(3) The total fee of the practitioners does not clearly exceed reasonable compensation for all legal services rendered to the client.

(b) This section does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement.

§ 10.38 Agreements restricting the practice of a practitioner.

(a) A practitioner shall not be a party to or participate in a partnership or employment agreement with another practitioner that restricts the right of a practitioner to practice before the Office after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(b) In connection with the settlement of a controversy or suit, a practitioner shall not enter into an agreement that restricts the practitioner's right to practice before the Office.

§ 10.39 Acceptance of employment.

A practitioner shall not accept employment on behalf of a person if the practitioner knows or it is obvious that such person wishes to:

(a) Bring a legal action or commence a proceeding before the Office, or conduct a defense, or assert a position in litigation or any proceeding pending before the Office, or otherwise have steps taken for the person, merely for the purpose of harassing or maliciously injuring any other person.

(b) Present a claim or defense in litigation or any proceeding before the Office that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

§ 10.40 Withdrawal from employment.

(a) A practitioner shall not withdraw from employment in a proceeding before the Office without permission from the Office (see §§ 1.36, and 2.19 of this subchapter). In any event, a practitioner shall not withdraw from employment until the practitioner has taken reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving due notice to his or her client, allowing time for employment of another practitioner, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules. A practitioner who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(b) *Mandatory withdrawal.* A practitioner representing a client before the Office shall withdraw from employment if:

(1) The practitioner knows or it is obvious that the client is bringing a legal action, commencing a proceeding before the Office, conducting a defense, or asserting a position in litigation or any proceeding pending before the Office, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any person;

(2) The practitioner knows or it is obvious that the practitioner's continued employment will result in violation of a Disciplinary Rule;

(3) The practitioner's mental or physical condition renders it unreasonably difficult for the practitioner to carry out the employment effectively; or

(4) The practitioner is discharged by the client.

(c) *Permissive withdrawal.* If paragraph (b) of this section is not applicable, a practitioner may not request permission to withdraw in matters pending before the Office, and may not withdraw in other matters, unless such request or such withdrawal is because:

(3) The practitioner's client:

(i) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law;

(ii) Personally seeks to pursue an illegal course of conduct;

(iii) Insists that the practitioner pursue a course of conduct that is illegal or that is prohibited under a Disciplinary Rule;

(iv) By other conduct renders it unreasonably difficult for the practitioner to carry out the employment effectively;

(v) Insists, in a matter not pending before a tribunal, that the practitioner engage in conduct that is contrary to the judgment and advice of the practitioner but not prohibited under the Disciplinary Rule; or

(vi) Has failed to pay one or more bills rendered by the practitioner for an unreasonable period of time or has failed to honor an agreement to pay a retainer in advance of the performance of legal services.

(2) The practitioner's continued employment is likely to result in a violation of a Disciplinary Rule;

(3) The practitioner's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal;

(4) The practitioner's mental or physical condition renders it difficult for the practitioner to carry out the employment effectively;

(5) The practitioner's client knowingly and freely assents to termination of the employment; or

(6) The practitioner believes in good faith, in a proceeding pending before the Office, that the Office will find the existence of other good cause for withdrawal.

§§ 10.41–10.45 [Reserved]

§ 10.46 Canon 3.

A practitioner should assist in preventing the unauthorized practice of law.

§ 10.47 Aiding unauthorized practice of law.

(a) A practitioner shall not aid a non-practitioner in the unauthorized practice of law before the Office.

(b) A practitioner shall not aid a suspended or excluded practitioner in the practice of law before the Office.

(c) A practitioner shall not aid a non-lawyer in the unauthorized practice of law.

§ 10.48 Sharing legal fees.

A practitioner or a firm of practitioners shall not share legal fees with a non-practitioner except that:

(a) An agreement by a practitioner with the practitioner's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the practitioner's death, to the practitioner's estate or to one or more specified persons.

(b) A practitioner who undertakes to complete unfinished legal business of a deceased practitioner may pay to the estate of the deceased practitioner that proportion of the total compensation which fairly represents the services rendered by the deceased practitioner.

(c) A practitioner or firm of practitioner's may include non-practitioner employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement, providing such plan does not circumvent another Disciplinary Rule.

§ 10.49 Forming a partnership with a non-practitioner.

A practitioner shall not form a partnership with a non-practitioner if any of the activities of the partnership consist of the practice of patent, trademark, or other law before the Office.

§§ 10.50–10.55 [Reserved]

§ 10.56 Canon 4.

A practitioner should preserve the confidences and secrets of a client.

§ 10.57 Preservation of confidences and secrets of a client.

(a) "Confidence" refers to information protected by the attorney-client or agent-client privilege under applicable

law. "Secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(b) Except when permitted under paragraph (c) of this section, a practitioner shall not knowingly:

(1) Reveal a confidence or secret of a client.

(2) Use a confidence or secret of a client to the disadvantage of the client.

(3) Use a confidence or secret of a client for the advantage of the practitioner or of a third person, unless the client consents after full disclosure.

(c) A practitioner may reveal:

(1) Confidences or secrets with the consent of the client affected but only after a full disclosure to the client.

(2) Confidences or secrets when permitted under Disciplinary Rules or required by law or court order.

(3) The intention of a client to commit a crime and the information necessary to prevent the crime.

(4) Confidences or secrets necessary to establish or collect the practitioner's fee or to defend the practitioner or the practitioner's employees or associates against an accusation of wrongful conduct.

(d) A practitioner shall exercise reasonable care to prevent the practitioner's employees, associates, and others whose services are utilized by the practitioner from disclosing or using confidences or secrets of a client, except that a practitioner may reveal the information allowed by paragraph (c) of this section through an employee.

§§ 10.58–10.60 [Reserved]

§ 10.61 Canon 5.

A practitioner should exercise independent professional judgment on behalf of a client.

§ 10.62 Refusing employment when the interest of the practitioner may impair the practitioner's independent professional judgment.

(a) Except with the consent of a client after full disclosure, a practitioner shall not accept employment if the exercise of the practitioner's professional judgment on behalf of the client will be or reasonably may be affected by the practitioner's own financial, business, property, or personal interests.

(b) A practitioner shall not accept employment in contemplated or pending litigation or a proceeding in the Office if the practitioner knows or it is obvious that the practitioner or another practitioner in the practitioner's firm ought to sign an affidavit to be filed in the Office or be called as a witness, except that the practitioner may undertake the employment and the practitioner or another practitioner in the practitioner's firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the practitioner or the practitioner's firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the practitioner or the practitioner's firm as counsel in the particular case.

§ 10.63 Withdrawal when the practitioner becomes a witness.

(a) If, after undertaking employment in contemplated or pending litigation or a proceeding in the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm ought to sign an affidavit to be filed in the Office or be called as a witness on behalf of a practitioner's client, the practitioner shall withdraw from the conduct of the trial or proceeding and the practitioner's firm, if any, shall not continue representation in the trial or proceeding, except that the practitioner may continue the representation and the practitioner or another practitioner in the practitioner's firm may testify in the circumstances enumerated in paragraphs (1) through (4) of § 10.62(b).

(b) If, after undertaking employment in contemplated or pending litigation or a proceeding in the Office, a practitioner learns or it is obvious that the practitioner or another practitioner in the practitioner's firm may be asked to sign an affidavit to be filed in the Office or be called as a witness other than on behalf of the practitioner's client, the practitioner may continue the representation until it is apparent that the practitioner's affidavit or testimony is or may be prejudicial to the practitioner's client.

§ 10.64 Avoiding acquisition of interest in litigation or proceeding before the Office.

(a) A practitioner shall not acquire a proprietary interest in the subject matter of a proceeding before the Office which the practitioner is conducting for a client, except that the practitioner may:

(1) Acquire a lien granted by law to secure the practitioner's fee or expenses; or

(2) Contract with a client for a reasonable contingent fee; or

(3) In a patent case, take an interest in the patent as part or all of his or her fee.

(b) While representing a client in connection with a contemplated or pending proceeding before the Office, a practitioner shall not advance or guarantee financial assistance to a client, except that a practitioner may advance or guarantee the expenses of going forward in a proceeding before the Office including fees required by law to be paid to the Office, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

§ 10.65 Limiting business relations with a client.

A practitioner shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the practitioner to exercise professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

§ 10.66 Refusing to accept or continue employment if the interests of another client may impair the independent professional judgment of the practitioner.

(a) A practitioner shall decline proffered employment if the exercise of the practitioner's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve the practitioner in representing differing interests, except to the extent permitted under paragraph (c) of this section.

(b) A practitioner shall not continue multiple employment if the exercise of the practitioner's independent professional judgment in behalf of a client will be or is likely to be adversely affected by the practitioner's representation of another client, or if it would be likely to involve the practitioner in representing differing interests, except to the extent permitted under paragraph (c) of this section.

(c) In the situations covered by paragraphs (a) and (b) of this section a practitioner may represent multiple clients if it is obvious that the practitioner can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of the practitioner's independent professional judgment on behalf of each.

(d) If a practitioner is required to decline employment or to withdraw from employment under a Disciplinary

Rule, no partner, or associate, or any other practitioner affiliated with the practitioner or the practitioner's firm, may accept or continue such employment unless otherwise ordered by the Director or Commissioner.

§ 10.67 Settling similar claims of clients.

A practitioner who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against the practitioner's clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement, and of the participation of each person in the settlement.

§ 10.68 Avoiding influence by others than the client.

(a) Except with the consent of the practitioner's client after full disclosure, a practitioner shall not:

(1) Accept compensation from one other than the practitioner's client for the practitioner's legal services to or for the client.

(2) Accept from one other than the practitioner's client any thing of value related to the practitioner's representation of or the practitioner's employment by the client.

(b) A practitioner shall not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services.

(c) A practitioner shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if a non-practitioner has the right to direct or control the professional judgment of a practitioner.

§§ 10.69–10.75 [Reserved]

§ 10.76 Canon 6.

A practitioner should represent a client competently.

§ 10.77 Failing to act competently.

A practitioner shall not:

(a) Handle a legal matter which the practitioner knows or should know that the practitioner is not competent to handle, without associating with the practitioner another practitioner who is competent to handle it.

(b) Handle a legal matter without preparation adequate in the circumstances.

(c) Neglect a legal matter entrusted to the practitioner.

§ 10.78 Limiting liability to client.

A practitioner shall not attempt to exonerate himself or herself from, or limit his or her liability to, a client for his or her personal malpractice.

§§ 10.79–10.82 [Reserved]

§ 10.83 Canon 7.

A practitioner should represent a client zealously within the bounds of the law.

§ 10.84 Representing a client zealously.

(a) A practitioner shall not intentionally:

(1) Fail to seek the lawful objectives of a client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by paragraph (b) of this section. A practitioner does not violate the provisions of this section, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

(2) Fail to carry out a contract of employment entered into with a client for professional services, but a practitioner may withdraw as permitted under §§ 10.40, 10.63, and 10.66.

(3) Prejudice or damage a client during the course of a professional relationship, except as required under § 10.85.

(b) In representation of a client, a practitioner may:

(1) Where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

(2) Refuse to aid or participate in conduct that the practitioner believes to be unlawful, even though there is some support for an argument that the conduct is legal.

§ 10.85 Representing a client within the bounds of the law.

(a) In representation of a client, a practitioner shall not:

(1) Initiate or defend any proceeding in the Office, assert a position, conduct a defense, delay a trial or proceeding in the Office, or take other action on behalf of the practitioner's client when the practitioner knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that a practitioner may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the practitioner is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the practitioner knows or it is obvious that the evidence is false.

(7) Counsel or assist a client in conduct that the practitioner knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(b) A practitioner who receives information clearly establishing that:

(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal.

(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

§ 10.86 [Reserved]

§ 10.87 Communicating with one of adverse interest.

During the course of representation of a client, a practitioner shall not:

(a) Communicate or cause another to communicate on the subject of the representation with a party the practitioner knows to be represented by another practitioner in that matter unless the practitioner has the prior consent of the other practitioner representing such other party or is authorized by law to do so.

(b) Give advice to a person who is not represented by a practitioner other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the practitioner's client.

§ 10.88 Threatening criminal prosecution.

A practitioner shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in any prospective or pending proceeding before the Office.

§ 10.89 Conduct in proceedings.

(a) A practitioner shall not disregard or advise a client to disregard any provision of this Subchapter or a decision of the Office made in the course of a proceeding before the Office, but the practitioner may take appropriate steps in good faith to test

the validity of such provision or decision.

(b) In presenting a matter to the Office, a practitioner shall disclose:

(1) Controlling legal authority known to the practitioner to be directly adverse to the position of the client and which is not disclosed by opposing counsel or an employee of the Office.

(2) Unless privileged or irrelevant, the identities of the client the practitioner represents and of the persons who employed the practitioner.

(c) In appearing in a professional capacity before a tribunal, a practitioner shall not:

(1) State or allude to any matter that the practitioner has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(2) Ask any question that the practitioner has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

(3) Assert the practitioner's personal knowledge of the facts in issue, except when testifying as a witness.

(4) Assert the practitioner's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the practitioner may argue, on the practitioner's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

(5) Fail to comply with known customs of courtesy or practice of the Office without giving to opposing counsel timely notice of the practitioner's intent not to comply.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any provision of this Subchapter or established rule of evidence.

§ 10.90–10.91 [Reserved]

§ 10.92 Contact with witnesses.

(a) A practitioner shall not suppress any evidence that the practitioner or the practitioner's client has a legal obligation to reveal or produce.

(b) A practitioner shall not advise or cause a person to be secreted or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein.

(c) A practitioner shall not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' affidavit, testimony or the outcome of the case. But a practitioner may advance, guarantee, or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending, testifying, or making an affidavit.

(2) Reasonable compensation to a witness for the witness' loss of time in attending, testifying, or making an affidavit.

(3) A reasonable fee for the professional services of an expert witness.

§ 10.93 Contact with officials.

(a) A practitioner shall not give or lend anything of value to a judge, official, or employee of a tribunal under circumstance which might give the appearance that the gift or loan is made to influence official action.

(b) In an adversary proceeding, including any *inter partes* proceeding in the Office, a practitioner shall not communicate, or cause another to communicate, as to the merits of the cause with a judge, official, or Office employee before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if the practitioner promptly delivers a copy of the writing to opposing counsel or to the adverse party if the adverse party is not represented by a practitioner.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a practitioner.

(4) As otherwise authorized by law.

§§ 10.94–10.99 [Reserved]

§ 10.100 Canon 8.

A practitioner should assist in improving the legal system.

§ 10.101 Action as a public official.

(a) A practitioner who holds public office shall not:

(1) Use the practitioner's public position to obtain, or attempt to obtain, a special advantage in legislative matters for the practitioner or for a client under circumstances where the practitioner knows or it is obvious that such action is not in the public interest.

(2) Use the practitioner's public position to influence, or attempt to influence, a tribunal to act in favor of the practitioner or of a client.

(3) Accept any thing of value from any person when the practitioner knows or it is obvious that the offer is for the purpose of influencing the practitioner's action as a public official.

(b) A practitioner who is an officer or employee of the United States shall not practice before the Office in patent cases except as provided in § 10.6(d).

§ 10.102 Statements concerning officials.

(a) A practitioner shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office or to a position in the Office.

(b) A practitioner shall not knowingly make false accusations against a judge, other adjudicatory officer, or employee of the Office.

§ 10.103 Practitioner candidate for judicial office.

A practitioner who is a candidate for judicial office shall comply with applicable provisions of law.

§ 10.104–10.109 [Reserved].

§ 10.110 Canon 9.

A practitioner should avoid even the appearance of professional impropriety.

§ 10.111 Avoiding even the appearance of impropriety.

(a) A practitioner shall not accept private employment in a matter upon the merits of which he or she has acted in a judicial capacity.

(b) A practitioner shall not accept private employment in a matter in which he or she had personal responsibility while a public employee.

(c) A practitioner shall not state or imply that the practitioner is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

§ 10.112 Preserving identity of funds and property of client.

(a) All funds of clients paid to a practitioner or a practitioner's firm, other that advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained:

(1) In the case of a practitioner whose office is located in the United States, in the State in which the practitioner's office is situated or

(2) In the case of a practitioner having an office in a foreign country or registered under §10.6(c) in the United States or the foreign country.

(b) No funds belonging to the practitioner or the practitioner's firm shall be deposited in the bank accounts required by paragraph (a) of this section except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the practitioner or the practitioner's firm must be deposited therein, but the portion belonging to the practitioner or the practitioner's firm may be withdrawn when due unless the right of

the practitioner or the practitioner's firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A practitioner shall:

(1) Promptly notify a client of the receipt of the client's funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the posession of the practitioner and render appropriate accounts to the client regarding the funds, securities, or other properties.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the practitioner which the client is entitled to receive.

(OMB approval pending)

§§ 10.113–10.129 [Reserved]

Disciplinary Proceedings

§ 10.130 Reprimand, suspension or exclusion.

(a) The Commissioner may, after notice and opportunity for a hearing, (a) reprimand or (b) suspend or exclude, either generally or in any particular case, any individual, attorney, or agent shown to be incompetent or disreputable, who is guilty of gross misconduct, or who violates a Disciplinary Rule.

(b) Petitions to disqualify a practitioner in *ex parte* or *inter partes* cases in the Office are not governed by §§ 10.130 through 10.170 and will be handled on a case-by-case basis under such conditions as the Commission deems appropriate.

§ 10.131 Investigations.

(a) The Director is authorized to investigate possible violations of Disciplinary Rules by practitioners. See § 10.2(b)(2). The investigation shall be such as to determine whether there is probable cause to believe that a violation of a Disciplinary Rule by a practitioner has occurred.

(b) Practitioners shall report and reveal to the Director any knowledge or evidence required by § 10.24. A practitioner shall cooperate with the Director in connection with any investigation under paragraph (a) of this section and with officials of the Office in connection with any disciplinary proceeding instituted under § 10.132(b).

(c) Any non-practitioner possessing knowledge or information concerning a violation of a Disciplinary Rule by a practitioner may report the violation to the Director. The Director may require that report be presented in the form of an affidavit.

§ 10.132 Initiating a disciplinary proceeding; reference to an administrative law judge.

(a) If after conducting an investigation under § 10.131(a) the Director is of the opinion that there is probable cause to believe that practitioner has violated a Disciplinary Rule, the Director shall, after complying where necessary with the provisions of 5 U.S.C. 558(c), call a meeting of the Committee on Discipline. The Committee on Discipline shall then determine as specified in § 10.4(b) whether a disciplinary proceeding shall be instituted under paragraph (b) of this section.

(b) If the Committee on Discipline determines that probable cause exists to believe that a practitioner has violated a Disciplinary Rule, the Director shall institute a disciplinary proceeding by filing a complaint under § 10.134. The complaint shall be filed in the Office of the Director. A disciplinary proceeding may result in:

(1) A reprimand or

(2) Suspension or exclusion of a practitioner from practice before the Office.

(c) Upon the filing of a complaint under § 10.134, the Commissioner will refer the disciplinary proceeding to an administrative law judge.

§ 10.133 Conference between Director and practitioner; resignation.

(a) *General.* The Director may confer with a practitioner concerning possible violations by the practitioner of a Disciplinary Rule whether or not a disciplinary proceeding has been instituted.

(b) *Resignation.* Any practitioner who is the subject of an investigation under § 10.131 or against whom a complaint has been filed under §§ 10.132(b) and 10.134 may resign from practice before the Office by submitting his or her resignation by filing with the Director an affidavit stating his or her desire to resign. The affidavit shall state that:

(1) The resignation is freely and voluntarily proferred;

(2) The practitioner is not acting under duress or coercion from the Office;

(3) The practitioner is fully aware of the implications of filing the resignation;

(4) The practitioner is aware (i) of a pending investigation or (ii) of charges arising from the complaint alleging that he or she is guilty of a violation of the Patent and Trademark Office Code of Professional Responsibility, the nature of which shall be set forth by the practitioner to the satisfaction of the Director;

(5) The practitioner acknowledges the material facts on which the complaint is based are true; and

(6) The resignation is being submitted because the practitioner could not successfully defend himself or herself against (i) charges predicated on the violation under investigation or (ii) charges set out in the complaint filed against him or her.

(c) When an affidavit under paragraph (b) of this section is received while an investigation is pending, the Commissioner shall enter an order excluding the practitioner "on consent." When an affidavit under paragraph (b) of this section is received after a complaint has been filed, the Director shall notify the administrative law judge. The administrative law judge shall enter an order transferring the discriplinary proceeding to the Commissioner and the Commissioner shall enter an order excluding the practitioner "on consent."

(d) Any practitioner who resigns from practice before the Office under this section and who intends to reapply for admission to practice before the Office must comply with the provisions of § 10.158.

(e) *Settlement.* Before or after a complaint is filed under § 10.134, a settlement conference may occur between the Director and a practitioner for the purpose of settling any disciplinary matter. If an offer of settlement is made by the Director or the practitioner and is not accepted by the other, no reference to the offer of settlement or its refusal shall be admissible in evidence in the disciplinary proceeding unless both the Director and the practitioner agree in writing.

§ 10.134 Complaint.

(a) A complaint instituting a disciplinary proceeding shall:

(1) Name the practitioner, who may then be referred to as the "respondent."

(2) Give a plain and concise description of the alleged violations of the Disciplinary Rules by the practitioner.

(3) State the place and time for filing an answer by the respondent.

(4) State that a decision by default may be entered against the respondent if an answer is not timely filed.

(5) Be signed by the Director.

(b) A complaint will be deemed sufficient if it fairly informs the respondent of any violation of the Disciplinary Rules which form the basis

for the disciplinary proceeding so that the respondent is able to adequately prepare a defense.

§ 10.135 Service of complaint.

(a) A complaint may be served on a respondent in any of the following methods:

(1) By handing a copy of the complaint personally to the respondent, in which case the individual handing the complaint to the respondent shall file an affidavit with the Director indicating the time and place the complaint was handed to the respondent.

(2) By mailing a copy of the complaint by "Express Mail" or first-class mail to:

(i) A registered practitioner at the address for which separate notice was last received by the Committee on Enrollment, or

(ii) A non-registered practitioner at the last address for the respondent known to the Director.

(3) By any method mutually agreeable to the Director and the respondent.

(b) If a complaint served by mail under paragraph (a)(2) of this section is returned by the U.S. Postal Service, the Director shall mail a second copy of the complaint to the respondent. If the second copy of the complaint is also returned by the U.S. Postal Service, the Director shall serve the respondent by publishing an appropriate notice in the *Official Gazette* for four consecutive weeks, in which case the time for answer shall be at least thirty days from the fourth publication of the notice.

(c) If a respondent is a registered practitioner, the Director may serve simultaneously with the complaint a letter under § 10.11(b). The Director may require the respondent to answer the § 10.11(b) letter within a period of not less than 15 days. An answer to the § 10.11(b) letter shall constitute proof of service. If the respondent fails to answer the § 10.11(b) letter, his or her name will be removed from the register as provided by § 10.11(b).

(d) If the respondent is represented by an attorney under § 10.140(a), a copy of the complaint shall also be served on the attorney.

§ 10.136 Answer to complaint.

(a) *Time for answer.* An answer to a complaint shall be filed within a time set in the complaint which shall be not less than thirty days.

(b) *With whom filed.* The answer shall be filed in writing with the administrative law judge. The time for filing an answer may be extended once for a period of no more than thirty days by the administrative law judge upon a showing of good cause provided a motion requesting an exfension of time is filed within thirty days after the date the complaint is filed by the Director. A copy of the answer shall be served on the Director.

(c) *Content.* The respondent shall include in the answer a statement of the facts which constitute the grounds of defense and shall specifically admit or deny each allegation set forth in the complaint. The respondent shall not deny a material allegation in the complaint which the respondent knows to be true or state that respondent is without sufficient information to form a belief as to the truth of an allegation when in fact the respondent possesses that information. The respondent shall also state affirmatively special matters of defense.

(d) *Failure to deny allegations in complaint.* Every allegation in the complaint which is not denied by a respondent in the answer is deemed to be admitted and may be considered proven. No further evidence in respect of that allegation need be received by the administrative law judge at any hearing. Failure to timely file an answer will constitute an admission of the allegations in the complaint.

(e) *Reply by Director.* No reply to an answer is required by the Director and any affirmative defense in the answer shall be deened to be denied. The Director may, however, file a reply if he or she chooses or if ordered by the administrative law judge.

§ 10.137 Supplemental complaint.

False statement in an answer may be made the basis of a supplemental complaint.

§ 10.138 Contested case.

Upon the filing of an answer by the respondent, a disciplinary proceeding shall be regarded as a contested case within the meaning of 35 U.S.C. 24. Evidence obtained by a subpoena issued under 35 U.S.C. 24 shall not be admitted into the record or considered unless leave to proceed under 35 U.S.C. 24 was previously authorized by the administrative law judge.

§ 10.139 Administrative law judge; appointment; responsibilities; review of interlocutory orders; stays.

(a) *Appointment.* An administrative law judge, appointed under 5 U.S.C. 3105, shall conduct disciplinary proceedings as provided by this part.

(b) *Responsibilities.* The administrative law judge shall have authority to:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and other requests;

(3) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(4) Authorize the taking of a deposition of a witness in lieu of personal appearance of the witness before the administrative law judge;

(5) Determine the time and place of any hearing and requlate its course and conduct;

(6) Hold or provide for the holding of conferences to settle or simplify the issues;

(7) Receive and consider oral or written arguments on facts or law;

(8) Adopt procedures and modify procedures from time to time as occasion requires for the orderly disposition of proceedings;

(9) Make initial decisions under § 10.154; and

(10) Perform acts and take measures as necessary to promote the efficient and timely conduct of any disciplinary proceeding.

(c) *Time for making initial decision.* The administrative law judge shall set time and exercise control over a disciplinary proceeding such that an initial decision under § 10.154 is normally issued within six months of the date a complaint is filed. The administrative law judge may, however, issue an initial decision more than six months after a complaint is filed if in his or her opinion there exist unusual circumstances which preclude issuance of an initial decision within six months of the filing of the complaint.

(d) *Review of interlocutory orders.* An interlocutory order of an administrative law judge will not be reviewed by the Commissioner except:

(1) When the administrative law judge shall be of the opinion (i) that the interlocutory order involves a controlling question of procedure or law as to which there is a substantial ground for a difference of opinion and (ii) that an immediate decision by the Commissioner may materially advance the ultimate termination of the disciplinary proceeding or

(2) In an extraordinary situation where justice requires review.

(e) *Stays pending review of interlocutory order.* If the Director or a respondent seek review of an interlocutory order of an administrative law judge under paragraph (b)(2) of this section, any time period set for taking action by the administrative law judge shall not be stayed unless ordered by the Commissioner or the administrative law judge.

§ 10.140 Representative for Director or respondent.

(a) A respondent may be represented before the Office in connection with an investigation or disciplinary proceeding by an attorney. The attorney shall file a written declaration that he or she is an attorney within the meaning of § 10.1(c) and shall state:

(1) The address to which the attorney wants correspondence related to the investigation or disciplinary proceeding sent and

(2) A telephone number where the attorney may be reached during normal business hours.

(b) The Commissioner shall designate at least two associate solicitors in the Office of the Solicitor to act as representatives for the Director in disciplinary proceedings. In prosecuting disciplinary proceedings, the designated associate solicitors shall not involve the Solicitor or the Deputy Solicitor. The Solicitor and the Deputy Solicitor shall remain insulated from the investigation and prosecution of all disciplinary proceedings in order that they shall be available as counsel to the Commissioner in deciding disciplinary proceedings.

§ 10.141 Filing of papers.

(a) The provisions of § 1.8 of this subchapter do not apply to disciplinary proceedings.

(b) All papers filed after the complaint and prior to entry of an initial decision by the administrative law judge shall be filed with the administrative law judge at an address or place designated by the administrative law judge. All papers filed after entry of an initial decision by the administrative law judge shall be filed with the Director. The Director shall promptly forward to the Commissioner any paper which requires action under this part by the Commissioner.

(c) The administrative law judge or the Director may provide for filing papers and other matter by hand or by "Express Mail."

§ 10.142 Service of papers.

(a) All papers other than a complaint shall be served on a respondent represented by an attorney by:

(1) Delivering a copy of the paper to the office of the attorney; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to the attorney at the address provided by the attorney under § 10.140(a)(1); or

(3) Any other method mutually agreeable to the attorney and a representative for the Director.

(b) All papers other than a complaint shall be served on a respondent who is not represented by an attorney by:

(1) Delivering a copy of the paper to the respondent; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to the respondent at the adddress to which a complaint may be served or such other address as may be designated in writing by the respondent; or

(3) Any other method mutually agreeable to the respondent and a representative of the Director.

(c) A respondent shall serve on the representative for the Director one copy of each paper filed with the administrative law judge or the Director. A paper may be served on the representative for the Director by:

(1) Delivering a copy of the paper to the representative; or

(2) Mailing a copy of the paper by first-class mail or "Express Mail" to an address designated in writing by the representative; or

(3) Any other method mutually agreeable to the respondent and the representative.

(d) Each paper filed in a disciplinary proceeding shall contain therein a certificate of service indicating:

(1) The date on which service was made and

(2) The method by which service was made.

(e) The administrative law judge or the Commissioner may require that a paper be served by hand or by "Express Mail."

(f) Service by mail is completed when the paper mailed in the United States is placed into the custody of the U.S. Postal Service.

§ 10.143 Motions.

Motions may be filed with the administrative law judge. The administrative law judge will determine on a case-by-case basis the time period for response to a motion and whether replies to responses will be authorized. No motion shall be filed with the administrative law judge unless such motion is supported by a written statement by the moving party that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach agreement. If issues raised by a motion are resolved by the parties prior to a decision on the motion by the administrative law judge, the parties shall promptly notify the administrative law judge.

§ 10.144 Hearings.

(a) The administrative law judge shall preside at hearings in disciplinary proceedings. Hearings will be stenographically recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The administrative law judge shall conduct hearings in accordance with 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall be provided to the Director and the respondent at the expense of the Office.

(b) If the respondent to a disciplinary proceeding fails to appear at the hearing after a notice of hearing has been given by the administrative law judge, the administrative law judge may deem the respondent to have waived the right to a hearing and may proceed with the hearing in the absence of the respondent.

(c) A hearing under this section will not be open to the public except that the Director may grant a request by a respondent to open his or her hearing to the public and make the record of the disciplinary proceeding available for public inspection, *provided,* agreement is reached in advance to exclude from public disclosure information which is privileged or confidential under applicable laws or regulations. If a disciplinary proceeding results in disciplinary action against a practitioner, and subject to § 10.159(c), the record of the entire disciplinary proceeding, including any settlement agreement, will be available for public inspection.

§ 10.145 Proof; variance; amendment of pleadings.

In case of a variance between the evidence and the allegations in a complaint, answer, or reply, if any, the administrative law judge may order or authorize amendment of the complaint, answer, or reply to conform to the evidence. Any party who would otherwise be prejudiced by the amendment will be given reasonable opportunity to meet the allegations in the complaint, answer, or reply, as amended, and the administrative law judge shall make findings on any issue presented by the complaint, answer, or reply as amended.

§§ 10.146–10.148 [Reserved]

§ 10.149 Burden of proof.

In a disciplinary proceeding, the Director shall have the burden of proving his or her case by a preponderance of evidence and a respondent shall have the burden of

proving any affirmative defense by a preponderance of evidence.

§ 10.150 Evidence.

(a) *Rules of evidence.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings. However, the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* Depositions of witnesses taken pursuant to § 10.151 may be admitted as evidence.

(c) *Government documents.* Official documents, records, and papers of the Office are admissible without extrinsic evidence of authenticity. These documents, records and papers may be evidenced by a copy certified as correct by an employee of the Office.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the administrative law judge may authorize the withdrawal of the exhibit subject to any conditions the administrative law judge deems appropriate.

(e) *Objections.* Objections to evidence will be in short form, stating the grounds of objection. Objections and rulings on objections will be a part of the record. No exemption to the ruling is necessary to preserve the rights of the parties.

§ 10.151 Depositions.

(a) Depositions for use at the hearing in lieu of personal appearance of a witness before the administrative law judge may be taken by respondent or the Director upon a showing of good cause and with the approval of, and under such conditions as may be deemed appropriate by, the administrative law judge. Depositions may be taken upon oral or written questions, upon not less than ten days written notice to the other party, before any officer authorized to administer an oath or affirmation in the place where the deposition is to be taken. The requirement of ten days notice may be waived by the parties and depositions may then be taken of a witness and at a time and place mutually agreed to by the parties. When a deposition is taken upon written questions, copies of the written questions will be served upon the other party with the notice and copies of any written cross-questions will be served by hand or "Express Mail" within five days of the date of the taking of the deposition unless the parties mutually agree otherwise. A party on whose behalf a deposition is taken shall file a copy of a transcript of the deposition signed by a court reporter with the administrative law judge and shall serve one copy upon the opposing party. Expenses for a court reporter and preparing, serving, and filing depositions shall be borne by the party at whose instance the deposition is taken.

(b) When the Director and the respondent agree in writing, a deposition of any witness who will appear voluntarily may be taken under such terms and conditions as may be mutually agreeable to the Director and the respondent. The deposition shall not be filed with the administrative law judge and may not be admitted in evidence before the administrative law judge unless he or she orders the deposition admitted in evidence. The admissibility of the deposition shall lie within the discretion of the administrative law judge who may reject the deposition on any reasonable basis including the fact that demeanor is involved and that the witness should have been called to appear personally before the administrative law judge.

§ 10.152 Discovery.

Discovery shall not be authorized except as follows:

(a) The administrative law judge may require parties to file and serve, prior to any hearing, a pre-hearing statement which contains:

(1) A list (together with a copy) of all proposed exhibits to be used in connection with a party's case-in-chief,

(2) A list of proposed witnesses,

(3) The identity of government employees who have investigated the case, and

(4) Copies of memoranda reflecting respondent's own statements to administrative representatives.

(b) After a witness testifies for a party, if the opposing party requests, the party may be required to produce, prior to cross-examination, any written statement made by the witness.

§ 10.153 Proposed findings and conclusions; post-hearing memorandum.

Except in cases when the respondent has failed to answer the complaint, the administrative law judge, prior to making an initial decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and a post-hearing memorandum in support of the proposed findings and conclusions.

§ 10.154 Initial decision of administrative law judge.

(a) The administrative law judge shall make an initial decision in the case. The decision will include (a) a statement of findings and conclusions, as well as the reasons or basis therefor with appropriate references to the record, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension or exclusion from practice, an order of reprimand, or an order dismissing the complaint. The administrative law judge shall file the decision with the Director and shall transmit a copy to the representative of the Director and to the respondent. In the absence of an appeal to the Commissioner, the decision of the administrative law judge will, without further proceedings, become the decision of the Commissioner of Patents and Trademarks thirty (30) days from the date of the decision of the administrative law judge.

(b) The initial decision of the administrative law judge shall explain the reason for any penalty of reprimand suspension or exclusion. In determining any penalty, the following should normally be considered:

(1) The public interest;

(2) The seriousness of the violation of the Disciplinary Rule;

(3) The deterrent effects deemed necessary; and

(4) The integrity of the legal profession.

§ 10.155 Appeal to the Commissioner.

(a) Within thirty (30) days from the date of the initial decision of the administrative law judge under § 10.154, either party may appeal to the Commissioner. An appeal by the respondent will be filed with the Director in duplicate and will include exceptions to the decisions of the administrative law judge and supporting reasons for those exceptions. If the Director files the appeal, the Director shall serve a copy of the appeal on the respondent. Within thirty (30) days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director. If the Director files the reply brief, the Director shall serve a copy of the reply brief on the respondent. Upon the filing of an appeal and a reply brief, if any, the Director shall transmit the entire record to the Commissioner.

(b) The appeal will be decided by the Commissioner on the record made before the administrative law judge.

(c) The Commissioner may order reopening of a disciplinary proceeding in accordance with the principles which govern the granting of new trials. Any request to reopen a disciplinary proceeding on the basis of newly discovered evidence must demonstrate that the newly discovered evidence could not have been discovered by due diligence.

§ 10.156 Decision of the Commissioner.

(a) An appeal from an initial decision of the administrative law judge shall be decided by the Commissioner. The Commissioner may affirm, reverse, or modify the initial decision or remand the matter to the administrative law judge for such further proceedings as the Commissioner may deem appropriate. Entry of a decision by the Commissioner is a final agency action in a disciplinary proceeding. In making a final decision, the Commissioner shall review the record or those portions of the record as may be cited by the parties in order to limit the issues. The Commissioner shall transmit a copy of the final decision to the Director and to the respondent.

(b) A final decision of the Commisioner may dismiss a disciplinary proceeding, reprimand a practitioner, or may suspend or exclude the practitioner from practice before of the Office.

§ 10.157 Review of Commissioner's final decision.

(a) Review of the Commissioner's final decision in a disciplinary case may be had by a petition filed in the United States District Court for the District of Columbia. See 35 U.S.C. 32 and Local Rule 1–26 of the United States District Court for the District of Columbia.

(b) The Commissioner may stay a final decision pending review of the Commissioner's final decision.

§ 10.158 Suspended or excluded practitioner.

(a) A practitioner who is suspended or excluded from practice before the Office under § 10.156(b) shall not engage in unauthorized practice of patent, trademark and other non-patent law before the Office.

(b) Unless otherwise ordered by the Commissioner, any practitioner who is suspended or excluded from practice before the Office under § 10.156(b) shall:

(1) Within 30 days of entry of the order of suspension or exclusion, notify all bars of which he or she is a member and all clients of the practitioner in separate written communications of the suspension or exclusion and shall file a copy of each written communication with the Director.

(2) Within 30 days of entry of the order of suspension or exclusion, surrender a client's active case files to (i) the client or (ii) another practitioner designated by the client.

(3) Not hold himself or herself out as authorized to practice law before the Office.

(4) Promptly take any necessary and appropriate steps to remove from any telephone, legal, or other directory any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice patent, trademark or other non-patent law before the Office, and within 30 days of taking those steps, file with the Director an affidavit describing the precise nature of the steps taken.

(5) Not advertise the practitioner's availability or ability to perform or render legal services for any person having immediate, prospective, or pending business before the Office.

(6) Not render legal advice or services to any person having immediate, prospective, or pending business before the Office as to that business.

(7) Promptly take steps to change any sign identifying a practitioner's or the practitioner's firm's office and the practitioner's or the practitioner's firm's stationary to delete therefrom any advertisement, statement, or representation which would reasonably suggest that the practitioner is authorized to practice law before the Office.

(8) Within 30 days, return to any client any unearned funds, including any unearned retainer fee, and any securities and property of the client.

(c) A practitioner who is suspended or excluded from practice before the Office and who aides another practitioner in any way in the other practitioner's practice of law before the Office, may, under the direct supervision of the other practitioner, act as a para-legal for the other practitioner or perform other services for the other practitioner which are normally performed by lay-persons, *provided:* (1) The practitioner who is suspended or excluded is (i) a salaried employee of the other practitioner or the other practitioner's law firm and (ii) does not share profits with the other practitioner or the other practitioner's law firm; (2) the other practitioner assumes full professional responsibility to any client and the Office for any work performed by the suspended or excluded practitioner for the other practitioner; (3) the suspended or excluded practitioner, in connection with any immediate, prospective, or pending business before the Office, does not: (i) Communicate directly in writing, orally, or otherwise with a client of the other practitioner, (ii) render any legal advice, or any legal services, to a client of the other practitioner, or (iii) meet in person or in the presence of the other practitioner, with any client of the other practitioner or the other practitioner's law firm or any witness or potential witness which the other practitioner or the other practitioner's law firm may or intends to call as a witness in any proceeding before the Office. The term "witness" includes individuals who will testify orally in a proceeding before, or sign an affidavit or any other document to be filed in, the Office.

(d) When a suspended or excluded practitioner acts as a para-legal or performs services under paragraph (c) of this section, the suspended or excluded petitioner shall not thereafter be reinstated to practice before the Office unless:

(1) The suspended or excluded practitioner shall have filed with the Director an affidavit which (i) explains in detail the precise nature of all para-legal or other services performed by the suspended or excluded practitioner and (ii) shows by clear and convincing evidence that the suspended or excluded practitioner has complied with the provisions of this section and all Disciplinary Rules, and

(2) The other practitioner shall have filed with the Director a written statement which (i) shows that the other practitioner has read the affidavit required by paragraph (d)(1) of this section and that the other practitioner believes every statement in the affidavit to be true and (ii) states why the other practitioner believes that the suspended or excluded practitioner has complied with paragraph (c) of this section.

§ 10.159 Notice of suspension or exclusion.

(a) Upon issuance of a final decision reprimanding a practitioner or suspending or excluding a practitioner from practice before the Office, the Director shall give notice of the final decision to appropriate employees of the Office and to interested departments, agencies, and courts of the United States. The Director shall also give notice to appropriate authorities of any State in which a practitioner is known to be a member of the bar.

(b) The Director shall cause to be published in the *Official Gazette* the name of any practitioner suspended or excluded from practice. Unless otherwise ordered by the Commissioner, the Director shall publish in the *Official Gazette* the name of any practitioner reprimanded by the Commissioner.

(c) The Director shall maintain records, which shall be available for public inspection, of every disciplinary proceeding where a practitioner is reprimanded, suspended, or excluded unless the Commissioner orders that the proceeding be kept confidential.

§ 10.160 Petition for reinstatement.

(a) A petition for reinstatement of a practitioner suspended for a period of less than five years will not be

considered until the period of suspension has passed.

(b) A petition for reinstatement of a practitioner excluded from practice will not be considered until five years after the effective date of the exclusion.

(c) A practitioner who has been suspended or excluded may file a petition for reinstatement. The Director may grant a petition for reinstatement if the Director is satisfied that the suspended or excluded practitioner will conduct himself or herself in accordance with the regulations of this part and that granting a petition for reinstatement is not contrary to the public interest. As a condition to reinstatement, the Director may require a suspended or excluded practitioner to:

(1) Meet the requirements of § 10.7, including taking and passing an examination under § 10.7(b) and

(2) Pay all or a portion of the costs and expenses, not to exceed $1,500, of the disciplinary proceeding which led to suspension or exclusion.

(d) Any suspended or excluded practitioner who has violated the provisions of § 10.158 during his or her period of suspension or exclusion shall not be entitled to reinstatement until such time as the Director is satisfied that a period of suspension equal in time to that ordered by the Commissioner or exclusion for five years has passed during which the suspended or excluded practitioner has complied with the provisions of § 10.158.

(e) Proceedings on any petition for reinstatement shall be open to the public. Before reinstating any suspended or excluded practitioner, the Director shall publish in the *Official Gazette* a notice of the suspended or excluded practitioner's petition for reinstatement and shall permit the public a reasonable opportunity to comment or submit evidence with respect to the petition for reinstatement.

§ 10.161 Savings clause.

(a) A disciplinary proceeding based on conduct engaged in prior to the effective date of these regulations may be instituted subsequent to such effective date, if such conduct would continue to justify suspension or exclusion under the provisions of this part.

(b) No practitioner shall be subject to a disciplinary proceeding under this part based on conduct engaged in before the effective date hereof if such conduct would not have been subject to disciplinary action before such effective date.

§ 10.162–10.169 [Reserved]

§ 10.170 Suspension of rules.

(a) In an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of any party, including the Director or the Director's representative, subject to such other requirements as may be imposed.

(b) Any petition under this section will not stay a disciplinary proceeding unless ordered by the Commissiner or an administrative law judge.

Dated: July 24, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

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federal register

Friday
August 24, 1984

Part IV

Federal Reserve System

12 CFR Part 268

Proposed Revision of Rules Regarding Equal Opportunity; Notice of Proposed Rulemaking

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R-0527]

Proposed Revision of Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Governors of the Federal Reserve System (or Board of Governors) proposes to revise and expand its Equal Employment Opportunity rgulation principally for the following purposes:

(1) To designate clear responsibility for equal employment opportunity functions in light of changes in the Board's organizational structure; (2) to prohibit discrimination against the handicapped in programs and activities conducted by the Board; and (3) to provide for review by the Equal Employment Opportunity Commission of Board decisions on individual and class complaints of discrimination.

DATES: To be assured of consideration, comments must be in writing and must be received by the Board on or before October 23, 1984.

ADDRESS: Comments, which should refer to Docket No. R-0527, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551, or delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Senior Counsel (202/452-3920); Portia Thompson, EEO Programs Officer (202/452-3549).

SUPPLEMENTARY INFORMATION: The Board as a matter of policy has long recognized that it should afford to its employees, applicants for employment, and others the same substantive and procedural rights as are enjoyed by persons in their dealings with other Government agencies. Pursuant to this policy the present Part 268 was issued by the Board to provide for equal opportunity in employment in compliance with the spirit of Title VII of the Civil Rights Act of 1964, as amended. Also pursuant to this policy, the Board has designated an EEO Programs Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, and a Handicapped Program Coordinator, and has formulated and implemented affirmative action plans which are routinely submitted to the Equal Employment Opportunity Commission for review and advice.

Part 268 has not been updated in several years. The Board believes that certain omissions need to be corrected. The revised Part 268 is intended to provide Board employees with the same substantive and procedural rights guaranteed to government employees generally by the Equal Pay Act, the Age Discrimination in Employment Act, and the Rehabilitation Act and thus to comply with the spirit of those laws. The Board has addressed these matters in the proposed revision of Part 268.

The present Part 268 makes no provision for review by the Equal Employment Opportunity Commission of Board decisions on complaints of discrimination. The Board now desires to make provision for Commission review of Board decisions on complaints of discrimination, at the request of any complainant, in order to provide its employees and applicants the additional level of administrative review. The Board believes that such review can be permitted consistent with the Board's status as provided for by the Federal Reserve Act. This matter is addressed principally in subpart H.

Additional revisions in Part 268 are made necessary by changes in the Board's organizational structure within the past two years in order clearly to designate staff responsibility for important equal opportunity functions.

The revised Part 268 is intended to conform in so far as possible to existing regulations issued by the Equal Employment Opportunity Commission and, with respect to enforcement of section 504 of the Rehabilitation Act, by the Department of Justice. To this end, major portions of those regulations are derived substantially verbatim in the revised Part 268.

I. Administration

Subpart B, "Administration", places principal decisional responsibility for complaints in the Administrative Governor, a member of the Board empowered to delegate this authority to the Staff Director for Management, a Board official responsible directly to the Administrative Governor and to the Board. Responsibility for day to day management of the Board's equal opportunity programs is vested principally in the EEO Programs Officer.

II. Processing of Complaints

Subparts C and D of the revised Part 268 establish procedures for processing individual and class complaints of discrimination on the basis of race, color, religion, sex, national origin, age, and physical or mental handicap. These subparts track in large measure the corresponding regulations of the Equal Employment Opportunity Commission. The principal differences between Part 268 and the EEOC prototype have to do with decisions on complaints, in light of the Board's organizational structure, and EEOC review of decisions on complaints. Because the Board does not use the title "Equal Employment Opportunity Director", the responsibility for functions assigned generally to the Agency or to the Director in the EEOC regulation is given to officials specifically identified in the revised Part 268 in order to avoid confusion. In addition § 268.315(c), regarding awards of attorneys fees and costs, has been added.

III. Nondiscrimination on Account of Age

Subpart E of revised Part 268 establishes rights conforming to those granted to Federal employees by the Age Discrimination in Employment Act.

IV. Prohibition Against Discrimination Because of a Physical or Mental Handicap

Subpart F defines rights conforming to those granted to Federal employees and applicants for employment under Section 501 of the Rehabilitation Act. The language of these sections conforms substantially to the EEOC regulation, 29 CFR 1613.701 *et seq.* Subpart G, "Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap," defines rights of the kind established by section 504 of the Rehabilitation Act. The Board does not conduct any programs of federal financial assistance as defined in section 504. Thus Subpart G defines the rights of persons in connection with programs and activities of the Board and tracks to a large extent the recently proposed Justice Department prototype regulation on section 504. Subpart G does not govern the conduct of Federal Reserve banks or of depository institutions or other companies supervised or regulated by the Board.

V. Review by the Equal Employment Opportunity Commission

Subpart H is intended to provide for review of the Equal Employment Opportunity Commission of any Board decision on a complaint of discrimination under the revised Part 268. Provision is also made for

reconsideration by the Board of any EEOC finding following such review.

VI. Equal Pay

Subpart I of the revised Part 268 covers matters addressed with regard to other agencies by the Equal Pay provisions of the Fair Labor Standards Act and by regulations of the Equal Employment Opportunity Commission, 29 CFR 1620.21 and 1620.22. The language in Subpart I is adopted from the statute and the cited regulations.

To aid in the Board's consideration of the proposed revision of Part 268, interested persons are invited to submit relevant comments, arguments and views.

Initial Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*) the Board certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The regulation focuses primarily on Board personnel and management policies and practices.

List of Subjects in 12 CFR Part 268

Equal opportunity, Federal Reserve System.

Pursuant to its authority under section 11(l) of the Federal Reserve Act, partially codified in 12 U.S.C. 248(l), the Board proposes to amend 12 CFR Part 268, its Equal Employment Opportunity regulation, by revising it as set forth below:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

Subpart A—General Provisions

Sec.
268.101 Authority, purpose, and scope.
268.102 Board program.
268.103 Definitions.

Subpart B—Administration

268.201 Equal Opportunity designations.
268.202 The Administrative Governor.
268.203 The Staff Director for Management.
268.204 The EEO Program Officer.
268.205 Federal Women's Program Manager.
268.206 Hispanic Program Coordinator.
268.207 Handicapped Program Coordinator.

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

268.301 Precomplaint processing.
268.302 Filing of complaint.
268.303 Right to representation.
268.304 Presentation of the complaint.
268.305 Rejection or cancellation of the complaint.
268.306 Investigation.
268.307 Adjustment of complaint and offer of hearing.
Sec.
268.308 Hearing on the complaint.
268.309 Relationship to other agency appellate procedure.
268.310 Avoidance of delay.
268.311 Decision on the complaint.
268.312 Complaint file.
268.313 Joint processing and consolidation of complaints.
268.314 Freedom from reprisal or interference.
268.315 Remedial actions.
268.316 Reconsideration.
268.317 Right to file a civil action.
268.318 Notice of right.
268.319 Effect on administrative procedure.

Subpart D—Class Complaints of Discrimination

268.401 Definitions.
268.402 Precomplaint processing.
268.403 Filing and presentation of a class complaint.
268.404 Acceptance, rejection or cancellation.
268.405 Notification and opting out.
268.406 Avoidance of delay.
268.407 Freedom from restraint, interference, coercion, and reprisal.
268.408 Obtaining Evidence concerning the complaint.
268.409 Opportunities for resolution of the complaint.
268.410 Hearing.
268.411 Report of findings and recommendations.
268.412 Board decision.
268.413 Notification to class members of decision.
268.414 Corrective action.
268.415 Right to file a civil action for judicial review.
268.416 Reconsideration.
268.417 Notice of right.
268.418 Effect on administrative processing.

Subpart E—Nondiscrimination on Account of Age

268.501 Policy statement.
268.502 Processing of individual complaints.
268.503 Coverage.
268.504 Exceptions.
268.505 Effect on administrative procedure.

Subpart F—Prohibition Against Discrimination in Employment Because of a Physical or Mental Handicap

268.601 Definitions.
268.602 General policy.
268.603 Reasonable accommodation.
268.604 Employment criteria
268.605 Preemployment inquiries.
268.606 Physical access to buildings.
268.607 Processing complaints.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

268.701 Purpose and application.
268.702 Definitions.
268.703 Self evaluation.
268.704 Prohibition against discrimination.
268.705 Employment.
268.706 Program accessibility: Discrimination prohibited.
268.707 Program accessibility: Existing facilities.
Sec.
268.708 Program accessibility: New construction and alterations.
268.709 Communications.
268.710 Compliance procedures.

Subpart H—Review by the Equal Employment Opportunity Commission

268.801 Entitlement.
268.802 Filing of the request for review.
268.803 Time limits.
268.804 Procedure.
268.805 Review and reconsideration.

Subpart I—Equal Pay

268.901 General prohibition of discrimination.
268.902 Record keeping.
268.903 Procedure.

Authority: Sec. 11(l) of the Federal Reserve Act, 12 U.S.C. 248(l).

Subpart A—General Provisions

§ 268.101 Authority, purpose, and scope.

(a) *Authority.* This regulation (Code of Federal Regulations, Title 12, Part 268) is issued by the Board of Governors of the Federal Reserve System ("Board") under the authority of section 11(l) of the Federal Reserve Act (partially codified in 12 U.S.C. 248(l)).

(b) *Purpose and scope.* This regulation sets forth the Board's policy, program, and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental handicap. It also set forth the Board's policy, program, and procedures for prohibiting discrimination on the basis of physical or mental handicap in programs and activities conducted by the Board.

§ 268.102 Board program.

The Board has established, maintains, and carries out a continuing affirmative program designed to promote equal opportunity in every aspect of the Board's personnel policies and practices in the employment, development, advancement, and treatment of employees. Under the terms of its program, the Board:

(a) Seeks to eradicate every form of prejudice of discrimination based upon race, color, religion, sex, national origin, age, or physical or mental handicap, from the Board's personnel policies and practices and working conditions;

(b) Utilizes to the fullest extent the present skills of employees by all means;

(c) Provides the maximum feasible opportunity to employees to enhance their skills so that they may perform at their highest potential and advance in accordance with their abilities;

(d) Communicates the Board's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, or physical or mental handicap;

(e) Participates with other employers, schools universities, and other public and private groups in cooperative action to improve employment opportunities;

(f) Reviews, evaluates, and controls managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provides orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;

(g) Provides recognition to employees, supervisors, manager, and units demonstrating superior accomplishment in equal employment opportunity;

(h) Informs its employees of the Board's affirmative equal employment opportunity policy and program and enlists their cooperation;

(i) Provides counseling for employees and applicants who believe they have been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for resolving informally the matters raised by them;

(j) Provides for the prompt, fair, and impartial consideration and disposition of compliants involving issues of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap; and

(k) Has established a system for periodically evaluating the effectiveness of the Board's overall equal employment opportunity effort.

(l) Makes reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath or other than Sunday, when those accommodations can be made (by substitution of another qualifield employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the Board.

§ 268.103 Definitions.

(a) "Age" is an inclusive term which means the age of at least forty years.

(b) "Complainant" means any party who files a claim, complaint, or request for counselling under this regulation or the Board's grievance procedure.

(c) "Complaint of discrimination" means any claim or complaint filed under this regulation or the Board's grievance procedure alleging discrimination in employment because of race, color, national origin, religion, sex, age, or physical or mental handicap.

(d) "Employee" or "employees" as used in this regulation shall include former employees and applicants for employment unless the context indicates otherwise.

(e) "Grievance procedures" means the Board's Adjusting Work-related Problems Policy.

(f) "He" means "he or she." "Him" means "him or her."

Subpart B—Administration

§ 268.201 Equal employment designations.

(a) The Board designates an EEO Programs Officer, an EEO Officer, a Federal Women's Program Manager, a Hispanic Program Coordinator, a Handicapped Program Coordinator, and such EEO Counselors and other persons as may be necessary to assist the Board in carrying out the functions described in this regulation.

§ 268.202 The Administrative Governor.

(a) The Administrative Governor is a member of the Board of Governors. He is designated by the Chairman of the Board of Governors, charged with overseeing the internal affairs of the Board and empowered to make decisions and determinations on behalf of the Board of Governors when authority to do so is delegated to him.

(b) The Administrative Governor is hereby delegated the authority to make determinations adjudicating complaints of discrimination pursuant to §§ 268.311 and 268.412 of this regulation. The Administrative Governor is further delegated the authority to order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c) and 268.414(a) of this regulation, as he may consider necessary, including such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice.

(c) The Administrative Governor may delegate to any officer or employee of the Board any of his duties or functions under this regulation.

(d) The Administrative Governor may refer to the Board of Governor for determination of decision any complaint of discrimination that the Administrative Governor would otherwise decide pursuant to §§ 268.311 and 268.412 of this regulation, any recommendations for any changes in programs and procedures designed to eliminate discriminatory practices or to improve the Board's programs under this regulation, and any recommendations for remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities, or employees who have been found to have engaged in discriminatory practices, or any other matter which the Administrative Governor believes merits the attention of the Board.

§ 268.203 The Staff Director for Management.

(a) When so authorized by the Administrative Governor, the Staff Director for Management shall make any determinations required under §§ 268.311 and 268.412 of this regulation on complaints of discrimination and shall order such corrective measures, including such remedial actions as may be required by §§ 268.315, 268.412(c) and 268.414(a) of this regulation as he may consider necessary, and including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(b) The Staff Director for Management shall review the record on any complaint under this regulation before a determination is made by the Board of the Administrative Governor on the complaint and make such recommendations as to the determination as he considers desirable, including any recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(c) The Staff Director for Management may make changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal employment opportunity.

§ 268.204 The EEO Programs Officer.

The EEO Programs Officer shall perform the following functions:

(a) Advise the Board, the Administrative Governor, and the Staff Director for Management with respect to the preparation of plans, goals, objectives, procedures, regulations, reports, and other matters pertaining to the Board's program established under § 268.102, and administer the Board's equal opportunity program.

(b) Evaluate from time to time the sufficiency of the Board's program for equal employment opportunity and report thereon to the Board, the Administrative Governor, and the Staff Director for Management, with recommendations as to any

improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(c) Recommend changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal employment opportunity.

(d) Provide for counseling by an EEO Counselor, of any aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under §§ 268.302 and 268.403 of this regulation.

(e) Publicize to Board employees and post permanently on official bulletin boards:

(1) The names and office addresses and the EEO responsibilities of the Staff Director for Management, the EEO Programs Officer, the Federal Women's Program Manager, the EEO Officer, the Hispanic Program Coordinator, and the Handicapped Program Coordinator.

(2) The names and office addresses of EEO Counselors, the segments of the Board for which they are responsible, the availablity of EEO Counselors to counsel an employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap; and the requirement that an employee must consult the EEO Counselor as provided by §§ 268.01 and 268.402 of this regulation about his allegation of discrimination because of race, color, religion, sex, national origin, age or mental or physical handicap, before a compliant may be filed as provided by §§ 268.302 and 268.403 of this regulation.

(3) Time limits for contacting EEO Counselors.

(f) Provide to each employee annually (and the Division of Personnel shall provide to each applicant for employment) a copy of a notice summarizing the general purposes of this regulation and specifying where copies of this regulation can be obtained. He shall ensure that copies of this regulation are posted in permanent locations in all Board facilities. The EEO Programs Officer shall, on request of any employee or applicant for employment provide that employee or applicant for employment with a copy of this regulation.

(g) Appoint any investigative officers or compliants examiners as necessary to administer this regulation. The EEO Programs Officer is authorized to request the loan of any investigative officers or complaints examiners from any other agency as necessary to administer this regulation. The EEO Programs Officer with the concurrence of the Staff Director for Management may authorize appropriate reimbursement to such agencies for the services of such investigative officers or compliants examiners.

(h) Provide for the receipt and investigation of individual compliants of discrimination, subject to §§ 268.301 through 268.312.

(i) Provide for the acceptance and processing and/or rejection of class action compliants in accordance with Subpart D of this regulation.

§ 268.205 Federal Women's Program Manager.

The Federal Women's Program Manager shall perform the following function: Advise the Board, the Administrative Governor, the Staff Director for Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of women.

§ 268.206 Hispanic Program Coordinator.

The Hispanic Program Coordinator shall perform the following function: Advise the Board, the Administrative Governor, the Staff Director for Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of Hispanics.

§ 268.207 Handicapped Program Coordinator.

The Handicapped Program Coordinator shall perform the following functions: Advise the Board, the Administrative Governor, the Staff Director for Management, and the EEO Programs Officer on matters affecting, and administer the Board's program with respect to, the employment and advancement of the Handicapped.

Subpart C—Complaints of Discrimination on Grounds of Race, Color, Religion, Sex, National Origin, Age, or Physical or Mental Handicap

§ 268.301 Precomplaint Processing.

(a) An aggrieved person who believes he has been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, shall consult with an EEO Counselor to try and resolve the matter. The EEO Counselor shall make whatever inquiry he believes is necessary into the matter and propose a solution to the matter on an informal basis. The EEO Counselor shall advise the aggrieved person of the complaint procedure under this subpart, counsel him concerning the issues in the matter, keep a record of the counseling activities so as to brief the EEO Officer on those activities, and when advised that a formal complaint of discrimination has been filed by an aggrieved person, shall submit a written report to the EEO Officer with a copy to the aggrieved person summarizing the EEO Counselor's actions and advice to the aggrieved person concerning the issues in the matter. The EEO Counselor shall, insofar as is practicable, conduct the final interview with the aggrieved person not later than 21 calendar days after the date on which the matter was called to the EEO Counselor's attention by the aggrieved person. However, the EEO Counselor may delay the final interview for up to 30 additional calendar days in order to achieve an informal settlement of the matter upon the written request of the aggrieved person. If the matter has not been resolved to the satisfaction of the aggrieved person, at the time of the final interview, that person shall be immediately informed, in writing, of his right to file a complaint of discrimination and of his right to representation, including legal counsel. The notice shall inform the aggrieved person of his right to file a discrimination complaint at any time up to 15 calendar days after receipt of the said notice, identify to the aggrieved person the officials with whom such complaint may be filed, and advise the aggrieved person that he must inform the Board immediately if he retains counsel or any other representative in connection with the complaint.

(b) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint.

(c) The EEO Counselor shall not reveal the identity of any aggrieved person who consults with the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has accepted a complaint of discrimination from the aggrieved person.

(d) The EEO Counselor shall have the full cooperation of all employees in the performance of his duties under this section.

(e) The EEO Counselor shall be free from restraint, interference, coercion, discrimination or reprisal, in connection with the performance of his duties under this section.

§ 268.302 Filing of Complaint.

(a) *Time Limits.* (1) The Board shall accept a complaint for processing under this subpart only if:

(i) The complainant brought to the attention of an EEO Counselor the matter causing him to believe he had been discriminated against within 30 calendar days of the date of the matter or, if a personnel action, within 30 calendar days of its effective date; and

(ii) The complainant or his authorized representative submitted his written complaint to an appropriate official within 15 calendar days of his final interview with an EEO Counselor.

(2) A complaint shall be deemed to have been filed on the date it was received, if delivered to the appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints under paragraph (b)(3) of this section.

(b) *Filing Requirements.* (1) A complaint of discrimination must be submitted in writing by the complainant or his authorized representative and must be signed by the complainant.

(2) A complaint of discrimination may be submitted in person or by mail. If a complainant or his authorized representative submits the complaint by mail, use of registered mail is advised.

(3) The complaint shall be submitted to either the Administrative Governor, the Staff Director for Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator. All complaints received by the Administrative Governor, the Staff Director for Management, the EEO Programs Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator shall be transmitted to the EEO Officer for acknowledgement of receipt in accordance with § 268.302(c)(1).

(c) *Acknowledgement of Receipt of Complaint.* (1) The EEO Officer shall acknowledge receipt of the complaint to the complainant or his authorized representative in writing.

(2) The EEO Officer shall advise the complainant or his authorized representative of all administrative rights of the complainant, and of complainant's right to file a civil action as set forth in § 268.317, including the time limits imposed on the exercise of those rights.

(d) *Extensions of Time.* (1) The EEO Programs Officer shall extend the time limits set forth in this section:

(i) On written request of the complainant when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the time limits; or

(ii) For other reasons considered sufficient by the EEO Programs Officer.

(2) Written requests for extensions of time under this section shall be filed with the EEO Programs Officer.

§ 268.303 Right to Representation.

At any stage in the presentation of a complaint under this subpart, including the counseling stage under § 268.301, the complainant shall have the right to be accompanied, represented, and advised by a representative, including legal counsel, of his choice. Complainant shall be advised of this right in writing by the EEO Counselor or other appropriate person responsible for matters under this regulation at the commencement of processing of any matter subject to this regulation.

§ 268.304 Presentation of the complaint.

(a) If the complainant is an employee of the Board, he shall have a reasonable amount of official time to present his complaint, if he is otherwise in an active duty status.

(b) If the complainant is an employee of the Board and the complainant designates another employee of the Board as his representative, the representative shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

§ 268.305 Rejection or cancellation of the complaint.

(a) The EEO Programs Officer shall reject a complaint which was not timely filed under § 268.302(a), unless the time for filing has been extended pursuant to § 268.302(d), and shall reject those allegations in a complaint which are not within the purview of this regulation or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending at the Board or has been decided by the board. The EEO Programs Officer may cancel a complaint for failure of the complainant to prosecute the complaint.

(b) The EEO Programs Officer shall transmit any decision or cancel by letter to the complainant and his authorized representative. The decision letter shall inform the complainant of his right to request reconsideration by the Board of the decision of the EEO Programs Officer, pursuant to § 268.316 of this subpart, and of the time limit within which the request for reconsideration must be submitted to the Board. The decision letter shall inform the complainant of his right to have the decision submitted to the Equal Employment Opportunity Commission for review as described in Subpart H and of his right to file a civil action as described in § 218.317 of this subpart, and of the time limits applicable thereto.

§ 268.306 Investigation.

(a) The EEO Officer shall advise the EEO Programs Officer of the receipt of a complaint. The EEO Programs Officer shall provide for the prompt investigation of the complaint. The EEO Programs Officer shall appoint an investigative officer to investigate the complaint. The investigative officer shall occupy a position at the Board which is not, directly or indirectly, under the jurisdiction of the Director of the Division of Office of the Board in which the complaint arose. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the Board Division or Office in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute or appear to constitute discrimination, even though they have not been expressly cited by the complainant.

Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form to the investigative file, but specific information as to the person's membership or non-membership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of witnesses, and copies of or extracts from records, policy statements, or regulations of the agency—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigative officer may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not

require or coerce an employee to provide this information.

(b) The investigative officer shall be authorized:

(1) To investigate all aspects of complaints of discrimination;

(2) To request all employees of the Board to cooperate with him in the conduct of the investigation; and

(3) to require that statements of witnesses be under oath or affirmation without a pledge of confidence.

§ 268.307 Adjustment of Complaint and Offer of Hearing.

(a) The Board shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the EEO Officer shall furnish complainant and his authorized representative a copy of the investigative file promptly after receiving it from the investigative officer, and shall provide an opportunity for the complainant and his authorized representative to discuss the investigative file with appropriate officials.

(b) If an adjustment of the complaint is arrived at and approved, the terms of the adjustment shall be reduced to writing and made a part of the complaint file, with a copy of the terms of the adjustment provided to the complainant. An informal adjustment of a complaint may include an award of back pay, attorney's fees and/or costs, if appropriate, or other appropriate relief. Where the parties agree on an adjustment of the complaint, but cannot agree on whether attorney's fees and/or costs should be awarded or on the amount of attorney's fees and/or costs to be awarded, the issue of the award of attoeney's fees and/or costs or the amount which should be awarded may be severed and shall be the subject of a final decision pursuant to § 268.311. The decision of whether to award attorney's fees and/or costs or of the amount to be awarded may be the subject of request for reconsideration by the Board under the provisions of § 268.316. At a complainant's request, the decision of the Board on any such reconsideration shall be submitted for review by the Equal Employment Opportunity Commission, pursuant to Subpart H of this Regulation.

(c) If the Board does not carry out, or rescinds any action specified by the terms of the adjustment for any reason not attributable to the actions or conduct of the complainant, the EEO Officer shall, upon the complainant's written request, reinstate the complaint for further processing at the point that processing ceased because of the adjustment.

(c) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing by the EEO Officer:

(1) Of the proposed disposition of the complaint;

(2) Of the complainant's right to a hearing and decision by the Administrative Governor, or the Staff Director for Management if he is delegated the authority under § 268.202(c), if the complainant notifies the EEO Officer in writing within 15 calendar days of receipt of the notice that he desires a hearing; and

(3) Of the complainant's right to a decision by the Administrative Governor, or the Staff Director for Management if he is delegated the authority under § 268.202(c), without a hearing.

(e) If the complainant fails to notify the EEO Officer of his wishes within 15 calendar days of receipt of the notice set forth in § 268.307(d), the EEO Officer shall transmit the complaint file to the Administrative Governor, or to the Staff Director for Management if he has been authorized to act for the Administrative Governor pursuant to § 268.202(c), for decision under § 268.311.

§ 268.308 Hearing on the complaint.

A hearing, held pursutant to an election by the complainant as provided in § 268.307(d)(2), shall be conducted in the following manner:

(a) *Complaints Examiner.* The hearing shall be held by a complaints examiner, who must be an employee of another agency, except in a case where the Board might be prevented by reason of law from divulging information concerning the matter complained of to a person who has not received a required security clearance. In that event, the EEO Programs Officer, in consultation with the Equal Employment Opportunity Commission, shall select an impartial employee of the Board to serve as a complaints examiner. In selecting a complaints examiner, the Board shall request the Equal Employment Opportunity Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit to the complaints examiner the complaint file containing all the documents described in § 268.312 that have been acquired up to that point in the processing of the complaint and including the original copy of the investigative file (which shall be considered by the complaints examiner in making his recommended decision on the complaint). The complaints examiner shall review the entire complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he shall remand the complaint to the Board's EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed additional information at the hearing. The requirements of § 268.306 shall apply to any further investigation on the complaint. The complaints examiner shall schedule the hearing at a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the complaints examiner to have direct connection with the complaint or whom the complaints examiner believes can provide information relevant to the complaint. Upon request of the complainant, the complaints examiner may open the proceedings to other interested person if it appears, in his discretion, that such action would be consistent with the due process rights of the complainant and would not unduly delay or impede the conduct of the hearing.

(2) The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complaints examiner, the complainant, his authorized representative, and representatives of the Board at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of Complaints Examiner.* In addition to the other powers vested in the complaints examiner by the Board in these regulations, the complaints examiner shall be authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The complaints examiner shall request the Board to make available as a witness at the hearing any employee(s) requested

by the complainant when the complaints examiner determines that the testimony of such employee(s) is necessary. He may also request the appearance of any other person whose testimony he determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his reasons for the denial of a request for the appearance of employees or other persons as witnesses and shall insert those reasons in the record of the hearing. The Board shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner and it is not administratively impracticable to comply with the request for a witness. When it is not administratively practicable to comply with the request for a witness, the Board shall provide an explanation to the complaints examiner. If the complaints examiner determines that the explanation is inadequate, he shall so advise the Board and request it to make the employee available as a witness at the hearing. If the complaints examiner determines that the explanation is adequate, he shall insert it in the record of the hearing, provide a copy of the explanation to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees of the Board shall be on duty status during the time they are made available as witnesses.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the Board submits a doucment that is accepted, the Board shall promptly furnish a copy to the complainant. If the complainant submits a document that is accepted, he shall promptly make the document available to the Board's representative for reproduction.

(g) Findings, analysis, and recommendations.

The complaints examiner shall transmit to the EEO Programs Officer:

(1) The complaint file (including the record of the hearing);

(2) The findings and analysis of the complaints examiner with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose;

(3) The recommended decision of the complaints examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter that gave rise to the complaint and the general environment out of which the complaint arose.

The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the EEO Programs Officer, any findings and recommendations he considers appropriate with respect to conditions at the Board which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

§ 268.309 Relationship to other agency appellate procedure.

(a) Any claim, complaint or request for counseling filed under the Board's grievance procedure by an employee who claims that he has been discriminated against because of race, color, religion, sex, national origin, age, or physical or mental handicap shall also be considered filed under this regulation. The date of filing of any such claim, complaint or request for counseling under the Board's grievance procedure shall be considered the date of filing of the collateral complaint of discrimination under this regulation for purpose of the time limitations set out in § 268.302(a) of this regulation. The Board shall thereafter promptly process any claim, complaint, or request for counseling pursuant to this regulation, unless the party submitting such claim, complaint, or request for counseling requests in writing that the grievance procedure be used exclusively or that processing under this regulation be deferred pending the outcome of the grievance procedure. In the absence of any written election by the complainant submitting the calim, complaint, or request for counseling, the Staff Director for Management is authorized to defer processing of the claim, complaint, or request for counseling under the Board's grievance procedure until the matter is fully processed under this regulation.

(b) Except as set forth in § 268.309(a) of this regulation, when an employee makes a written allegation of discrimination on grounds of race, color, religion, sex, national origin, age, or physical or mental handicap, in connection with an action that would otherwise be processed under a grievance or other system of the Board, the allegation of discrimination shall be processed under this regulation.

§ 268.310 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Board shall proceed with the complaint as specified in these regulations without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under § 268.308. When the complaint has not been resolved within such time, the complainant may petition the Staff Director for Management for a review of the reasons for the delay.

(b) The EEO Programs Officer may cancel a complaint if the complaint fails to prosecute the complaint without undue delay. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) When the complaints examiner has submitted a recommended decision finding discrimination and a final decision has not been issued by the Administrative Governor, or by the Staff Director for Management if he is delegated the authority to act for the Administrative Governor pursuant to § 268.202(c), within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on the Board 30 calendar days after its submission to the EEO Programs Officer. In such event, the complainant shall be notified of the decision and furnished a copy of the findings, analysis, and recommended decision of the complaints examiner under § 268.308(g) and a copy of the hearing record and shall be advised of his right to file a request for reconsideration of the decision by the Board pursuant to § 268.316, that at his request the decision may be reviewed by the Equal Employment Opportunity Commission pursuant to subpart H of this Part, and of his right to file a civil action as described in § 268.317 of these regulations, and of the time limits applicable thereto.

§ 268.311 Decision on the complaint.

(a) The Administrative Governor or, if he has been authorized to do so pursuant to § 268.202(c), the Staff Director for Management, shall make the decision on the complaint, based on information in the complaint file, in a fair, impartial, and objective manner.

(b)(1) The decision on the complaint shall be in writing, shall reflect the date of issuance, and shall be transmitted to the complaint and his authorized representative either by certified mail, return receipt requested, or by any other method which establishes the date of receipt by the complainant and his authorized representative.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner under § 268.308(g) of this regulation and a copy of the hearing record. The decision shall adopt, reject or modify the recommended decision recommended by the complaints examiner under § 268.308(g). If the decision is to reject or modify the recommended decision, the decision letter shall set forth the specific reasons in detail for rejection or modification.

(3) When there has been no hearing under § 268.308 and no adjustment under § 268.307, the decision letter shall set forth the findings, analysis and decision of the Administrative Governor, or of the Staff Director for Management if he has been delegated the authority to make the decision under § 268.202(c).

(c) The decision shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the decision maker shall (1) advise the complainant and his authorized representative that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt, (2) require remedial action to be taken in accordance with § 268.315, (3) review the matter giving rise to the complaint to determine whether disciplinary action against any alleged discriminatory officials is appropriate, and (4) record the basis for his decision to take, or not to take, disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for an award of attorney's fees and/or costs, the amount of those awards shall be determined under § 268.315(c). In the unusual situation in which the Board determines not to award attorney's fees and/or costs to a prevailing complaint, the decision shall set forth the specific reasons for denying the award.

(e) The decision letter shall inform the complainant of his right to file a request for reconsideration by the Board pursuant to § 268.316, that at his request the decision may be reviewed by the Equal Employment Opportunity Commission under subpart H, of his right to file a civil action in accordance with § 268.317 of this subpart, and of the time limits applicable thereto.

§ 268.312 Complaint file.

(a) The EEO Officer shall maintain a complaint file containing all documents pertinent to the complaint, except as provided in § 268.311(c)(4).

(1) The complaint file shall include copies of:

(i) The notice of the EEO Counselor to the complaint or his authorized representative pursuant to § 268.301(a);

(ii) The written report of the EEO Counselor under § 268.301(a) to the EEO Officer on whatever pre-complaint counseling efforts were made with regard to the complaint's case;

(iii) The complaint;

(iv) The investigative file;

(v) If the complaint is withdrawn by the complainant, a written statement of the complainant or his authorized representative to that effect;

(vi) If adjustment of the complaint is arrived at under § 268.307, the written record of the terms of the adjustment;

(vii) If no adjustment of the complaint is arrived at under § 268.307, a copy of the letter under § 268.307(d) notifying the complainant and his authorized representative of the proposed disposition of the complaint and of his right to a hearing;

(viii) If decision is made under § 268.307(e), a copy of the letter to the complainant transmitting that decision;

(ix) If a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint;

(x) The recommendations of the Staff Director for Management or the EEO Programs Officer, if any, to the Administrative Governor, the Staff Director for Management or the Board on the complaint; and

(xi) If decision is made under § 268.311, a copy of the letter transmitting the decision.

(b) The complaint file shall contain no document that has not been made available to the complainant or his authorized representative, including a physician designated in writing by the complainant.

§ 268.313 Joint processing and consolidation of complaints.

(a) Two or more complaints of discrimination filed by employees with the Board consisting of substantially similar allegations of discrimination may, with the written permission of the complainants, be consolidated by the EEO Programs Officer.

(b) Two or more individual complaints of discrimination from the same employee may, at the discretion of the EEO Programs Officer, be joined for processing after notifying the complainant that the complaints will be processed jointly.

§ 268.314 Freedom from reprisal or interference.

(a) *Freedom from reprisal.* Complainants, their authorized representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under § 268.301, or any time thereafter.

(b) *Review of allegations of reprisal.* A complainant, his authorized representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal for having filed a complaint or for having participated in the processing of a complaint under this subpart, may, if an employee, have the allegation reviewed as an individual complaint of discrimination subject to the provisions of this subpart.

(c) *Consolidation of complaints.* When a complainant alleges that he has been subjected to restraint, interference, coercion, discrimination, or reprisal in connection with the filing of a prior complaint of discrimination and that prior complaint from which the allegation derives is in process at the Board at the time the allegation is made, the complainant may request the EEO Programs Officer to consolidate the allegation with the prior complaint. If the prior complaint is at the hearing stage of the complaint process under § 268.308, the complainant may request the complaints examiner to consolidate the allegation with the complaint at the hearing. The EEO Programs Officer or the complaints examiner may grant the request, Provided, that the request is made within 30 calendar days of occurrence of the act which forms the basis of the allegation, or within 30 calendar days of its effective date, if a personnel action. The EEO Programs Officer or the complaints examiner may also deny the request, at his discretion, and require that the allegation be processed in accordance with § 268.314(b).

§ 268.315 Remedial actions.

(a) *Remedial Action Involving an Applicant.* (1) When it is determined that an applicant for employment has been discriminated against, the Board shall offer the applicant employment of the type and grade denied him, unless the record contains clear and convincing evidence that the applicant would not have been hired even absent discrimination. The offer shall be made in writing. The individual shall have 15 calendar days from receipt of the offer within which to accept or decline the

offer. Failure to notify the Board of his decision within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his control prevented the individual from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant should have been hired, subject to the limitation in paragraph (a)(3) of this section. Back pay shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The individual shall be deemed to have performed services for the Board during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, the individual shall be awarded a sum equal to the backpay he would have received from the date he would have been appointed until the date the offer was made subject to paragraph (a)(3) of this section. The individual shall be informed in the offer of his right to this award in the event he declines the offer.

(2) When it is determined that discrimination existed at the time the applicant was considered for employment but that there is clear and convincing evidence that the applicant would not have been hired even absent the discrimination, the Board shall consider the individual for any existing vacancy of the type and grade for which he was considered initially and for which he is qualified before consideration is given to other candidates. If the individual is not selected, the Board shall record the reasons for nonselection. If no vacancy exists, the Board shall give the individual priority consideration for the next vacancy for which he is qualified. This priority shall take precedence over all other Board employment priorities.

(3) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed. If a finding of discrimination was not based on a complaint, the period of retroactivity or period for which backpay is awarded under this paragraph may not extend earlier than two years prior to the date the finding of discrimination was recorded:

(b) *Remedial Action Involving an Employee.* When it is determined that a Board employee has been discriminated against, the Board shall take remedial actions which may include, but need not be limited to, one or more of the following:

(1) Retroactive promotion, with back pay, unless the record contains clear and convincing evidence that the employee would not have been promoted or employed at a higher grade, even absent discrimination. The back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but, in any event shall not exceed the date the employee would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but, in any event, shall not exceed the date he would have been promoted.

(2) Consideration for promotion to a position for which the employee is qualified before consideration is given to other candidates, if the record contains clear and convincing evidence that, although discrimination existed at the time selection for promotion was made, the employee would not have been promoted even absent discrimination. If the individual is not selected, the Board shall record the reasons for non-selection. This priority consideration shall take precedence over all other Board employment priorities.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the Board's records of any reference to or any record of an unwarranted disciplinary action.

(5) Full opportunity to participate in the employee benefit denied him (e.g., training, preferential work assignments, overtime scheduling).

(c) *Attorney's Fees or Costs.*—(1) *Award of Attorney's Fees or Costs.* The Board may award the complainant reasonable attorney's fees and/or costs incurred in the processing of complaints of discrimination under this subpart or of any charge of restraint, interference, coercion, discrimination, or reprisal under § 268.314 of this regulation. In a decision made under §§ 268.307, 268,310, 268,311, 268.314 or under Subpart D of this regulation, or in connection with any review by the Equal Employment Opportunity Commission pursuant to Subpart H, the Board may award reasonable attorneys fees or costs incurred in the processing of the matter.

(i) A finding of discrimination shall raise a presumption of entitlement to an award of attorney's fees.

(ii) Attorney's fees may be allowed only for the services of members of the Bar and law clerks, paralegals, or law students under supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iii) Attorney's fees shall be paid only for services performed after the filing of the complaint under § 268.302 and after the complainant has notified the Board that he is represented by an attorney, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to the Board which are signed by the attorney shall be deemed to constitute notice of representation.

(2) *Amount of Award.* When it is determined to award attorney's fees and/or costs, the complainant's attorney shall submit a verified statement of costs and attorney's fees, as appropriate, to the Board within 20 calendar days of receipt of the decision. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services, and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees and/or costs to be awarded the complainant shall be determined by agreement between the complainant, the complainant's representative, and a representative of the Board. Such agreement shall immediately be reduced to writing. If the complainant, the complainant's representative, and the Board's representative cannot reach an agreement on the amount of attorney's fees and costs within 20 calendar days of receipt of the verified statement and accompanying affidavit, the amount of attorney's fees and/or costs to be awarded shall be decided under § 268.311 within 30 calendar days of receipt of the statement and affidavit. Such decision shall include the specific reasons for determining the amount of the award.

(i) The amount of the attorney's fees and costs awarded shall be determined in accordance with the following standards: The time and labor required; the novelty and difficulty of the questions presented by the complaint; the skill requisite to perform the legal services properly; the preclusion of other employment by the attorney due to acceptance of the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by

the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorney; the undesirability of the case; the nature and length of the professional relationship between the complainant and the attorney; and awards in similar cases.

(ii) The costs which may be awarded include: (A) Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case unless provided by the Board; (B) fees and disbursements for printing and witnesses except to the extent already paid for by the Board; (C) fees for exemplication and copies of papers necessarily obtained for use in the case except to the extent already paid for by the Board; and (D) any other costs determined to be reasonable by the Administrative Governor, or the Staff Director for Management if he is authorized to make the decision under § 268.202(c). Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821. However, no award may be made for a Board or Federal Government employee who is in a duty status when made available as a witness.

§ 268.316 Reconsideration.

Complainant may file a request for reconsideration with the Board of Governors within 7 calendar days following any final decision on a complaint under §§ 268.305(b), 268.307(b), 268.310 (b) and (c), and 268.311. The Board of Governors shall determine whether to reconsider the decision and, if it chooses to reconsider, shall announce its decision no later than 30 calendar days following filing of the request for reconsideration.

§ 268.317 Right to file a civil action.

(a) A complainant is authorized to file a civil action against the Board in an appropriate United States District Court, pursuant to 28 U.S.C. 1331.

(1) Within 30 calendar days of receipt of notice of final action taken by the Board on the complaint.

(2) After 180 calendar days from a date of filing a complaint with the Board if there has been no decision.

(3) Within 30 calendar days of Board reconsideration of any final action by the Board following the decision of the Equal Employment Opportunity Commission on a request to review that final action by the Board under subpart H of this regulation.

(4) After 180 calendar days from the date of filing of a request for review of a final action of the Board by the Equal Employment Opportunity Commission if there has been no determination by the Equal Employment Opportunity Commission under subpart H of this regulation.

(b) For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint, including action on a request for reconsideration by the Board pursuant to § 268.316 and including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision is not final until the procedures are followed for determining the amount of the award as set forth in § 268.315(c) of this regulation.

(c) The Board waives any claim that a civil suit is untimely where such suit is filed within 30 days of Board action on a timely filed request for reconsideration by the Board pursuant to § 268.316, or within 30 days following Board reconsideration of any action of the Board following review of the Board's action by the Equal Employment Opportunity Commission under subpart H of this regulation, whichever is later.

§ 268.318 Notice of right.

The Board shall notify a complainant in writing of his right to file a civil aciton, and of the 30-day time limit specified in § 268.317 in any final action on a complaint under this subpart.

§ 268.319 Effect on administrative procedure.

The filing of a civil action does not terminate Board processing of a complaint or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart D—Class Complaints of Discrimination

§ 268.401 Definitions.

(a) A "class" is a group of Board employees, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by a Board personnel management policy or practice which the Board has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, age, or mental or physical handicaps.

(b) A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class;

(3) The claims of the agent of the class are typical of the claims of the class; and

(4) The agent of the class or his authorized representative, if any, will fairly and adequately protect the interests of the class.

(c) An "agent of the class" is a class member who acts for the class during the processing the class complaint.

§ 268.402 Precomplaint processing.

(a) An employee who wishes to be an agent and who believes he has been discriminated against shall consult with an EEO Counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or within 90 calendar days of its effective date if a personnel action.

(b) The EEO Counselor shall: (1) Advise the aggrieved person of the discrimination complaint procedures, of his right to representation, including legal counsel, throughout the precomplaint and complaint process, and of the right to anonymity only during the precomplaint process; (2) make whatever inquiry he believes is necessary; (3) make an attempt at informal resolution through discussion with appropriate officials; (4) counsel the aggrieved person concerning the issues involved; (5) inform the EEO Officer and other appropriate officials when he believes corrective action is necessary; (6) keep a record of all counseling activities; and (7) summarize actions and advice in writing both to the EEO Officer and the aggrieved person concerning the issues arising from the personnel management policy or practice in question.

(c) The EEO Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the EEO Counselor, unless the aggrieved person in writing requests an extension of an additional 30 calendar days in which to attempt an informal resolution of the matter. During the final interview, the EEO Counselor shall inform the aggrieved person in writing that counseling is terminated, that he has the right to file a class complaint of discrimination with appropriate officials of the Board, of the time limits for filing a class complaint, of is right to representation, including legal counsel, and of his duty to assure the Board is immediately informed if legal representation is obtained.

(d) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint

or to encourage the person to file a complaint.

(e) The EEO Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except when authorized to do so in writing by the aggrieved person.

(f) All Board employees and officers shall fully cooperate with EEO Counselors in the performance of their duties under this section. EEO Counselors shall have routine access to personnel records of the Board without unwarranted invasion of privacy.

(g) Corrective action taken as a result of counseling shall be consistent with law and the Board's regulations, rules, and instructions.

§ 268.403 Filing and presentation of a class complaint.

(a) The complaint must be submitted in writing by the agent or his authorized representative and be signed by the agent.

(b) The complaint shall set forth specifically and in detail:

(1) A description of the Board personnel management policy or practice giving rise to the complaint; and

(2) A description of the resultant personnel action or matter adversely affecting the agent.

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of final interview with an EEO Counselor pursuant to § 268.402(c).

(d) The complaint must be filed with either the Administrative Governor, the Staff Director for Management, the EEO Programs Officer, the EEO Officer, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Handicapped Program Coordinator.

(e) A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

(f) At all stages, including counseling, in the preparation and presentation of a complaint or claim, and appeal from a decision on a complaint or claim, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of his own choosing, including legal counsel, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

(g) If the agent is a Board employee in an active duty status, he shall have a reasonable amount of official time to prepare and present the complaint. Board employees, including attorneys, who are representing employees of the Board in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is consistent with the faithful performance of their duties.

§ 268.404 Acceptance, rejection or cancellation.

(a) Within 10 calendar days of the Board's receipt of a complaint, the EEO Officer shall forward the complaint, along with a copy of the EEO Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Equal Employment Opportunity Commission with a request for designation of a complaints examiner qualified to conduct the proceeding.

(b) The complaints examiner may recommend that the Board reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending before the Board or which has been resolved or decided by the Board;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult an EEO Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent; or

(7) It does not meet all of the prerequisites set forth in § 268.401(b) of this subpart.

(c) If an allegation is not included in the EEO Counselor's report, the complaints examiner shall afford the agent 15 calendar days to explain whether the matter was discussed with an EEO Counselor and if not, why he did not discuss the allegation with an EEO Counselor. If the explanation is not satisfactory, the complaints examiner may recommend that the Board reject the allegation. If the explanation is satisfactory, the complaints examiner may refer the allegation to the Board for further counseling of the agent.

(d) If an allegation lacks specificity and detail, the complaints examiner shall afford the agent 15 calendar days to provide specific and detailed information. The complaints examiner may recommend that the Board reject the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the complaints examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The complaints examiner may recommend that the Board extend the time limits for filing a complaint and for consulting with an EEO Counselor when the agent, or his authorized representative, shows that he was not notified of the prescribed time limits and was not otherwise aware of them or that he was prevented by circumstances beyond his control from acting within the time limits.

(f) When appropriate, the complaints examiner may recommend to the Board that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The complaints examiner may recommend that the Board cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the complaints examiner has provided the agent, or his authorized representative, a written request, including notice of proposed cancellation, that the agent provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of his receipt of the request.

(h) An agent, or his authorized representative, must be informed by the complaints examiner in a request under (c) or (d) of this section that his complaint may be rejected if the information is not provided.

(i) The complaints examiner's recommendation to the Board on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the Board, the agent and the agent's authorized representative. The complaint examiner's recommendation to accept, reject, or cancel shall become the Board's decision unless the EEO Programs Officer rejects or modifies the decision within 10 calendar days of its receipt. The EEO Programs Officer shall notify the agent, the agent's authorized representative, and the complaints examiner of his decision to accept, reject, or cancel a complaint. The notice of a decision to reject or cancel the class complaint shall inform the agent of his right to proceed with his individual complaint of discrimination under Subpart C, that he may request that the Board's decision on the complaint be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H, that he may petition the Board for reconsideration of the

decision of the EEO Programs Officer or the complaints examiner pursuant to § 268.416, and of this right to file a civil action pursuant to § 268.415, and of the time limits applicable thereto.

§ 268.405 Notification and opting out.

(a) After acceptance of a class complaint, the Board, within 15 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) The name of the Board or organizational segment(s) thereof involved, its location, and the date of acceptance of the complaint; (2) a description of the issues accepted as part of the class complaint; (3) an explanation that class members may remove themselves from the class by notifying the EEO Programs Officer within 30 calendar days after issuance of the notice; and (4) an explanation of the binding nature of the final decision on or resolution of the complaint.

§ 268.406 Avoidance of Delay.

The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

§ 268.407 Freedom from restraint, interference, correction and reprisal.

(a) Agents, claimants, their authorized representatives, witnesses, the Staff Director for Management, the EEO Programs Officer, the EEO Officer, EEO Investigators, EEO Counselors, and other Board officials having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under § 268.402 or any time thereafter.

(b) A person identified in paragraph (a) of this section, if a Board employee, may file a complaint of restraint, interference, coercion, or reprisal in connection with the presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with the provisions of subpart C of this regulation.

§ 268.408 Obtaining evidence concerning the complaint.

(a) *General.* (1) Upon the acceptance of a complaint, the EEO Programs Officer shall designate a Board representative. The Board's representative shall not be an alleged discriminating official or any individual designated under Subpart B of this regulation.

(2) In representing the Board, the Board representative shall consult with officials, if any, named or identified as responsible for the alleged discrimination, and other officials or employees of the Board as necessary. In such consultations, the Board's representative shall be subject to the provisions of the Board's regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

(b) *Development of evidence.* (1) The complaints examiner shall notify the agent, or his authorized representative, and the Board's representative that a period of not more than 60 calendar days will be allowed for both parties to prepare their cases. This time period may be extended by the complaints examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) In the event that mutual cooperation fails, either party may request the complaints examiner to rule on a request to develop evidence. When the complaints examiner renders his report of findings and recommendations on the merits of the complaint, a party's failure to comply with the complaints examiner's ruling on an evidentiary request may be taken into account.

(3) During the time period for development of evidence, the complaints examiner may, at his discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an investigator trained and/or certified by the Equal Employment Opportunity Commission.

(4) Both parties shall furnish the complaints examiner all materials that they wish the complaints examiner to examine and such other material as the complaints examiner may request.

§ 268.409 Opportunities for resolution of the complaint.

(a) The complaints examiner shall furnish the agent or his authorized representative, and the Board's representative with a copy of all materials obtained concerning the complaint and provide an opportunity for the agent or his authorized representative to discuss these materials with the Board's representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the Board and the agent to terms offered by either party.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the Staff Director for Management. A resolution may include a finding on the issue of discrimination, and award of attorney's fee and/or costs, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law and the Board's regulations, rules, and instructions. A copy of the resolution shall be provided to the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the Board. A resolution shall bind all members of the class.

(e) If the Board does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his authorized representative, or class members, the Board upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of the Board to resinstate the complaint may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation.

§ 268.410 Hearing.

On the expiration of the period allowed for preparation of the case, the complaints examiner shall set a date for a hearing. The hearing shall be conducted in accordance with § 268.308 of Subpart C of this regulation.

§ 268.411 Report of findings and recommendations.

(a) The complaints examiner shall transmit to the EEO Programs Officer:

(1) The record of the hearing;

(2) The complaints examiner's findings and analysis with regard to the complaint; and

(3) The complaints examiner's report of findings are recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

(b) The complaints examiner shall notify the agent of the date on which the report of findings and recommendations was forwarded to the EEO Program Officer.

§ 268.412 Board decision.

(a)(1) Within 30 calendar days of receipt of the report of findings and recommendations issued under § 268.411 of this subpart, the Administrative Governor, or the Staff Director for Management if he is authorized to make the decision under § 268.202(c), shall issue a decision to accept, reject, or modify the findings and recommendations of the complaints examiner.

(2) The decision of the Administrative Governor, or the Staff Director for Management if he is delegated the authority to make the decision under § 268.202(c), shall be in writing and shall be transmitted to the agent or his authorized representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the complaints examiner.

(3) When the decision of the Administrative Governor, or the Staff Director for Management if he is delegated the authority to make the decision under § 268.202(c), is to reject or modify the findings and recommendations of the complaints examiner, the decision shall contain the specific reasons in detail for the action.

(b) If the Administrative Governor, or the Staff Director for Management if he is authorized to make the decision under § 268.202(c), has not issued a decision within 30 calendar days of receipt by the Board of the complaints examiner's report of findings and recommendations, those findings and recommendations shall become the final Board decision. The Board shall transmit the final Board decision and the record of the hearing to the agent or his authorized representative within 5 calendar days of the expiration of the 30-day period.

(c) The decision of the Administrative Governor, or the Staff Director for Management if he is authorized to make the decision under § 268.202(c) of Subpart C of this regulation, shall require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the Board shall: (1) Advise the agent and his authorized representative that any request for attorney's fees and/or costs must be documented and submitted within 20 calendar days of receipt of the decision; (2) review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate; and (3) record the basis for its decision to take or not to take disciplinary action, but this decision shall not be recorded in the complaint file.

(d) When the final decision provides for the award of attorney's fees and/or costs, the amount of these awards shall be determined under § 268.315(c) of Subpart C of this regulation. When it is determined not to award attorney's fees and/or costs, the decision shall set forth the specific reasons for denying the award.

(e) The decision shall inform the agent or his authorized representative that on request of the agent, the decision under this section may be reviewed by the Equal Employment Opportunity Commission pursuant to Subpart H of this regulation, that the agent may request Board reconsideration of the decision under this section pursuant to § 268.416, and of his right to file a civil action in accordance with § 268.415 of this subpart, and of the time limits applicable thereto.

(f) A final decision on a class complaint shall be binding on all members of the class and the Board.

§ 268.413 Notification to class members of decision.

Class members shall be notified by the Board, through the same media employed to give notice of the existence of the class complaint, of the Board decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 calendar days of the transmittal of its decision to the agent.

§ 268.414 Corrective action.

(a) When discrimination is found, the Board shall eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action, including an award of attorney's fees and/or costs to the agent, in accordance with § 268.315 of Subpart C of this regulation. Corrective action in all cases must be consistent with law and Board regulations, rules, and instructions.

(b) When discrimination is found and a class member believes that but for that discrimination, he would have received employment or an employment benefit, the class member may file a written claim with the EEO Programs Officer within 30 calendar days of notification by the Board of its decision.

(c) The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

(d) The EEO Programs Officer shall attempt to resolve the claim for relief within 60 calendar days after the date the claim was postmarked, or in the absence of a postmark, within 60 calendar days after the date it was received by the EEO Programs Officer, with whom claims may be filed. If the EEO Programs Officer and claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, the EEO Programs Officer shall refer the claim, with recommendations concerning it, to the complaints examiner.

(e) The complaints examiner shall notify the claimant of his right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with § 268.308 of Subpart C of this regulation. If no hearing is requested, the complaints examiner, in his discretion, may hold a hearing to obtain necessary evidence concerning the claim.

(f) The complaints examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under §§ 268.411 and 268.412.

(g) If the complaints examiner determines that the claimant is not a member of the class or that the claim was not timely filed, the complaints examiner shall recommend rejection of the claim and give notice of his action to the Board, the claimant and the claimant's authorized representative. Such notice shall include advice that the claimant may request review of the claim by the Equal Employment Opportunity Commission pursuant to Subpart H, that the claimant may request reconsideration of the claim by the Board pursuant to § 268.416, and of claimant's right to file a civil action in accordance with the provisions of § 268.415.

§ 268.415 Right to file a civil action for judicial review.

(a) An agent who has filed a complaint or a claimant who has filed a claim for relief based on race, color,

religion, sex, national origin, age, or physical or mental handicap, is authorized to file a civil action against the Board in an appropriate United States district court, pursuant to 28 U.S.C. 1331:

(1) Within 30 calendar days of his receipt of notice of final action taken by the Board.

(2) After 180 calendar days from the date he filed a complaint or claim with the Board if there has been no decision on the complaint or claim.

(3) Within 30 calendar days of Board reconsideration of any final action by the Board following the decision of the Equal Employment Opportunity Commission on a request to review that final action by the Board under Subpart H of these regulations.

(4) After 180 calendar days from the date of filing of a request for review of a final action of the Board by the Equal Employment Opportunty Commission if there has been no action by the Equal Opportunity Commission under Subpart H of these regulations.

(b) For the purposes of this Part, the decision of the Board shall be final only when the Board makes a determination on all issues in the complaint, including action on a request for reconsideration by the Board under § 268.416 and including whether or not to award attorney's fees and/or costs. If a determination to award attorney's fees and/or costs is made, the decision will not be final until the procedure is followed for determining the amount of the award as set forth in § 268.315(c) of Subpart C.

(c) The Board waives any claim that a civil suit is untimely where such suit is filed within 30 days following Board action on a timely filed request for reconsideration pursuant to § 268.416 or following board reconsideration of any action of the Board following review of the Board's action by the Equal Employment Opportunity Commission under Subpart H of this regulation, whichever is later.

§ 268.416 Reconsideration.

An agent, an agent's authorized representative or a claimant may file a request for reconsideration with the Board of Governors within 7 calendar days following any final decision on a complaint under §§ 268.404, 268.412, 268.414(g), and 268.417. The Board shall have 30 calendar days within which to make a determination to reconsider the decision and to announce its decision should it decide to reconsider.

§ 268.417 Notice of right.

When the agent alleges that the Board discriminated against a class on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, or a claimant files for relief, the Board shall notify the agent or claimant in writing of his right to file a civil action following any final action on a complaint or claim under this subpart.

§ 268.418 Effect on administrative processing.

The filing of a civil action by an agent or claimant does not terminate Board processing of a complaint or claim or Equal Employment Opportunity Commission review of any Board action under this subpart.

Subpart E—Nondiscrimination on Account of Age

§ 268.501 Policy statement.

(a) The board shall not:

(1) Fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age, except as permitted by § 268.504;

(2) Limit, segregate, or classify Board employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's age, except as permitted by § 2,68.504; or

(3) Reduce the wage rate of any employee in order to comply with this policy.

(b) The Board shall not discriminate against any employee because such employee has opposed any practice forbidden under this subpart or because such employee has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or litigation under this subpart.

(c) The Board shall not print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the Board indicating any preference, limitation, specification, or discrimination, based on age, except as permitted by § 268.504.

§ 268.502 Processing of individual complaints.

All individual complaints of discrimination on the basis of age shall be filed and processed pursuant to Subpart C. All class complaints shall be filed and processed pursuant to Subpart D. A complaint may also be filed by an organization for a complaint with his consent.

§ 268.503 Coverage.

A person filing a complaint of discrimination on the basis of age must have been at least 40 years of age at the time alleged discrimination occurred.

§ 268.504 Exceptions

(a) The Board may establish reasonable exemptions to the provisions of this subpart for each position for which the Board establishes a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification reasonably necessary to the normal performance of the duties of the position; and the Board may take any action otherwise prohibited by this subpart where the differentiation is based on reasonable factors other than age.

(b) The Board may use age as a criteria to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this subpart, except that no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual covered by this subpart because of age.

(c) Notwithstanding any other provision of this subpart, the Board may discharge or otherwise discipline an employee for good cause.

§ 268.505 Effect on administrative procedure.

The filing of a civil action by an employee does not terminate Board processing of a complaint under this subpart or Equal Employment Opportunity Commission review of any such complaint pursuant to Subpart H.

Subpart F—Prohibition Against Discrimination In Employment Because of a Physical or Mental Handicap

§ 268.601 Definitions.

(a) "Handicapped person" is defined for this subpart as one who: (1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

(b) "Physical or mental impairment" means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome,

emotional or mental illness, and specific learning disabilities.

(c) "Major life activities" means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) "Has a record of such an impairment" means has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

(e) "Is regarded as having such an impairment" means: (1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or (3) has none of the impairments defined in (b) of this section but is treated by an employer as having such an impairment.

(f) "Qualified handicapped person" means, with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the handicapped person or others, and who meets the experience and/or education requirements (which may include passing a written test) of the position in question.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, conveyances, or other seal or personal property.

§ 268.602 General policy.

The Board gives full consideration to hiring, placement, and advancement of qualified physically or mentally handicapped persons. The Board does not discriminate against qualified mentally or physically handicapped persons.

§ 268.603 Reasonable accommodation.

(a) The Board shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped employee unless it determines that the accommodation would impose an undue hardship on the operation of its programs.

(b) Reasonable accommodation may include, but shall not be limited to: (1) Making facilities readily accessible to and usable by handicapped persons; and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examination, the provision of readers and interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of the Board, factors to be considered include: (1) The overall size of the Board's program with respect to the number of employees, number and type of facilities, and size of budget; (2) the type of Board operation including the composition and structure of the Board's work force; and (3) the nature and the cost of the accommodation.

§ 268.604 Employment criteria.

(a) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons or any class of handicapped persons unless: (1) The test score or other selection criterion, as used by the Board, is job-related for the position in question; and (2) there are not available alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons.

(b) The Board shall select and administer tests concerning employment so as to insure that, when administered to an applicant for employment or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's ability to perform the position or type of positions in question, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 268.605 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, the Board does not conduct any preemployment medical examination and does not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. The Board may, however, make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question (i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question).

(b) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted coincident to the employee's entrance on duty, provided, that: (1) All entering employees are subjected to such an examination regardless of handicap or when the preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and (2) the results of such an examination are used only in accordance with the requirements of this subpart.

(c) To enable and evaluate affirmative action to hire, place, or advance handicapped individuals, the Board may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that: (1) Any questionnaire used for this purpose, and any employee requesting such information, shall state clearly that the information requested is intended for use solely in conjunction with affirmative action; and (2) any such questionnaire of employee shall state clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the applicant for employment or employee to any adverse treatment, and that it will be used only in accordance with this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant is kept confidential except that: (1) Managers, selecting officials, and others involved in the selection process of responsible for affirmative action may be informed that the applicant is a handicapped individual eligible for affirmative action; (2) supervisors and managers may be informed regarding necessary accommodations; (3) first aid and safety personnal may be informed, where appropriate, if the condition might require emergency treatment; (4) government officials investigating compliance with laws, regulations, and instructions relevant to equal employment opportunity and affirmative action for handicapped individuals shall be provided information upon request; and (5) statistics generated from information obtained may be used to manage, evaluate, and report on equal employment opportunity and affirmative action programs.

§ 268.606 Physical access to buildings.

The Board shall not discriminate against qualified handicapped employees or applicants for employment, due to the inaccessibility of its facilities.

§ 268.607 Processing complaints.

All individual complaints of discrimination on the basis of handicap shall be processed under Subpart C. All class complaints of discrimination on the basis of handicap shall be processed under Subpart D.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Handicap

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart is to prohibit discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) *Application.* This subpart applies to all programs and activities conducted by the Board. Such programs and activities include: (1) Attending open meetings of the Board or other meetings or public hearings at the Board's office in Washington, DC; (2) making inquiries, filing complaints, or applying for employment at the Board's office; (3) using the Board's library facilities; (4) lawful interaction with the Board or its staff in any official matter. This subpart does not apply to Federal Reserve banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

(a) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board.

(b) "Complete complaint" means a written statement that contains the complainant's name and address and describes the Board's actions in sufficient detail to inform the Board of the nature and date of the complaint. It shall be signed by the complainant or by someone authorized to do so on his behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) "Is regarded as having an impairment" means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in herein but is treated by the Board as having such an impairment.

(d) "Qualified handicapped person" means:

(1) With respect to a Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that would result in a fundamental alteration of its nature; and

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(e) With the above exceptions, the definitions in Subpart F shall apply also to this subpart.

§ 268.703 Self evaluation.

The Board conducts periodic self-evaluations of its performance under this subpart.

§ 268.704 Prohibition against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b) The Board, in providing any aid, benefit, or service under any of its programs or activities, shall make all reasonable accommodations which are necessary to ensure that handicapped persons are provided with an equal opportunity to benefit from such aids, benefits, or services.

§ 268.705 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Board.

§ 268.706 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 268.707 and 268.708, no qualified handicapped person shall, because the Board's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.707 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This section does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this section through such means as redesign of equipment reassignment of services to accessible buildings, assignment of aides to beneficiaries, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessbile to and usable by handicapped persons. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board gives priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section with which it is not presently complying within sixty days of the effective date of this section except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this section, but in any event, as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Board shall develop, within six months of the effective date of this section, a transition plan setting forth the steps necessary to complete such changes. The plan may be developed with the assistance of

interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the Board's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Described in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

§ 268.708 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board, shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial or administrative burdens. If an action would result in such an alteration or such burdens the Board shall take other feasible actions, if any, that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

§ 268.709 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board gives primary consideration to the requests of the handicapped person.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) The Board takes appropriate steps to provide handicapped persons, upon request, with information regarding their rights under the Board's programs or activities.

(e) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burden but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§ 268.710 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Board.

(b) The Board shall process complaints alleging discrimination on the basis of handicap in accordance with § 268.607.

(c) The Board shall designate an official to be responsible for coordinating implementation of this section.

(d) The Board shall accept and investigate all complete complaints over which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Board may extend this time period for good cause.

(e) If the Board receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complainant to the appropriate government entity.

(f) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Board shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings regarding the alleged violations;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(g) Appeals of the findings or remedies must be filed by the complainant within 90 days of receipt from the Board of the letter required by § 268.710(f). The Board may extend this time for good cause.

(h) Timely appeals shall be accepted and processed by the Board or its designee.

(i) The Board or its designee shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Board or its designee determines that additional information is needed from the complainant, he shall have 60 days from the date of the receipt of the additional information to make a determination on the appeal.

(j) The Board may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

Subpart H—Review by the Equal Employment Opportunity Commission

§ 268.801 Entitlement.

(a) A complainant, agent, or claimant may request the Equal Employment Opportunity Commission to review any final decision of the Board under §§ 268.305(b), 268.307(b), 268.310, 268.311, 268.404, 268.409(e), 268.412, and 268.414.

(b) A complainant, agent, or claimant may not request review by the Equal Opportunity Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other matter being reviewed at the request of the complainant or agent by the Equal Employment Opportunity Commission.

§ 268.802 Filing of the request for review.

The complainant, agent, or claimant shall file his request for review in writing, either personally or by mail, simultaneously with the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C.

20506, and with the Board's EEO Programs Officer.

§ 268.803 Time limits.

(a) Except as provided in paragraph (b) of this section, a complainant, agent, or claimant may file a request for review at any time up to 20 calendar days after receipt of the Board's notice of final decision on the complaint or claim, except that the deadline shall be 15 calendar days in connection with any class complaint or claim. A request for review shall be deemed filed on the date it is postmarked, or in the absence of a postmark, on the date it is received by the Equal Employment Opportunity Commission. Any statement or brief in support of the request for review must be submitted to the Equal Employment Opportunity Commission and to the Board within 30 calendar days of filing the request for review. For the purposes of this part, the decision of the Board shall be final only when the Board makes a determination on all of the issues in the complaint or claim, including whether or not to award attorney's fees and/or costs. If a decision to award attorney's fees and/or costs is made, the decision shall not be final until the procedure is followed for determining the amount of the award as set forth in § 268.315(c) of Subpart C.

(b) The time limits within which a request for review must be filed will not be extended unless, based upon a written statement by complainant, agent, or claimant showing that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented filing of a request for review within the prescribed time limits, the Equal Employment Opportunity Commission determines that the time limit should be extended.

§ 268.804 Procedure.

(a) The Office of Review and Appeals of the Equal Employment Opportunity Commission may review the complaint or claim file and all relevant written representations made to the Commission. The Office may return a complaint to the Board with a request for further investigation or a rehearing if it considers such action necessary. There is no right to a hearing before the Office of Review and Appeals. The Office of Review and Appeals shall issue a written finding and shall set forth its reasons for its conclusions, and shall send copies to the complainant, agent, claimant, or his authorized representative and the Board.

(b) If the findings of the Office of Review and Appeals are in any way inconsistent with the decision of the Board, the Board shall promptly reconsider its decision and shall adopt, modify, or reject the findings of the Office of Review and Appeals and notify the complainant, agent, or claimant, or his authorized representative, and the Office of Review and Appeals of its action.

§ 268.805 Review and reconsideration.

The Commissioners may, in their discretion, reopen and reconsider any findings of the Office of Review and Appeals when the Board or the complainant, agent, or claimant requesting reopening or reconsideration submits written argument or evidence which tend to establish that:

(a) New and material evidence is available that was not readily available when the previous finding was issued;

(b) The previous finding involves an erroneous interpretation of law or regulation or misapplication of established policy; or

(c) The previous finding is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

Subpart I—Equal Pay

§ 268.901 General prohibition of discrimination.

The Board shall not discriminate among employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to: (1) A seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any factor other than sex and otherwise not prohibited by this regulation.

§ 268.902 Record keeping.

(a) The Board shall preserve any records which are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, descriptions of practices, or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to determination of whether such differential is based on a factor other than sex.

(b) Such records are to be kept for at least two years.

§ 268.903 Procedure.

(a) Wages withheld in violation of this subpart have the status of unpaid minimum wage or unpaid overtime compensation.

(b) Any employee who believes he has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under Subpart C of this regulation, if a complaint of individual discrimination, or Subpart D of this regulation, if a class action, or may bring an action in any appropriate federal court for packpay and an additional amount, up to the amount of backpay, as liquidated damages, plus attorney's fees and court costs.

Board of Governors of the Federal Reserve System, August 20, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-22427 Filed 8-23-84; 8:45 am]

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federal register

Friday
August 24, 1984

Part V

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Reference Methods; Revision to Method 12 for Inorganic Lead To Add a Method of Additions Procedure; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2620-3]

Standards of Performance for New Stationary Sources; Reference Methods; Revision to Method 12 for Inorganic Lead To Add a Method of Additions Procedure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to promulgate a revision to Method 12 for inorganic lead of Appendix A of 40 CFR Part 60 to include a method of additions procedure, which deals with the resolution of any possible interferences in the lead analysis. This revision is necessary because it has been determined that the method of additions procedures previously cited by Method 12 may not be readily available to the analyst, and were not suitable for incorporation by reference. This revision was proposed in the **Federal Register** on December 12, 1983 (48 FR 55395). No changes in the revision have been made since proposal, as no comment letters were received.

EFFECTIVE DATE: August 24, 1984.

Under section 307(b)(1) of the Clean Air Act, judicial review of this revision is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A–83–38, containing materials considered by EPA in development of the promulgated rulemaking, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE–131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: William Grimley or Roger Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2237.

SUPPLEMENTARY INFORMATION: This rulemaking does not impose any additional emission measurement requirements on facilities affected by this rulemaking. Rather, this rulemaking adds a supplementary analytical procedure to a test method that would apply irrespective of this rulemaking. This addition is necessary because the supplementary analytical procedure, which was previously cited by the method, is not suitable for incorporation by reference.

Public Participation

The revision was proposed and published in the **Federal Register** on December 12, 1983 (48 FR 55395). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed revision, but no person desired to make an oral presentation. The public comment period was from December 12, 1983, to February 27, 1984. No comment letters were received.

Docket

The docket is an organized and complete file of the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation was submitted to OMB for review under E.O. 12291.

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 small entities because no additional costs will be incurred. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

This rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic Minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel Sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by Reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators. Fiberglass Insulation, Synthetic Fibers, Lime.

Dated: August 2, 1984.

Alvin L. Alm,

Acting Administrator.

PART 60—[AMENDED]

40 CFR Part 60, Appendix A, Method 12, is amended as follows:

1. By revising Section 5.4.2 to read as follows:

§ 5.4.2 Check for Matrix Effects on the Lead Results.

Since the analysis for Pb by atomic absorption is sensitive to the chemical composition and to the physical properties (viscosity, pH) of the sample (matrix effects), the analyst shall check at least one sample from each source using the method of additions as follows:

Add or spike an equal volume of standard solution to an aliquot of the sample solution, then measure the absorbance of the resulting solution and the absorbance of an aliquot of unspiked sample.

Next, calculate the Pb concentration C_s in μg/ml of the sample solution by using the following equation:

$$C_s = C_a \frac{A_s}{A_c - A_s} \qquad \text{Eq. 12–1}$$

Where:

C_a = Pb concentration of the standard solution, μg/ml.

A_s = Absorbance of the sample solution.
A_t = Absorbance of the spiked sample solution.

Volume corrections will not be required if the solutions as analyzed have been made to the same final volume. Therefore, C_s and C_a represent Pb concentration before dilutions.

Method of additions procedures described on pages 9–4 and 9–5 of the section entitled "General Information" of the Perkin Elmer Corporation Atomic Absorption Spectrophotometry Manual, Number 303–0152 (see Section 9.1) may also be used. In any event, if the results of the method of additions procedure used on the single source sample do not agree to within 5 percent of the value obtained by the routine atomic absorption analysis, then reanalyze all samples from the source using a method of additions procedure.

2. By correcting the symbol "$V_{m(std)}$" to "$V_{w(std)}$" in Section 7.2, line 3.

3. By adding "Eq. 12–2" to the right of the equation in Section 7.4.

4. By inserting "$x10^{-9}$" immediately after the number "2.205" in the last line of Section 7.4, so that said number reads: "$=2.205\ lb./\mu g \times 10^{-9}$."

[FR Doc. 84–21131 Filed 8–23–84; 8:45 am]
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H.J. Res. 529 / Pub. L. 98-385

To designate the week of September 23, 1984, through September 29, 1984, as "National Drug Abuse Education and Prevention Week". (Aug. 21, 1984; 98 Stat. 1351) Price: $1.50

H.J. Res. 574 / Pub. L. 98-386

To designate the week beginning on September 9, 1984, as "National Community Leadership Week". (Aug. 21, 1984; 98 Stat. 1352) Price: $1.50

H.J. Res. 583 / Pub. L. 98-387

To designate January 27, 1985, as "National Jerome Kern Day". (Aug. 21, 1984; 98 Stat. 1353) Price: $1.50

H.J. Res. 587 / Pub. L. 98-388

Designating the month of August 1984 as "Ostomy Awareness Month". (Aug. 21, 1984; 98 Stat. 1354) Price: $1.50

H.J. Res. 597 / Pub. L. 98-389

To designate the week beginning September 2, 1984, as "Youth of America Week". (Aug. 21, 1984; 98 Stat. 1355) Price: $1.50

S. 1224 / Pub. L. 98-390

To provide for the disposition of certain undistributed judgment funds awarded the Creek Nation. (Aug. 21, 1984; 98 Stat. 1356) Price: $1.50

S. 1806 / Pub. L. 98-391

To recognize the organization known as the Jewish War Veterans of the United States of America, Incorporated (Aug. 21, 1984; 98 Stat. 1358) Price: $1.50

S. 2556 / Pub. L. 98-392

To authorize appropriations for the American Folklife Center for fiscal years 1985 and 1986, and for other purposes. (Aug. 21, 1984; 98 Stat. 1362) Price: $1.50

S. 2820 / Pub. L. 98-393

To name the Federal Building in McAlester, Oklahoma, the "Carl Albert Federal Building". (Aug. 21, 1984; 98 Stat. 1364) Price: $1.50

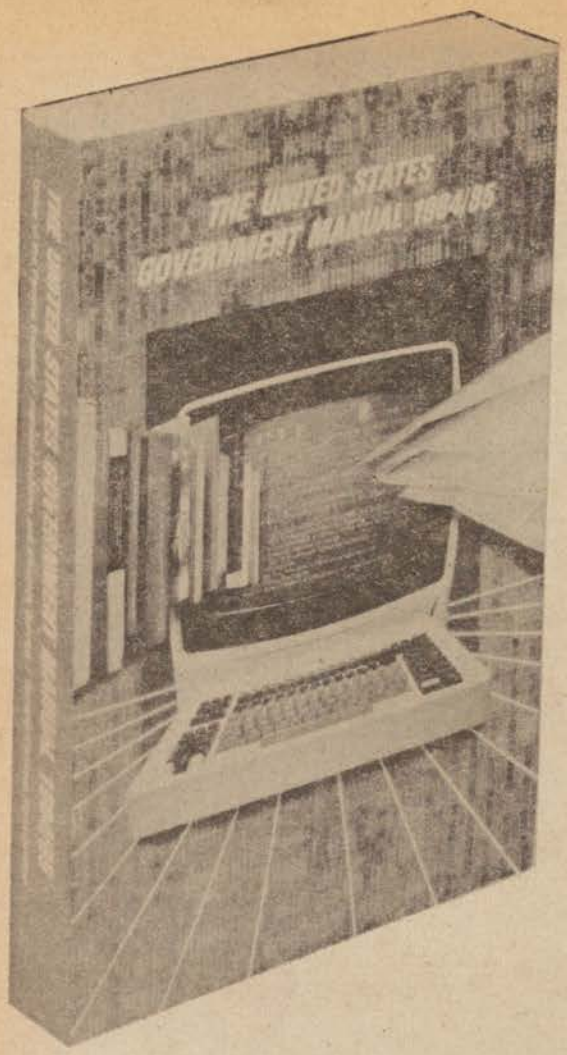
S.J. Res. 338 / Pub. L. 98-394

To congratulate the athletes of the United States Olympic team for their performance and achievements in the 1984 winter Olympic games in Sarajevo, Yugoslavia and the 1984 summer Olympic games in Los Angeles, California. (Aug. 21, 1984; 98 Stat. 1365) Price: $1.50

S. 1429 / Pub. L. 98-395

Small Business Development Center Improvement Act of 1984. (Aug. 21, 1984; 98 Stat. 1366) Price: $1.50





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