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Tuesday
September 25, 1984

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Drugs
Food and Drug Administration

Endangered and Threatened Species
Fish and Wildlife Service

Excise Taxes
Alcohol, Tobacco and Firearms Bureau

Fisheries
National Oceanic and Atmospheric Administration

Loan Programs—Business
Small Business Administration

Milk Marketing Orders
Agricultural Marketing Service

Organization and Functions (Government Agencies)
National Science Foundation

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Water Pollution Control
Environmental Protection Agency

Water Supply
Environmental Protection Agency

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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.

Contents

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

The President
PROCLAMATIONS
37563 Columbus Day (Proc. 5237)
37561 Drug Abuse Education and Prevention Week (Proc. 5236)
37565 Leif Erikson Day (Proc. 5238)
37559 School-Age Child Care Awareness Week (Proc. 5235)
37555 Sewing Month, National (Proc. 5233)
37557 Youth of America Week (Proc. 5234)

Executive Agencies

Agricultural Marketing Service
RULES
Milk marketing orders:
37567 Upper Florida and Tampa Bay
PROPOSED RULES
Milk marketing orders:
37599 Lake Mead
37599 Sweet peppers grown in Florida

Agriculture Department
See Agricultural Marketing Service; Commodity Credit Corporation; Soil Conservation Service.

Alcohol, Drug Abuse, and Mental Health Administration
NOTICES
Meetings; advisory committees:
37666 October
37698 Privacy Act; systems of records; annual publication

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol and tobacco tax payments:
37576 Electronic fund transfer

Arts and Humanities National Foundation
NOTICES
Meetings:
37679 Humanities Panel; clarification and correction
Meetings:
37679 President's Committee on the Arts and Humanities

Centers for Disease Control
NOTICES
37715 Privacy Act; systems of records; annual publication

Civil Aeronautics Board
PROPOSED RULES
37639 Standard foreign fare level methodology; cost pass-through mechanism; policy statement; proceeding terminated
NOTICES
Hearings, etc.:
37652 Premiere Airlines, Inc.

Commerce Department
See also National Oceanic and Atmospheric Administration; National Technical Information Service; Patent and Trademark Office
NOTICES
Meetings:
37652 President's Commission on Industrial Competitiveness

Commodity Credit Corporation
NOTICES
Loan and purchase programs:
37651 Soybean

Copyright Royalty Tribunal
NOTICES
Cable royalty fees:
37653 Distribution determination

Customs Services
NOTICES
Trade name recordation applications:
37688 L.A. Gear California, Inc.

Defense Department
NOTICES
Meetings:
37658 Science Board task forces

Employment and Training Administration
NOTICES
Adjustment assistance:
37676 Alten Founday & Machine Works, Inc.
37676 Goodyear Tire & Rubber Co.
37677 Republic Steel Corp. et al.
Federal Unemployment Tax Act:
37677 State certifications; Colorado et al.

Energy Department
See Federal Energy Regulatory Commission.

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
37591, 37592 Massachusetts (2 documents)
37590 Ohio
Water pollution; effluent guidelines for point source categories:
37594 Inorganic chemicals manufacturing; correction
Water pollution control; State underground injection control programs:
37593 Oregon
PROPOSED RULES
Air quality implementation plans; approval and promulgaton; various States:
37645 Idaho; extension of time
37642, 37644 Ohio (2 documents)
Air quality implementaton plans; delayed compliance orders:
37646, 37648 Michigan (2 documents)

37647 Pennsylvania (2 documents)

Environmental Quality Council
NOTICES
37657 Presidential Parkway, Atlanta, GA; national importance determination

Federal Aviation Administration
RULES
Airworthiness directives:
37658 Pratt & Whitney
NOTICES
Special certificaton review:
37688 Mitsubishi MU-2

Federal Deposit Insurance Corporation
NOTICES
37689 Meetings; Sunshine Act

Federal Energy Regulatory Commission
NOTICES
Hearings, etc.:
37659 Alabama-Tennessee Natural Gas Co.
37659 Arizona Public Service Co.
37659 Columbia Gas Transmission Corp.
37659 Commercial Pipeline Co., Inc.
37660 Consolidated Gas Transmission Corp.
37660 Great Lakes Gas Transmission Co.
37661 Inter-city Minnesota Pipelines Ltd., Inc.
37661 Louisiana-Nevada Transit Co.
37661 MIGC, Inc.
37662 Pacific Power & light Co.
37662 Public Service Co. of New Mexico
37663 Texas Eastern Transmission Corp.
37663 Transwestern Pipeline Co.
Small power production and cogeneration facilities; qualifying status; certification applications, etc.:
37660 Conway Oil Co.
37661 Ice Haus I
37662 SAI Geothermal, Inc.

Federal Maritime Commission
NOTICES
37664 Agreements filed, etc.
37663 Agreements filed, etc.; correction
Freight forwarder licenses:
37663 Sam Young Express Co.

Federal Procurement Policy Office
NOTICES
Procurement:
37683 Federal procurement process, reforms and general policies; meeting and inquiry

Federal Reserve System
NOTICES
Bank holding company applications, etc.:
37664 Central of Kansas, Inc.
37665 GHW Associates et al.
37665 Manufacturers Hanover Corp. et al.
37689 Meetings; Sunshine Act

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
37649 June sucker; hearing and comment period reopened
NOTICES
37672 Non-toxic shot zones for waterfowl hunting; identification criteria, establishment; inquiry

Food and Drug Administration
RULES
Human drugs:
37574 Official names list, revocation
PROPOSED RULES
Human drugs:
37640 Official names list; withdrawn
NOTICES
GRAS or prior-sanctioned ingredients:
37670 Sulfiting agents; reexamination of status; study; tentative report availability delay and inquiry
37722 Privacy Act; systems of records; annual publication

Health and Human Services Department
See Alcohol, Drug Abuse, and Mental Health Administration; Centers for Disease Control; Food and Drug Administration; Health Resources and Services Administration; National Institutes of Health; Public Health Service.

Health Resources and Services Administration
NOTICES
Grants; availability, etc.:
37671 Family medicine departments
37721 Privacy Act; systems of records; annual publication

Housing and Urban Development Department
RULES
Public and Indian housing:
37575 Definition of income, income limits, rent calculations, etc.; correction
NOTICES
Organization, functions, and authority delegations:
37671 Mortgagee Review Board; application of administrative actions to property improvement and manufactured home program (Title I) lenders

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; National Park Service; Surface Mining Reclamation and Enforcement Office.

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
37675 Peoria & Pekin Union Railway Co.

Justice Department
NOTICES
37675 Agency information collection activities under OMB review

Labor Department
See Employment and Training Administration; Mine Safety and Health Administration

Land Management Bureau
NOTICES
Survey plat filings:
37672 Montana (2 documents)

Management and Budget Office
See Federal Procurement Policy Office.

Mine Safety and Health Administration
PROPOSED RULES
Metal and nonmetallic mine safety:
37640 Explosives standards; preproposal draft availability; extension of time

Minerals Management Service
NOTICES
Meetings:
37673 Outer Continental Shelf Advisory Board
Outer Continental Shelf; development operations coordination:
37673 Tenneco Oil Exploration & Production

National Aeronautics and Space Administration
NOTICES
37678 Agency information collection activities under OMB review
Patent licenses, exclusive:
37678 HealthMate, Inc.
37679 John J. McMullen Associates, Inc.

National Institutes of Health
NOTICES
37705 Privacy Act; systems of records; annual publication

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
37598 Atlantic surf clam and ocean quahog; effective date extension

National Park Service
NOTICES
Historic Places National Register; pending nominations:
37674 Arkansas et al.

National Scienced Foundation
RULES
37594 Nomenclature changes
NOTICES
Meetings:
37679 Genetics Advisory Panel (2 documents)

National Technical Information Service
NOTICES
37652 Inventions, Government-owned; availability for licensing

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
37682 Florida Power & Light Co.
37683 Houston Lighting & Power Co. et al.
37683 Portland General Electric Co. et al.
Environmental statements; availability, etc.:
37681 Carolina Power & Light Co.
Meetings:
37680 Reactor Safeguards Advisory Committee (2 documents)

Patent and Trademark Office
NOTICES
Meetings:
37653 Trademark Affairs Public Advisory Committee

Pension Benefit Guaranty Corporation
NOTICES
Multiemployer pension plans:
37686 Plan amendments; class approvals

Personnel Management Office
NOTICES
Excepted service:
37684 Schedules A, B, and C; positions placed or revoked, update
Meetings:
37685 Federal Prevailing Rate Advisory Committee; correction

Postal Service
NOTICES
37689, 37690 Meetings; Sunshine Act (2 documents)

Public Health Service
NOTICES
37692 Privacy Act; systems of records; annual publication

Securities and Exchange Commission
RULES
Securities:
37569 Broker-dealers; research reports
NOTICES
Hearings, etc.:
37687 Middle South Energy, Inc.
37690 Meetings: Sunshine Act

Small Business Administration
PROPOSED RULES
37614 Business and special purpose loans

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
37652 Upper Chester River Watershed, MD and DE

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program submission; various States:
37585 Kentucky
37587 Ohio
PROPOSED RULES
Permanent and interim regulatory programs:
37641 Surface mining and reclamation operations; use of explosives, and certification of blasters; correction
Permanent program submission; various States:
37641 Texas

Tennessee Valley Authority
NOTICES
37690 Meetings; Sunshine Act

Transportation Department
See Federal Aviation Administration.

Treasury Department
See also Alcohol, Tobacco and Firearms Bureau; Customs Service.
NOTICES
Notes, Treasury:
37688 Y–1986 series

Separate Parts in This Issue

Part II

37692 Department of Health and Human Services, Public Health Service, Office of the Assistant Secretary for Health, Alcohol, Drug Abuse and Mental Health Administration, National Institutes of Health, Centers for Disease Control, Health Resources and Services Administration, Food and Drug Administration

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Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

5233 37555
5234 37557
5235 37559
5236 37561
5237 37563
5238 37565

7 CFR

1006 37567
1012 37567

Proposed Rules:

Ch. IX 37599
1139 37599

13 CFR

Proposed Rules:

118 37614
119 37614
120 37614
122 37614
130 37614

14 CFR

39 37568

Proposed Rules:

399 37639

17 CFR

230 37569
241 37569

21 CFR

299 37574

Proposed Rules:

299 37640

24 CFR

904 37575
905 37575
913 37575
960 37575
965 37575

27 CFR

19 37576
240 37576
245 37576
250 37576
251 37576
270 37576
275 37576
285 37576

30 CFR

917 37585
935 37587

Proposed Rules:

55 37640
56 37640
57 37640
816 37641
817 37641
855 37641
943 37641

40 CFR

52 (3 documents) 37590–37592
147 37593
415 37594

Proposed Rules:

52 (3 documents) 37642, 37645
65 (4 documents) 37646–37648

45 CFR

610 37594
611 37594
612 37594
613 37594
640 37594
650 37594
670 37594

50 CFR

652 37598

Proposed Rules:

17 37649

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 1984

Presidential Documents

Title 3—

The President

Proclamation 5233 of September 21, 1984

National Sewing Month, 1984

By the President of the United States of America

A Proclamation

The home sewing industry is important to our Nation's economy and is an activity shared by many Americans. Approximately fifty million Americans sew at home, and nearly forty million sew at least part of their wardrobe. Their initiative, creativity and self-reliance are characteristic of the people of our Nation.

Sewing at home helps keep down the cost of clothing, and the sewing industry generates over $3,500,000,000 annually for the economy of the United States. Home sewing also enhances the career opportunities of many Americans in fields such as fashion, interior design, patternmaking, retail merchandising and textile design.

In recognition of the importance of home sewing to our Nation, the Congress, by Senate Joint Resolution 302, has designated the month of September 1984 as "National Sewing Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 1984 as National Sewing Month, and I call upon the people of the United States to observe September with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 84-25538
Filed 9-21-84; 4:15 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5234 of September 21, 1984

Youth of America Week, 1984

By the President of the United States of America

A Proclamation

More than fifty million young Americans contribute to the vitality of our Nation. In their values, aspirations and accomplishments we see reflected not only a rich heritage but a vision of America in the future. It will be a society generous in spirit, strong in character and sincere in purpose—one in which freedom and opportunity give rise to responsibility and excellence.

Just as young Americans can be proud of their contribution to our Nation, they also share a vital part of the life of the smaller community of the family. In this first school where the values of self-reliance, compassion and initiative are taught, the younger members make special contributions to foster the unique identity and sharing of each family. And they prepare for the time when they too will pass on to a new generation the values of our heritage.

For those young Americans in special need we continue to offer support in a variety of activities within the public and private sectors. These support programs are an investment in our national future, and many of the best of them rely not on large sums of money but on the unpaid service of volunteers who contribute their time and experience to the task of forming the next generation. Just as importantly, young people themselves are one of our best sources of volunteers because their energy and idealism give them a natural motivation to devote themselves to helping others.

To assure the Nation's youth of our commitment to share our knowledge, experience and wisdom as they mature towards a full appreciation of democratic principles, the Congress of the United States, by Senate Joint Resolution 597, has designated the week of September 2 through September 8, 1984, as "Youth of America Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 2 through 8, 1984, as Youth of America Week.

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

Ronald Reagan

[FR Doc. 84-25539
Filed 9-21-84; 4:16 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5235 of September 21, 1984

National School-Age Child Care Awareness Week, 1984

By the President of the United States of America

A Proclamation

The care and education of children has always been society's most important task, since a nation's children are its future. The love and instruction young people receive during their formative years help to set their characters for the rest of their lives and so determine the kind of society we all live in.

Patterns of child care are changing rapidly as a majority of women spend part or all of their adult lives as members of the labor force. Yet the need of young people for love and guidance remains as important as ever, and we all have a responsibility to make sure that they continue to receive it.

The Federal government has been actively involved in working with State and local governments, voluntary and nonprofit agencies, and businesses to encourage the creation of appropriate programs for school-age children. The White House Office of Private Sector Initiatives has launched a series of forums for chief executive officers of major corporations to promote increased private sector involvement in child care. The Department of Health and Human Services is also sponsoring a number of initiatives to help American families meet their child care needs. These projects are increasing knowledge through research, demonstrating new program models, making valuable information available to parents and providers, and helping to develop local child care systems.

But today, as in the past, the most important environment forming the characters of our young people is the family. Families face new challenges, but the American family has proved to be a most resilient institution. It remains the primary vehicle by which parents seek to develop their children into healthy and confident adults. The task before us is to strengthen the family and help it when necessary so that it will continue to perform its unique civilizing function.

The Congress of the United States, by House Joint Resolution 544, has designated the week of September 2 through 8, 1984, as "National School-Age Child Care Awareness Week" and has authorized and requested the President to issue a proclamation in observance of that week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week of September 2 through 8, 1984, as National School-Age Child Care Awareness Week.

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

Ronald Reagan

[FR Doc. 84-25540
Filed 9-21-84; 4:17 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5236 of September 21, 1984

National Drug Abuse Education and Prevention Week, 1984

By the President of the United States of America

A Proclamation

During the past two decades, the use of illegal drugs in the United States spread at an unprecedented rate and reached into every segment of our society. The youth-oriented drug culture was foreign to most of our adult population. We lacked accurate information about the hazards of some of the most widely used drugs, and our efforts to combat the lies, misconceptions, and moral confusion surrounding drug abuse lacked credibility. There was a feeling of inevitability regarding widespread drug use and uncertainty over what was the right thing to do.

The early 1980s have brought a dramatic change. People no longer believe that drug abuse is inevitable. There is growing recognition that by working together to eliminate the abuse of drugs, we can make a real difference in the lives of our children and a better future for America.

One of the most effective weapons we have against drug abuse is our ability to communicate the truth about drugs to the user and the potential user. Research and the personal experience of families across the Nation are expanding our knowledge of drug abuse and how to stop it. This new knowledge is being used by parents, community volunteers, local officials, teachers, health care professionals, and young people themselves. These are the individuals who are closest to current potential drug users, and they can have the greatest influence in preventing the abuse of drugs.

Across America, all levels of government, businesses, educational institutions, civic groups, and individual citizens are organizing activities which will help persons of all ages to say "no" to drug abuse. These Americans are committed to raising the awareness of the dangers of drug abuse and creating a positive environment in which drug abuse is unacceptable behavior.

To call attention to these important efforts, the Congress, by House Joint Resolution 529, has designated the week beginning September 23, 1984, as "National Drug Abuse Education and Prevention Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 23, 1984, as National Drug Abuse Education and Prevention Week, and I call upon all Americans to observe this week with appropriate ceremonies and activities. Let all of us seek every opportunity to learn the truth about drug abuse and join in the national fight to create a drug-free America.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of September, in the year of our Lord nineteen hundred and eighty-four, and of the Independence of the United States of America the two hundred and ninth.

Ronald Reagan

[FR Doc. 84-25541
Filed 9-21-84; 4:18 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of Sept. 21, 1984, on signing Proclamation 5236, see the *Weekly Compilation of Presidential Documents* (vol. 20, no. 38).

Presidential Documents

Proclamation 5237 of September 21, 1984

Columbus Day, 1984

By the President of the United States of America

A Proclamation

In October of each year, we are privileged to honor Christopher Columbus, the Italian explorer whose epic voyages to the New World still excite the imagination.

Columbus challenged the unknown when he sailed westward in 1492 with his tiny fleet of ships. Others had preceded him; some indeed may have visited the Western Hemisphere. Yet his discovery of the New World stands as a unique and momentous achievement. His voyages ushered in a new phase in history and enriched mankind with new opportunities. They revolutionized the way man thought of himself and his world. This New World that Columbus revealed to Europe soon came to symbolize hope, freedom, and opportunity for all. A stream of settlers arrived to build a new society out of their dreams of liberty, justice, and economic opportunity.

We Americans will always feel that we stand at the frontier. Today our voyage of discovery continues—to the vastness of outer space, to the depths of the sea, to the mysteries of life itself. The willingness to strike out in new directions and to take risks is still at work. This spirit has enriched our lives and expanded our horizons. Thus, it is appropriate that we, both as Americans and as Columbus' spiritual heirs, should take inspiration from his blend of daring, skill, enterprise, and imagination.

All Americans share in admiring Columbus' achievement. But those of Italian descent can take particular pride in honoring this bold son of Genoa who set forth in the service of Spain in search of the unknown. A host of other Italians have followed Columbus to this land, lending their talents and helping to create an unparalleled society of freedom and opportunity. This day is one of justifiable pride for Italy and Italians everywhere, and it symbolizes the respect we Americans have for our rich inheritance from the Old World.

In tribute to Columbus' achievement, the Congress of the United States, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as Columbus Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Monday, October 8, 1984, as Columbus Day. I invite the people of this Nation to observe that day in schools, churches, and other suitable places with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in memory of Christopher Columbus.

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

Ronald Reagan

[FR Doc. 84-25542
Filed 9-21-84; 4:19 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5238 of September 21, 1984

Leif Erikson Day, 1984

By the President of the United States of America

A Proclamation

In the year 1000, Leif Erikson, charged by King Olav to convert the Nordic settlers in Greenland, set sail to the west. A terrible storm forced his vessel off course, and he came upon lands of which there was no previous knowledge. He found "fields of self-sown wheat" and a country rich with grapes and timber. His early explorations are a tribute to the indomitable and inquisitive spirit so characteristic of the Nordic peoples.

Leif Erikson could not have known at the time of his voyage how intermingled the fate and fortune of the Nordic peoples and the new land would become. During the nineteenth century and early part of the twentieth, millions of Erikson's descendants would join the great current of European migration to the United States. Brave pioneers from Norway, Sweden, Denmark, Finland and Iceland helped push the American frontier to the west, building communities and farms and enriching American life and culture. Others worked long and hard contributing to the great industries of the Northeast. Their accomplishments constitute a proud monument to the Nordic-American heritage and to the development of our country. Democratic ideals, an abiding faith in the value of ingenuity and hard work, and a deep belief in the sanctity of the individual are among the many values and principles we share. Because of the extensive commerce and exchange of ideas and people between the United States and the Nordic region, we have enjoyed friendship, understanding, and appreciation for each other.

To commemorate the courage of Leif Erikson and in recognition of our long and fruitful relationship with the Nordic peoples, the Congress of the United States, by joint resolution approved September 2, 1964 (78 Stat. 849, 36 U.S.C. 169c), authorized the President to proclaim October 9 in each year as Leif Erikson Day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate October 9, 1984, as Leif Erikson Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings that day. I also invite the people of the United States to honor Leif Erikson by holding appropriate exercises and ceremonies in suitable places throughout the land.

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

Ronald Reagan

[FR Doc. 84-25543
Filed 9-21-84; 4:20 pm]
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Rules and Regulations

Federal Register
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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

Agricultural Marketing Service

7 CFR Parts 1006 and 1012

[Docket Nos. AO-356-A20 and AO-347-A23]

Milk in the Upper Florida and Tampa Bay Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Upper Florida and Tampa Bay milk orders. As amended, the plant location adjustment provisions will insure that the Class I milk price for fluid milk products transferred from a pool plant under the Upper Florida or Tampa Bay orders that is located outside Florida, to a pool plant regulated by another Federal milk order, shall be not less than the Class I price under such other Federal milk order applicable at the location of the transferor plant. The action is based on industry proposals considered at a public hearing held December 6, 1983. The changes are necessary to reflect current marketing conditions and to insure orderly marketing conditions in the Upper Florida, Tampa Bay and other marketing areas.

EFFECTIVE DATE: November 1, 1984.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued November 10, 1983; published November 17, 1983 (48 FR 52318).

Extension of Time for Filing Briefs: Issued February 21, 1984; published February 27, 1984 (49 FR 7133).

Recommended Decision: Issued May 17, 1984; published May 22, 1984 (49 FR 21537).

Final Decision: Issued July 26, 1984; published August 1, 1984 (49 FR 30720).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Florida and Tampa Bay orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) *Findings upon the basis of the hearing record.* 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 and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Upper Florida and Tampa Bay marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order, as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending each of the specified orders is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1006 and 1012

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Upper Florida and Tampa Bay marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the aforesaid orders, as amended, and as hereby further amended, as follows:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

In § 1006.52(a), the introductory text preceding the table is revised to read as follows:

§ 1006.52 Plant location adjustment for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida and more than 70 miles from the nearer of the City Halls of Jacksonville or Tallahassee, Florida, or within the State of Florida shall be adjusted at the rates set forth in the following schedule: *Provided,* That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal

order shall not be less than the Class I price under such other Federal order applicable at the location of the transferor plant:

* * * * *

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

In § 1012.52(a), the introductory text preceding the table is revised to read as follows:

§ 1012.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk at a plant located outside the State of Florida or within the State of Florida but outside the defined marketing area shall be adjusted at the rates set forth in the following schedule: *Provided,* That the resulting adjusted price for fluid milk products transferred from a pool plant to a plant regulated under another Federal order shall not be less than the Class I price under such other Federal order applicable at the location at the transferor plant:

* * * * *

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

Effective date: November 1, 1984.

Signed at Washington, D.C. on September 19, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84–25387 Filed 9–24–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84–ANE–4; Amdt. 39–4897]

Airworthiness Directives; Pratt & Whitney Aircraft Model JT8D–15, –17, and –17R Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires tightening of the diametral fit between the second stage turbine disk snap diameter and third stage turbine rotor airseal to prevent relative motion between these parts on Pratt & Whitney Aircraft model JT8D–15, –17, and –17R turbofan engines. The AD is needed to prevent excessive movement between disk/airseal surfaces which could result in high amplitude stresses in the operating range and ultimately, failure of the second stage turbine disk.

DATE: Effective—October 25, 1984.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on October 25, 1984.

ADDRESSES: The applicable service bulletins may be obtained from: Pratt & Whitney Aircraft, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108.

A copy of each of the service bulletins is contained in the Rules Docket, in the Office of the Regional Counsel, Federal Aviation Administration (FAA), 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: W. Locke Easton, Transport Engine Branch, ANE–141, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7088.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring tightening of the diametral fit between the second stage turbine disk snap diameter and third stage turbine rotor airseal to prevent relative motion between these parts on certain Pratt & Whitney model JT8D–15, –17, and –17R turbofan engines was published in the **Federal Register** on May 18, 1984 (49 FR 21071).

The FAA has determined that second stage turbine disks and third stage turbine inner airseals that are assembled with a diametral fit at the low end of the tolerance band can become loose during certain engine operating conditions, resulting in relative motion between the disk and airseal. This movement can cause the mating surfaces to wear after extended operation. Wear at the bottom of the disk airseal groove can reduce fatigue strength, and relative motion between the disk and the airseal can allow a high amplitude disk stress to occur within the engine operating range. The combination of reduced disk strength and increased vibratory stress can result in disk cracking and eventual failure. Since this condition is likely to exist or develop on other engines of the same type design, this AD requires inspection of the second stage turbine disk assemblies which will detect wear of the snap diameter and the bottom of the disk airseal groove. The AD also provides repair instructions for the disk and modification instructions for the mating third stage airseal which will increase the disk to airseal diametrical fit and will prevent future wear, in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision 1, dated May 4, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two commenters requested that it be made clear that the repair of the disk and modification of the mating third stage airseal in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision 1, be required only one time and not at each shop visit. The FAA has determined that the phrase "Compliance is required as indicated unless already accomplished" precludes the need for repetitive compliance.

One commenter took exception to the time(s) since last inspection and time(s) since new being effective as of April 30, 1984. Selecting April 30, 1984, resulted in a significant impact to this user in terms of engine compliance and resulting out of service aircraft. The FAA has determined that extension of the April 30, 1984, date to June 30, 1984, as the date from which time(s) since last inspection and time(s) since new are effective, is acceptable. The AD will reflect the June 30, 1984, date.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

Pratt & Whitney Aircraft: Applies to Pratt & Whitney Aircraft model JT8D–15, –17, and –17R turbofan engines.

Compliance is required as indicated unless already accomplished, in accordance with Pratt & Whitney Aircraft Service Bulletin No. 5510, Revision 1, dated February 13, 1984, or Pratt & Whitney Aircraft Alert Service Bulletin No. 5541, Revision 1, dated May 4, 1984, or equivalent means approved by the Manager, Engine Certification Office, New England Region.

To prevent possible failure of the second stage turbine disk, inspect second stage turbine disk, Part Numbers 676802, 770602, 780502, 786802, and 787302 details, and Part Numbers 676822, 769722, 769832, 86822, and 787232 assemblies for wear of the snap diameter and at the bottom of the disk airseal groove, repair the disk, and modify the mating third stage turbine inner airseal in accordance with Pratt & Whitney Aircraft Alert Service Bulletin Number 5541, Revision

1, dated May 4, 1984, per the following schedule:

1. (a) For disks not previously inspected:

(1) With over 17,000 hours time since new—inspect within 1,000 hours.

(2) With 17,000 hours or less time since new—inspect at next shop visit over 5,000 hours time since new or prior to reaching 18,000 hours, whichever occurs first.

(b) For disks previously inspected in accordance with JT8D engine manual, P/N 481672:

(1) With over 17,000 hours time since last inspection—inspect within 1,000 hours.

(2) With 17,000 hours or less time since last inspection—inspect at next shop visit over 5,000 hours time since last inspection, or prior to reaching 18,000 hours time since last inspection, whichever occurs first.

Note.—Time(s) since last inspection and time(s) since new are effective as of June 30, 1984.

Note.—Shop Visit (as defined in the World Airlines Technical Operations Glossary) is defined as the input of an engine to a repair shop where the subsequent engine maintenance entails:

2. (a) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle or reverser. Note: Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "Shop Visit".

(b) Removal of a disk or hub or spool.

(c) Removal of the main or angle gearbox.

(d) Removal of the fuel nozzles.

For purpose of this AD the term "repair shop" refers to a maintenance station where low pressure turbine overhaul facilities exist.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, New England Region, Burlington, Massachusetts 01803.

The manufacturer's service bulletins and engine manual identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a) (1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Pratt & Whitney Aircraft Group, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. These documents also may be examined at the Office of the Regional Counsel, Room No. 311, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday except Federal holidays.

This amendment becomes effective October 25, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act or 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 11.89.)

Note.—The FAA has determined that this regulation involves 2,000 engines and will require 99 revenue plane days lost and 293,000 manhours. At $20,000/revenue plane day and at $40/manhour labor the total cost of the program would be approximately $14,000,000. Less than 11 small entities will be affected by this AD. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) 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 final evaluation prepared for this document is contained in the regulatory docket.

A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

Issued in Burlington, Massachusetts, on August 7, 1984.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 84-25383 Filed 9-24-84; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 241

[Release Nos. 33-6550; 34-21332; File No. S7-996]

Research Reports

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of amendments to Rule 139, which provides a safe harbor under Section 5 of the Securities Act for the publication of broker-dealer research reports that contain information, opinions or recommendations concerning registrants that are in the process of registering securities for public sale. The amended Rule furthers the integrated disclosure system by expanding the class of publications that come within the protection of the Rule, thereby broadening the flow of corporate information into the marketplace. The release also announces related amendments to two companion Securities Act rules concerning research reports and provides interpretive guidance under an antimanipulation Exchange Act rule, Rule 10b-6.

EFFECTIVE DATE: October 25, 1984. The rule amendments and interpretive position may be relied upon voluntarily prior to their effectiveness.

FOR FURTHER INFORMATION CONTACT: With regard to Rules 137, 138 and 139, prior to the effective date, contact Patricia B. Magee (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549; after the effective date, contact Anne M. Krauskopf (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. With regard to Rule 10b-6, contact M. Blair Corkran, Jr. (202) 272-2853, or Stuart D. Fishman (202) 272-2828, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: Rule 139, as adopted, expands the research information reaching the marketplace in a two-tiered manner. The Rule extends the safe harbor under Section 5 with respect to broker or dealer research reports that include information, opinions or recommendations concerning registrants that are eligible to use short form registration Form S-3 [1] or Form F-3 [2] or such registrants' securities, so long as the reports are distributed with reasonable regularity in the normal course of business. The Rule's safe harbor for research reports concerning other registrants, or their securities, is more restrictive than that for S-3 and F-3 registrants. The Rule contains limitations regarding the distribution of the reports, as well as the type, manner and tone of the information. The two principal respects in which the Rule's safe harbor has been broadened are: first, deletion of the two-year prior publication requirement; and second, modification of the comprehensive list requirement.

I. Background

Section 5 of the Securities Act of 1933 (the "Securities Act")[3] governs the type and manner of disclosure regarding securities in registration.[4] Where no exemption from registration is available, Section 5 requires that any offers to sell securities in registration be made only under certain conditions,[5] in order to

[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 15 U.S.C. 77a *et seq.* (1982).

[4] Unless otherwise specified, the term "in registration" refers to the entire registration process from the pre-filing period until the prospectus delivery requirements [17 CFR 230.174] have been satisfied.

[5] In the pre-filing period, section 5(c) prohibits offers to sell securities by means of a propectus or otherwise. During the period after the registration statement has been filed, but prior to effectiveness, section 5(b)(1) provides that written offers may be

Continued

lessen the opportunity to condition the market for the security in registration.[6] In this context, questions arise concerning the status of broker or dealer research reports under Section 5.

Historically, the concerns with respect to research reports containing information, opinions or recommendations regarding a company in registration included: (1) Whether the report would be considered an offer to sell under Section 5(c), particularly when the broker or dealer publishing the report also is a participant in the distribution of the subject security; and (2) whether research reports disseminated by participating brokers or dealers in the waiting or post-effective periods that do not meet Section 10 prospectus requirements, or are not accompanied by a Section 10 prospectus, may violate Section 5(b) (1) or (2). Rule 139 originally was adopted to provide specific guidance as to permissible broker or dealer activities under Section 5 during the registration process.[7]

In October 1983, the Commission published for comment proposed amendments to Rule 139 designed to update the Rule's requirments in keeping with regulatory and market developments that had occurred since its original adoption in 1970.[8] First, the integrated disclosure system was implemented, combining the registration system under the Securities Act and the continuous reporting system under the Securities Exchange Act of 1934 (the "Exchange Act")[9] into a single, streamlined disclosure system. Second, the securities markets and the activities of their participants have evolved, including the research publication practices of brokerage firms.

Among the participants whose publication practices have evolved are: (1) Financial analysts, who constantly digest and synthesize information and act as essential conduits in the continuous flow of information to investors; and (2) the financial press, which facilitates the broad dissemination of timely and material corporate information. This flow of information is an integral part of the integrated disclosure system because the existence of timely and complete corporate information in the marketplace allowed the Commission to streamline the Securities Act registration process.

Amending Rule 139 will enhance the efficiency of the markets by allowing a greater number of research reports to provide a continuous flow of essential corporate information into the marketplace.[10] The amended Rule is structured to differentiate between companies eligible to use Form S–3 (and Form F–3) and other registrants. This structure facilitates the functioning of the integrated disclosure system by increasing the flow of information most broadly as to S–3/F–3 companies, those companies whose marketplace following is relied upon to replace reiteration of all company-oriented information in the prospectus. Moreover, the marketplace following provides the basis for allowing more research as to S–3/F–3 companies to come within a Section 5 safe harbor because it lessens the opportunity to condition the market for such companies' securities.

Commentator response to the proposed amendments to Rule 139 was overwhelmingly favorable,[11] and the Commission is adopting the Rule substantially as proposed. Certain modifications from the proposed Rule have been made in response to commentator suggestions.

II. Rule 139

The introductory paragraph of Rule 139 is adopted as proposed, with four clarifying and simplifying changes.[12] In addition, the words "broker or" have been added wherever the word "dealer" appears, to clarify the application of the Rule.[13]

A. Registrants Eligible To Use Form S–3 or F–3

Commentators expressed unqualified support for the approach reflected in paragraph (a) of proposed Rule 139. The Commission has adopted paragraph (a) as proposed. That paragraph applies to reports concerning companies which meet the registrant requirements for Form S–3 or F–3, and the minimum float test, or investment grade securities provisions of the respective Forms.[14] The requirements of former Rule 139 applied one standard to all research reports concerning companies in registration. The amendments to Rule 139 provided a simpler standard for research reports concerning S–3 or F–3 companies. Amend paragraph (a) of the Rule, in addition to removing the two-year distribution and comprehensive list requirements, also removes several of the requirements that continue to be imposed upon research reports concerning other registrants. In order to come within the protection of revised

made only by means of a prospectus meeting the requirements of section 10 of the Securities Act. This would include a preliminary or "red herring" prospectus complying with Section 10(b) and Rule 430 [17 CFR 230.430] thereunder, a "tombstone ad" complying with Section 2(10) and Rule 134 [17 CFR 230.134] thereunder, or a summary prospectus prepared by an independent organization complying with section 10(b) and Rule 431 [17 CFR 230.431] thereunder. In the post-effective period, section 5(b)(2) provides that, unless an exemption from the prospectus delivery requirements is available, all sales or confirmations of sales must be accompanied or preceded by a Section 10 prospectus.

[6] The terms "offer to sell" and "prospectus" are defined broadly in Sections 2(3) and 2(10), and have been interpreted to encompass pre-filing publicity efforts by participants in an offering which, although not couched in terms of an express offer, may condition the market and stimulate interest in a proposed offering. *See e.g., In the Matter of Loeb Rhodes & Co.*, 38 SEC 843 (1959); *In the Matter of First Maine Corporation*, 38 SEC 882 (1959).

[7] Release No. 33–5101 (November 19, 1970) [35 FR 18457].

[8] Release No. 33–6492 (October 5, 1983) [48 FR 46801].

[9] 15 U.S.C. 78a *et seq.* (1982).

[10] For example, registrants that are eligible to use Forms S–3 and F–3 may be involved in a distribution of their various securities for extended periods of time by using shelf registration under Rule 415 of the Securities Act [17 CFR 230.415]. The Commission believes that former Rule 139 would restrict unduly the dissemination of research reports with respect to these registrants, thereby impeding the flow of information concerning them into the marketplace. Thus, amended Rule 139 permits dissemination of research reports with respect to these registrants so long as the reports meet the requirements of paragraph (a) of the amended Rule.

[11] The Commission received twelve comment letters in response to the proposed amendments to the Rule. The comment letters and a summary of the comments prepared by the staff are available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549 (see File No. S7–996).

[12] The changes adopted are: (1) the word "registrant" replaces the word "issuer"; (2) the words "or has an effective" have been added; (3) the words "participant in a distribution" replace the words "member of the underwriting syndidate or dealer group"; (4) the words "in the regular course of business" have been deleted.

[13] The staff recognizes that in addition to research reports concerning companies in registration that are published by dealers participating in firm commitment underwritings there are also research reports published by brokers participating in best efforts underwritings. Thus, the addition of the words "broker or" wherever "dealer" appears is necessary to extend the Rule's safe harbor protection to both broker and dealer research reports that meet the Rule's requirements. Corresponding changes also were made to Rules 137 and 138.

[14] General Instruction I.A. of Form S–3 contains the registrant requirements for use of the Form. General Instruction I.B.(1) of Form S–3 requires that the aggregate market value of stock held by non-affiliates must be either (1) 150 million dollars or more or (2) 100 million dollars or more and the registrant must have had an annual trading volume of such stock of 3 million shares or more. The registrant requirements of General Instruction I.A. (4) of Form F–3 requires that the aggregate market value worldwide of voting stock held by non-affiliates is the equivalent of 300 million dollars or more.

paragraph (a) of the Rule, research reports containing information, opinions or recommendations with respect to such companies must be distributed "with reasonable regularity in the normal course of business."

In their strong support of amended paragraph (a), some commentators also suggested extending the proposed safe harbor protection in the paragraph to reporting registrants that are eligible to use Form S–2 [15] or Form F–2 [16] for registration of securities under the Securities Act. The Commission has determined not to make this change because the marketplace following of registrants using Forms S–2 and F–2 is not sufficiently wide to insure adequate dissemination of information with respect to such registrants.

Several commentators suggested that the proposed requirement in paragraph (a) that applications discussing registrants eligible to use Form S–3 or F–3 be distributed "with reasonable regularity" should be deleted. The Commission believes that the "reasonable regularity" standard is necessary to insure that the purposes of Section 5 are met and that it also gives the Rule adequate flexibility to accommodate changes in research practices.[17] Moreover, the Commission has added an Instruction to make clear that the Rule's protection would not cover research concerning a company with respect to which broker or dealer currently is not publishing research because such research would not have been distributed with reasonable regularity by the broker or dealer participant.[18]

Paragraph (a) of Rule 139, as adopted, reflects a change from the proposal clarifying the reference to S–3 or F–3 companies. This provision is intended to limit the application of paragraph (a) to companies which could qualify to use these Forms for the registration of primary offerings. In view of a commentator question as to whether paragraph (a) was intended to be limited to reports where the particular offering in registration is of securities for cash, the Rule, as adopted, reflects a change to make clear that paragraph (a) provides safe harbor protection for research reports concerning companies which are qualified to use short form registration for their securities regardless of whether the transaction involves cash or securities. Thus, the references to the Forms' "transaction requirements" has been replaced by a reference to the "minimum float" or "investment grade securities" provisions.

B. Other Registrants

Research reports with respect to registrants which are not eligible to use Form S–3 or F–3 must meet the requirements of paragraph (b) of Rule 139 in order to come within the Rule's safe harbor protection. Paragraph (b) of the Rule is adopted substantially as proposed with modifications to paragraphs (b)(1)(ii) and (b)(3).

Paragraph (b)(1)(i) requires that information, opinions or recommendations as to registrants which are not eligible to use Form S–3 or F–3 must be contained in a publication that is distributed with reasonable regularity in the normal course of business. This paragraph is adopted as proposed for the reasons discussed in A. above.

Paragraph (b)(1)(ii) of the Rule, as proposed, requires research reports concerning companies not eligible to use Form S–3 or F–3 to include similar information with respect to a substantial number of companies in the registrant's industry. This provision received commentary in response to which several modifications have been made.

Commentators generally perceived the "substantial number of companies in the registrant's industry" requirement to be more restrictive than necessary to effectuate the Rule's purposes. While the Commission does not agree that the Rule should be less restrictive, it does believe that greater clarity and flexibility may be provided by adding the words "or sub-industry" to paragraph (b)(1)(ii). This change avoids the necessity to define the term "industry" and addresses the needs of regional firms whose research reports may cover a smaller number of companies in a particular industry.

Paragraph (b)(1)(ii) of the Rule, as adopted, also provides a comprehensive list alternative to the "information with respect to a substantial number of companies" requirement. Thus, a research report containing a comprehensive list of securities currently recommended by a broker or dealer will come within the Rule's safe harbor even though no particular industry or sub-industry is represented by a substantial number of companies in the report.

Paragraph (b)(2)(i) of the Rule is adopted as proposed, but redesignated subparagraph (b)(2). This provision requires that the information, opinions or recommendations contained in the report may not be given materially greater space or prominence in the publication than that given to other securities or registrants.

Existing Rule 139 [19] provides that a research report may not include projections of sales or earnings beyond the registrant's current fiscal year or following fiscal year if within the last six months of the current fiscal year. While it did not propose changes to the Rule 139 projections provision, the Commission recognized that registrant projections are allowed and sought specific comment as to what treatment should be accorded projections made by brokers or dealers in research reports. Commentators generally believed that amended Rule 139 should provide a safe harbor for research reports that include projections beyond those now within the Rule. The Commission has determined to allow projections for longer periods and, accordingly, has deleted proposed paragraph (b)(2)(ii). At the same time, the Commission has included an Instruction to paragraph (b) to clarify the application of the conditions of paragraph (b) to publications including projections of a registrant's sales or earnings. The instruction provides that: (1) the projections must have been published previously on a regular basis in order for the publication to come within paragraph (b)(1)(i); (2) there must be projections included, and included for the same periods, with respect to all the companies covered in the publication in order for it to meet paragraph (b)(2)(ii); and (3) because projections constitute opinions within the meaning of the Rule, they must meet the "no upgrade" requirements of paragraph (b)(3).

Paragraph (b)(3) of the Rule, as proposed, requires a research report to contain an opinion or recommendation "at least as favorable as to the registrant or any class of its securities" to have been published by the broker or dealer in the publication of such broker of dealer addressing the registrant or its securities prior to the broker's or dealer's commencement of participation in a distribution of such registrant's

[15] 17 CFR 239.12.

[16] 17 CFR 239.32

[17] For example, variations in the scope and format of research reports occasioned by industry personnel turnover would come under the Rule's safe harbor so long as the reports are distributed with reasonable regularity in the normal course of business.

[18] Initial company reports would not have been published or distributed with reasonable regularity by the broker or dealer participant. Therefore, not including such reports within the safe harbor of Rule 139 does not interrupt the flow of information concerning the company in registration into the marketplace. The Instruction clarifies that a broker or dealer participant in the distribution must have been publishing research concerning the company in registration prior to the distribution.

[19] Paragraph (b) of existing Rule 139; paragraph (b)(2)(ii) of the proposed amendments.

securities. One commentator suggested that paragraph (b)(3) be modified to clarify that research reports which contain opinions or recommendations that are the same as, or less favorable than those previously published come within the Rule's safe harbor protection. The Commission has determined to clarify paragraph (b)(3) by revising the "at least as favorable" language in the proposal to read: "An opinion or recommendation as favorable or more favorable as to the registrant or any class of its securities was published by the broker or dealer in the last publication of such broker or dealer addressing the registrant or its securities prior to the commencement of participation in the distribution." Of course, research reports which contain opinions or recommendations that are more favorable than those previously published would not come within the Rule's safe harbor because such reports might condition the market with respect to the securities of a registrant not well followed in the marketplace, and thus not eligible to use short form registration.

III. Rule 10b–6 Considerations

Historically, the staff of the Division of Market Regulation has taken the position that research reports complying with the provisions of Rule 139 do not constitute prohibited inducements to purchase under Rule 10b–6 under the Exchange Act.[20] More recently, in the 1983 release adopting amendments to Rule 10b–6, the staff took an interim no-action position with respect to certain research reports which exceed the limitations then found in Rule 139.[21] In proposing amendments to Rule 139, the Commission solicited comment on whether the interpretation under Rule 10b–6 should be modified to be consistent with the proposed amendments to Rule 139.[22]

Rule 139 and Rule 10b–6 are designed to serve different purposes. Rule 139 provides a safe harbor from the strict liability provisions of the Securities Act, which assure that investors receive prospectus disclosure. In contrast, Rule 10b–6 is intended to assure that distributions of securities are free of the market effects of bids, purchase, or inducements to purchase by those who have an interest in the success of a distribution. The prohibition on inducements to purchase is an essential element of Rule 10b–6. Because inducements to purchase, such as improved recommendations, can be an effective and inexpensive method of facilitating the distribution of securities, the staff is taking a no-action position that substantially broadens the type of research that can be disseminated during a distribution but is narrower than the safe harbor provided by Rule 139.[23]

Accordingly, the staff announces that it will not recommend that the Commission take enforcement action under Rule 10b–6 with respect to a research report that is: (1) Within Rules 137, 138 or paragraph (b) of Rule 139; or (2) within paragraph (a) of Rule 139 [24] and does not contain a recommendation or earnings forecast more favorable than that previously disseminated by the firm.[25]

IV. Rules 137 and 138

In connection with the proposed amendments to Rule 139, the Commission also solicited comment on the need for changes to Rules 137 and 138. Several commentators suggested that changes be made in those Rules to conform the language in Rules 137 and 138 to that in proposed Rule 139. Therefore the following changes have been made in Rules 137 and 138: (1) The words "members of the underwriting syndicate or dealer group" have been changed to "participant in the distribution"; (2) the words "or an effective" have been added to the introductory paragraphs; (3) the word "issuer" has been replaced by the word "registrant"; and (4) the words "broker or" have been added wherever the word "dealer" appears. The Commission has determined that no further changes to Rules 137 and 138 are necessary.[26]

V. Lists of Subjects in 17 CFR Parts 230 and 241

Reporting and recordkeeping requirements; Interpretive releases, Securities.

VI. Statutory Authority

The Commission hereby authorizes adoption of the amendments to Rules 137, 138 and 139 pursuant to its statutory authority under Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933.

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[20] Securities Act Release No. 6383 (March 3, 1982) [47 FR 11380, 11398 n. 94]. This was reiterated as the staff's position in Securities Exchange Act Release No. 19565 (March 4, 1983) [48 FR 10628] (the "1983 Rule 10b–6 Release").

[21] 1983 Rule 10b–6 Release, 48 FR at 1036. The Release noted that research reports that do not comply with the requirements of Rule 139 may not, in some instances, constitute either inducements to purchase for purposes of Rule 10b–6 under the Exchange Act or offers to sell securities for purposes of Section 2(10) or 5(c) of the Securities Act. Cited as examples were: (1) industry or sub-industry reports disseminated as part of a firm's continuing research program that are similar in tone and appearance and are distributed with reasonable regularity in the normal course of business and discuss registrants without giving special treatment to the security to be distributed; and (2) reports that constitute a factual or statistical update on a registrant in an industry or sub-industry regularly covered by the firm.

[22] Five of the twelve commentators that responded to the proposing release commented on the advisability of reconciling Rules 139 and 10b–6. All five agreed that Rule 10b–6 should be modified to provide that research reports that comply with Rule 139 would not be considered inducements to purchase under Rule 10b–6.

[23] In light of the revisions made to Rule 139, the interim no-action position under Rule 10b–6 is withdrawn.

[24] See Instruction 1. to Rule 139, which also is applicable to this interpretation.

[25] The staff believes that more favorable recommendations or earnings forecasts may constitute impermissible inducements to purchase securities under Rule 10b–6 and thus should remain subject to that Rule. The staff recognizes that on infrequent occasions new information may be released regarding a company after the commencement of a distribution in that company's securities that significantly affects outstanding earnings estimates. Whether a favorable revision of an earnings forecast based on such new information would serve as an inappropriate inducement to purchase requires an analysis of all of the facts and circumstances surrounding the distribution. Where appropriate the staff will respond to requests for interpretive advice in those situations.

Broker-dealers also must determine whether research provided by account executives and other sales personnel renders a transaction "solicited" and thus outside the scope of permissible transactions under exception (v) of Rule 10b–6. Generally, research transmitted continuously through the use of routine distribution systems such as mailing lists does not constitute a solicitation to purchase, while research directed to particular customers by sales personnel constitutes a solicitation to purchase. Research transmitted orally must be evaluated in the context of the entire oral presentation, *e.g.*, whether the broker-dealer or the customer initiated the contact, the sophistication of the customer, and the normal course of dealings with the customer. In most cases, oral transmission of positive research by sales personnel on their own initiative would constitute both a solicitation and an inducement to purchase.

[26] Rule 137 confirms the publication of research reports concerning companies in registration by brokers or dealers that are not participants in the distribution of the companies' securities do not raise concerns under Section 5, and thus do not require limitations as to their content and manner of distribution.

Rule 138 permits publication of research reports concerning S–2/F–2 registrants by brokers or dealers that are participants in a distribution, so long as the reports are published in the regular course of business and contain information, opinions or recommendations regarding: (1) nonconvertible senior securities where the security in registration is common stock; or (2) common stock where the security in registration is a nonconvertible senior security. While paragraph (b) of Rule 139 imposes greater limitations upon research reports concerning an S–1 or S–2 company in registration where reports discuss the company or any class of its securities, the less restrictive limitations of Rule 138 apply only where the report concerns a class of the company's securities which is not the subject of the offering in which the broker or dealer is a participant. Because the markets for nonconvertible senior securities and common stock differ, Rule 138 provides a somewhat broader safe harbor in circumstances where the opportunity to condition the market is lessened.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising § 230.137 to read as follows:

§ 230.137 Definition of "offers", "participates", or "participation" in section 2(11) in relating to certain publications by persons independent of participants in a distribution.

The terms "offers", "participates", or "participation" in section 2(11) of the Act shall not be deemed to apply to the publication or distribution of information, opinions or recommendations with respect to the securities of a registrant which is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 and proposes to file, has filed or has an effective registration statement under the Securities Act of 1933 if—

(a) Such information, opinions, and recommendations are published and distributed in the regular course of its business by a broker or dealer which is not and does not propose to be a participant in the distribution of the security to which the registration statement relates; and

(b) Such broker or dealer receives no consideration, directly or indirectly, in connection with the publication and distribution of such information, opinions or recommendations from the registrant, a selling security holder or any participant in the distribution or any other person interested in the securities to which the registration statement relates, and such information, opinions or recommendations are not published or distributed pursuant to any arrangement or understanding, direct or indirect, with such registrant, underwriter, dealer, or selling security holder; *Provided, however,* That nothing herein shall forbid payment of the regular subscription or purchase price of the document or other written communication in which such information, opinions or recommendations appear.

2. By revising § 230.138 to read as follows:

§ 230.138 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

(a) Where a registrant which meets all of the conditions for the use of Form S–2 [§ 239.12 of this chapter] or Form F–2 [§ 239.32 of this chapter] proposes to file, has filed or has an effective registration statement under the Act relating solely to a nonconvertible debt security or to a nonconvertible, nonparticipating preferred stock, publication or distribution in the regular course of its business by a broker or dealer of information, opinions or recommendations relating solely to common stock or to debt or preferred stock convertible into common stock of such registrant shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act even though such broker or dealer is or will be a participant in the distribution of the security to which such registration statement relates.

(b) Where a registrant which meets all of the conditions for the use of Form S–2 [§ 239.12 of this chapter] or Form F–2 [§ 239.32 of this chapter] proposes to file, has filed or has an effective registration statement under the Act relating solely to common stock or to debt or preferred stock convertible into common stock, the publication or distribution in the regular course of its business by a broker or dealer of information, opinions or recommendations relating solely to a nonconvertible debt security, or to a nonconvertible nonparticipating preferred stock shall not be deemed to constitute an offer for sale or offer to sell the security to which such registration statement relates for purposes of sections 2(10) and 5(c) of the Act, even though such broker or dealer is or will be a participant in the distribution of the security to which such registration statement relates.

3. By revising § 230.139 to read as follows:

§ 230.139 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

Where a registrant which is required to file reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 proposes to file, has filed or has an effective registration statement under the Securities Act of 1933 relating to its securities, the publication or distribution by a broker or dealer of information, an opinion or a recommendation with respect to the registrant or any class of its securities shall not be deemed to constitute an offer for sale or offer to sell the securities registered or proposed to be registered for purposes of sections 2(10) and 5(c) of the Act, even though such broker or dealer is or will be a participant in the distribution of such securities, if the conditions of paragraph (a) or (b) have been met:

(a) The registrant meets the registrant requirements of Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) and the minimum float or investment grade securities provisions of either paragraph (B) (1) or (2) of General Instruction I of the respective form and such information, opinion or recommendation is contained in a publication which is distributed with reasonable regularity in the normal course of business; or

(b)(1) Such information, opinion or recommendation is contained in a publication which:

(i) Is distributed with reasonable regularity in the normal course of business and

(ii) Includes similar information, opinions or recommendations with respect to a substantial number of companies in the registrant's industry, or sub-industry, or contains a comprehensive list of securities currently recommend by such broker or dealer.

(2) Such information, opinion or recommendation is given no materially greater space or prominence in such publication than that given to other securities or registrants; and

(3) An opinion or recommendation as favorable or more favorable as to the registrant or any class of its securities was published by the broker or dealer in the last publication of such broker or dealer addressing the registrant or its securities prior to the commencement of participation in the distribution.

Instructions to Rule 139. 1. For purposes of paragraph (a), a research report has not been distributed with "reasonable regularity" if it contains information, an opinion, or a recommendation concerning a company with respect to which a broker or dealer currently is not publishing research.

2. Where projections of a registrant's sales or earnings are included, the publication must comply with the following in order to meet paragraphs (b)(1) and (b)(3).

A. The projections must have been published previously on a regular basis in order for the publication to meet paragraph (b)(1)(i);

B. The projections must be included with respect to either a substantial number of companies in the registrant's industry or sub-industry or all companies in a comprehensive list which is contained in the publication, and must cover the same periods with respect to such companies as with respect to the registrant, in order to meet the requirements of paragraph (b)(1)(ii); and

C. Because projections constitute opinions within the meaning of the Rule, they must come within paragraph (b)(3).

(Secs. 6, 7, 10, 19(a), 48 Stat. 78, 81, 85; Secs. 205, 109, 48 Stat. 906, 908; Sec. 8, 68 Stat. 685;

Sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77f, 77g, 77j, 77s(a))

PART 241—INTERPRETIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

4. By amending Part 241 by adding this release, Release No. 34–21332 (September 19, 1984) to the list of interpretive releases set forth thereunder.

By the Commission.

Dated: September 19, 1984.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–25409 Filed 9–24–84; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 299

[Docket No. 81N–0263]

Designated Names; Revocation of List of Official Names of Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking the existing list of official names of drugs designated by the agency. Nonproprietary drug names listed in *USAN and the USP Dictionary of Drug Names* will serve as "established names" under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) unless FDA designates an official name for a drug because it finds the name listed in that volume to be unduly complex or not useful. This action will make it unnecessary for FDA to publish routinely as official names those names of drugs listed in *USAN and the USP Dictionary of Drug Names.* This action will not affect the availability to the public of current information on acceptable "established names" of drugs.

DATES: Effective on November 26, 1984. The Director of the Federal Register approves the incorporation by reference of the publication in § 299.4 effective September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1982 (47 FR 31008), FDA proposed to revoke the existing list of official names of drugs designated by the agency. Under the proposal, nonproprietary drug names adopted by the U.S. Adopted Name Council (for which names the abbreviation USAN is generally used), and other official or common or usual names listed in *USAN and the USP Dictionary of Drug Names* would serve as "established names" under section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)) unless FDA designates an official name for a drug because it finds the USAN or other official or common or usual name to be unduly complex or not useful. This action was taken because FDA's routine publication of official names of drugs was considered duplicative and unnecessary in light of the skill and expertise the USAN Council has shown in deriving useful nonproprietary names for drugs, because of the wide publicity each USAN quickly receives, and because the drug names which FDA has designated in the past as official names have been almost identical to those adopted by the USAN Council.

Interested persons were given 60 days to submit written comments on the proposed rule. The agency received three comments, two of which indicated support for the proposed rule. A summary of the third comment and the agency's response to it follows:

1. The comment stated that the proposed rule as written is confusing in regard to the hierarchical selection of "established names" of drugs. The comment stated that some entities have compendial names that are not USAN adopted names, and some entities have USAN adopted names that are not listed in the compendia. Therefore, the comment recommended that a clearer alternative to the selection of an "established name" would be (1) the compendial name, or (2) the USAN adopted name in the absence of a compendial name, or (3) the common or usual name in the absence of compendial or USAN adopted name.

The purpose of the proposal was not to substitute the use of compendial names for official names but, rather, to use those nonproprietary names listed in the volume *USAN and the USP Dictionary of Drug Names* as established names of drugs. In the agency's view, the *USAN and the USP Dictionary of Drug Names* is preferable to the compendia as a source of established names of drugs for several reasons. First, the volume is more comprehensive than the compendia in that it includes USAN adopted names and compendial names as well as common or usual names. Further, it is published yearly as opposed to every 5 years as is the compendia and, therefore, can provide a more up-to-date source of drug names which is its primary purpose. Moreover, because a liaison representative of FDA sits on the USAN Council, the agency plays a more prominent role in the establishment of names listed in the volume than it does in listing products in the compendia.

Another reason is that a drug name adopted by the USAN Council usually is established by the time the relevant new drug application is filed with FDA and well before the drug would be considered for recognition in the compendia. When choosing an adopted name, the USAN Council does so with the expectation that the name will be suitable for subsequent designation as the title of the monograph should the drug be recognized in the compendia. To assure such acceptability, the U.S. Pharmacopeial Convention, one of the three organizations that sponsor the USAN program, is represented on the USAN Council. Because names of drug substances that appear in both *USAN and the USP Dictionary of Drug Names* and the compendia are the same, the net result suggested by the comment will still be realized.

The agency recognizes that there are some drugs that have a compendial name, but do not have a USAN. Drugs that fall into this class, such as digitalis, digitoxin, and phenobarbital, were included in a compendia before the USAN Council started designating names. These drugs, however, are still included in *USAN and the USP Dictionary of Drug Names.* Therefore, the reference in the regulation to the name in *USAN and the USP Dictionary of Drug Names* covers both compendial names and USAN's.

2. The comment also stated that the language in proposed §299.4(e) should be changed to make clear that the drug names listed in *USAN and the USP Dictionary of Drug Names,* which persons can rely on as the "established names," are only those names listed in the publication which are designated as USAN's. The comment pointed out that *USAN and the USP Dictionary of Drug Names* contains numerous names of drugs that are listed for historical purposes only which are not USAN's.

The agency does not agree with the comment. The drug names listed in *USAN and the USP Dictionary of Drug Names* include compendial names and USAN's as well as other unofficial names of drugs. Therefore, the names listed in *USAN and the USP Dictionary*

of Drug Names, which persons can rely on as "established names," are not limited to those names officially designated as USAN's in the publication but, rather, all names listed in that publication.

In a notice appearing elsewhere in this issue of the **Federal Register**, FDA is withdrawing a proposal which was published in the **Federal Register** of September 13, 1977 (42 FR 45938) to update the list of official names of drugs. The official names proposed in the September 13, 1977 document have since been adopted by the USAN Council. Accordingly, because this final rule revokes the existing list of official names of drugs (21 CFR 299.20) and accepts drug names adopted by the USAN Council as the "established names" of drugs, FDA believes that is not necessary to issue a final rule based on the September 13, 1977 proposal.

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979; 44 FR 71742) that this final rule is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354), FDA has analyzed the economic impact of this rule. The agency has determined that the rule would not affect the availability to the public of current information on acceptable established names of drugs. Further, it would not result in any significant increase in cost for obtaining this information. Information concerning established names of drugs would be available in *USAN and the USP Dictionary of Drug Names* instead of the Code of Federal Regulations. *USAN and the USP Dictionary of Drug Names* is republished annually, and it can be found in most medical libraries. Most interested persons needing this information, moreover, probably already possess a current copy of this volume, because it has been widely used in the past as a reliable and up-to-date source for nonproprietary names of drugs. Drug manufacturers, which normally are the persons that request the USAN Council to designate a drug name, are especially likely to possess this volume. For these reasons, therefore, the agency has determined that the final rule is not a "major rule" as defined in Executive Order 12291. Further, the agency certifies that the rule, if implemented, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 299

Drugs, official names, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 301, 501, 502, 505, 508, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055, 76 Stat. 789–790 as amended (21 U.S.C. 331, 351, 352, 355, 358, 371(a))) and under 21 CFR 5.11, Part 299 is amended as follows:

PART 299—DRUGS; OFFICIAL NAMES AND ESTABLISHED NAMES

1. In § 299.4 by revising the second sentence of paragraph (d) and by adding new paragraphs (e) and (f), to read as follows:

§ 299.4 Established names of drugs.

* * * * *

(d) * * * In addition, the Food and Drug Administration agrees with "Guiding Principles for Coining U.S. Adopted Names for Drugs," published in *USAN and the USP Dictionary of Drug Names* (USAN 1985 ed., 1961–1984 cumulative list), which is incorporated by reference. Copies are available from: U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852, or are available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408. * * *

(e) The Food and Drug Administration will not routinely designate official names under section 508 of the act. As a result, the established name under section 502(e) of the act will ordinarily be either the compendial name of the drug or, if there is no compendial name, the common and usual name of the drug. Interested persons, in the absence of the designation of an official name, may rely on as the established name for any drug the nonproprietary name listed in *USAN and the USP Dictionary of Drug Names*. The Food and Drug Administration, however, will continue to publish official names under the provisions of section 508 of the act when the agency determines that: (1) The USAN of other official or common or usual name is unduly complex or is not useful for any other reason; (2) two or more official names have been applied to a single drug, or to two or more drugs that are identical in chemical structure and pharmacological action and that are substantially identical in strength, quality, and purity; or (3) no USAN or other official or common or usual name has been applied to a medically useful drug. Any official name published under section 508 of the act will be the established name of the drug.

(f) A cumulative list of U.S. adopted names selected and released since June 15, 1961, is published yearly by the U.S. Pharmacopeial Convention, Inc., in *USAN and the USP Dictionary of Drug Names*. Copies may be purchased from the U.S. Pharmacopeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, MD 20852.

§ 299.20 [Removed]

2. By removing Subpart B—Designated Names, consisting of § 299.20 *Drugs; official names*, and marking it "[Reserved]."

Effective date. This regulation is effective November 26, 1984.

(Secs. 301, 501, 502, 505, 508, 701(a), 52 Stat. 1042–1043 as amended, 1049–1053 as amended, 1055, 76 Stat. 789–790 as amended (21 U.S.C. 331, 351, 352, 355, 358, 371(a)))

Dated: August 27, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84-24526 Filed 9-24-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960, and 965

[Docket No. R-84-1144; FR-1882]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs

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

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on Monday, May 21, 1984 (49 FR 21475), which implemented a definition of income, established income limits for admission, set rental payment levels, and provided for reexamination of income for certain housing assistance programs. Previous correction documents were published in the **Federal Register** on June 29, 1984 and July 16, 1984. This action is necessary to correct a discrepancy between the preamble and the rule concerning the applicability of the ten percent annual cap on rent increases to the Mutual Help

Homeownership Program and to insert omitted language and punctuation.

FOR FURTHER INFORMATION CONTACT: Patricia Arnaudo, Office of Indian Housing, Department of Housing and Urban Development, Room 6230, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6522. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On page 21484, first column, line 12 of the **Federal Register** published on May 21, 1984, the preamble of the rule indicated that § 913.107(d) applied the ten percent cap to the Mutual Help Program. However, on page 21488, third column of that same issue, the text of § 913.107(d) did not apply the cap to that program. By omitting reference to the applicability of paragraph (c)(2), this correction changes the rule text to conform to the preamble and to the Department's original intent. This correction also inserts a missing word and parenthesis in § 913.109, published on page 21488, third column, and a missing comma in the heading of Part 960, which appeared on page 21491, third column.

PART 913—[AMENDED]

Accordingly, the Department is correcting 24 CFR Part 913, published on May 21, 1984, as follows:

1. Section 913.107(d) is corrected to read as follows:

§ 913.107 Total tenant payment.

* * * * *

(d) *Mutual help homeownership projects.* Paragraphs (a) and (b) of this section shall not apply to Mutual Help Homeownership projects (see § 905.416 of this chapter).

* * * * *

§ 913.109 [Amended]

2. Section 913.109(a) is corrected by changing the words in the first sentence following the word "pertinent" to the following: "regulations (Part 960, Subpart B)."

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

3. The heading of Part 960 is corrected to read as set forth above.

Dated: September 19, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 84-25420 Filed 9-24-84; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 240, 245, 250, 251, 270, 275, and 285

[T.D. ATF-185]

Electronic Fund Transfer for Alcohol and Tobacco Taxpayments

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

ACTION: Final rule,Treasury decision.

SUMMARY: This final rule implements section 27(c) of The Deficit Reduction Act of 1984, Pub. L. 98-369. Section 27(c) of Pub. L. 98-369 amends 26 U.S.C. 5061, relating to the method of payment of tax on distilled spirits, wine and beer, and amends 26 U.S.C. 5703(b), relating to the method of payment of tax on tobacco products and cigarette papers and tubes.

EFFECTIVE DATE: This final rule is effective for tax remittances required to be paid on and after September 30, 1984.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen, (202) 566-7531, or John A. Linthicum, (202) 566-7626.

SUPPLEMENTARY INFORMATION: Section 27(c) of Pub. L. 98-369 requires tax remittances to be made using electronic fund transfer (EFT) for any person who in any 12 month period ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in excise taxes on alcohol products, or tobacco products, and cigarette papers and tubes.

Regulations promulgated by the Treasury Department in January 1981 would have required payment of alcohol and tobacco taxes by electronic transfer in the case of taxpayers who paid $5 million or more in those taxes in the previous fiscal year. These regulations have never become effective because of restrictions included in the continuing appropriations Acts for the Treasury Department.

The Deficit Reduction Act of 1984 recognizes electronic fund transfer as an established, accurate and more effective method of transferring large sums of money than the present system where taxpayers attach a check to a return which is then mailed to the Treasury Department. Accordingly, the Act requires the electronic transfer of excise tax payments for alcohol and tobacco products. However, to prevent any undue burden on taxpayers liable for small amounts of tax, Congress decided to require payment by electronic fund transfer only by taxpayers who were liable for $5 million or more in the applicable tax during the preceeding calendar year.

The requirement of payment by electronic fund transfer applies to domestic producers and manufacturers (including Puerto Rican producers and manufacturers), to importers of taxable alcohol and tobacco products, cigarette papers and tubes, and to persons bringing such commodities into the United States from the Virgin Islands.

The determination of whether a person was liable for $5 million or more in alcohol or tobacco tax in any calendar year is to be made by reference to the person's gross tax liability, without regard to any drawbacks, credits, or refunds. However, erroneous overpayments are not taken into account in summarizing the gross tax liability. The term "person" includes all members of a controlled group of corporations as defined in 26 U.S.C. 1563. Likewise, all plants at which a person carries on business are to be aggregated. Additionally, this determination is to be made treating all types of distilled spirits as one product. Likewise, all types of beer will be treated as one product, and all types of wines will be treated as one product. In the case of tobacco, the determination is to be made by reference to all types of taxable tobacco products, e.g. a person liable for tax with respect to cigars, cigarettes, cigarette papers, and cigarette tubes, would be treated as liable for tax with respect to one product.

Regulatory Flexibility Act

The provisions of the regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law.

Executive Order 12291

This final rule is not a "major rule" within the meaning of Executive Order 12291 (46 FR 13193) because the rule will not have an annual effect on the economy of $100 million or more (although the underlying statute which is being implemented will have a net effect of increased revenues in fiscal year 1985); it will not result in a major increase in cost or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35 (Control Number 1512-0457). Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

Notice and Public Procedure

This final rule is promulgated without notice and public procedure, as required by 5 U.S.C. 553(b), because it is a rule of procedure. Moreover, notice and public procedure are unnecessary and impracticable in this case because immediate guidance is necessary to implement the use of EFT for tax remittances on and after September 30, 1984, the effective date of section 27(c) of The Deficit Reduction Act of 1984.

Effective Date

Because this final rule implements section 27(c) of Pub. L. 98-369, which was enacted on July 17, 1984 with an effective date of September 30, 1984, it is impracticable to publish this final rule thirty days before its effective date under 5 U.S.C. 553(d).

List of Subjects

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfer, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 240

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 245

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfer, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfer, Excise taxes, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

27 CFR Part 251

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Customs duties and inspection, Electronic fund transfer, Excise taxes, Labeling, Liquors, Packaging and containers, Perfume, Reporting and recordkeeping requirements, Transportation, Wine.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Puerto Rico, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 285

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds.

Drafting Information

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Authority and Issuance

These regulations are issued under the authority contained in 26 U.S.C. 6302(c) and 7805. Accordingly, Title 27 CFR is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

1. Section 19.523a is revised to implement the use of EFT for payment of taxes. As revised, § 19.523a reads as follows:

§ 19.523a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of distilled spirits taxes during the succeeding calendar year. Payment of distilled spirits taxes by cash, check, or money order, as described in § 19.524, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including distilled spirits products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4. These criteria are not the same criteria applied to a controlled group of corporations under Subpart H of this part, for the puposes of filing bonds covering more than one distilled spirits plant.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, ATF F 5110.32 or ATF F 5110.35, for each distilled

spirits plant from which spirits are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes during the previous calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 19.523. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 19.524. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to ATF F 5110.32 or ATF F 5110.35, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, ATF F 5110.32 or ATF F 5110.35, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on ATF F 5110.32 or ATF F 5110.35.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes during calendar year 1983, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

2. Paragraph (a) of § 19.524 is revised to conform to the above revision. As revised, paragraph (a) of § 19.524 reads as follows:

§ 19.524 Manner of filing returns.

(a) Each return on ATF F 5110.32 or 5110.35 shall be filed with the district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form. If the return and remittance are to be filed with a designated ATF Officer, the proprietor shall file the return and remittance no later than 2:00 p.m. on the date the return is required to be filed.

* * * * *

PART 240—WINE

3. Section 240.591a is revised to implement the use of EFT for payment of taxes. As revised, § 240.591a reads as follows:

§ 240.591a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of wine taxes during the succeeding calendar year. Payment of wine taxes by cash, check, or money order, as described in § 240.591, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount to tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including wines brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 2050 or Form 2052, for each bonded wine cellar or bonded winery from which wine is withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this

section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 240.591 or § 240.594. The request shall take into account any time limit established by the bank.

(3) If a Taxpayer was liable for less than five million dollars in wine taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 240.591. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 2050 or Form 2052, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 2050 or Form 2052, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 2050 or Form 2052.

(2) Remittance shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in wine taxes during calendar year 1983, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 240.594 [Amended]

4. Paragraph (b)(1) of § 240.594 is amended by replacing "director of the service center and to the regional director (compliance)" with "district director, director of the service center, or regional director (compliance)".

§ 240.901 [Amended]

4a. Section 240.901 is amended by replacing "Internal Revenue Service" with "district director, director of the service center, or regional director (compliance)".

§ 240.902 [Amended]

5. Paragraph (b)(2) of § 240.902 is amended by replacing "director of the service center;" with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form;".

PART 245—BEER

6. The table of sections in Part 245 is amended to reflect the removal of § 245.117b, to read as follows:

* * * * *

§ 245.117b [Removed and Reserved]

* * * * *

§ 245.117 [Amended]

7. Paragraph (f)(1) of § 245.117 is amended by replacing "director of the service center," with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form,".

8. Section 245.117a is revised to implement the use of EFT for payment of taxes. As revised, § 245.117a reads as follows:

§ 245.117a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of beer taxes during the succeeding calendar year. Payment of beer taxes by cash, check, or money order, as described in § 245.112, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable removals, determined in accordance with § 245.116, and importations (including beer brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4. These criteria are not the same criteria applied to a controlled group of brewers under § 245.110a, for the purposes of determining eligibility for a reduced rate of tax.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 2034, for each brewery from which beer is removed upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of

the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 245.117 or § 245.117d. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in beer taxes during the preceding calendar year, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 245.112. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 2034, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 2034, information about remitting the tax for that return by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 2034.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the tax payment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who paid a gross amount equal to or exceeding five million dollars in beer taxes during calendar year 1983, combining tax liabilities incurred under this part and Parts 250 and 251 of this chapter, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

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(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

§ 245.117b [Removed]

9. Section 245.117b is removed because it is incorporated in the above revision of § 245.117a.

§ 245.117d [Amended]

9a. Paragraph (b)(2) of § 245.117d is amended by replacing "director of the service center" with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form".

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

10. Section 250.112a is revised to implement the use of EFT for payment of taxes. As revised, § 250.112a reads as follows:

§ 250.112a Payment of tax by electronic fund transfer.

(a) *General.* Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirts taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment by cash, check, or money order, of distilled spirits taxes, wine taxes, or beer taxes, as described in § 250.112, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on each type of product for which taxes are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importation during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises at which tax liabilities are incurred by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate semimonthly return form or prepayment return form, for each premises from which distilled spirits, wine, or beer is withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 250.112 or § 250.113. The request

shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, less than five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or less than five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 250.112. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to the tax return, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the semimonthly return form or prepayment return form, information about remitting the tax for that return by EFT and shall file the return with the Officer-in-Charge.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the tax payment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5684, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 251 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 251 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 251 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

11. The table of sections in Part 251 is amended to reflect the addition of § 251.48a, to read as follows:

Sec.

* * * * *

251.48a Payment of tax by electronic fund transfer.

* * * * *

12. Immediately after § 251.48, the following new § 251.48a is added to implement the use of EFT for payment of taxes. As added, § 251.48a reads as follows:

§ 251.48a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part, five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 250 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 250 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (a)(3) of this section, of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is to be summarized separately for distilled spirits taxes, wine taxes, or beer taxes, and is defined as the gross tax liability on all taxable withdrawals and importations (including products of the same tax class brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, an importer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) Electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tape, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service.

(4) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(b) *Effective date.* Any importer who was liable for a gross amount equal to or exceeding five million dollars in distilled spirits taxes combining tax liabilities incurred under this part and Parts 19 and 250 of this chapter, a gross amount equal to or exceeding five million dollars in wine taxes combining tax liabilities incurred under this part and Parts 240 and 250 of this chapter, or a gross amount equal to or exceeding five million dollars in beer taxes combining tax liabilities incurred under this part and Parts 245 and 250 of this chapter, during calendar year 1983, shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 201, Pub. L. 85-859, 72 Stat. 1335, as amended (26 U.S.C. 5061))

PART 270—MANUFACTURE OF CIGARS AND CIGARETTES

§ 270.165 [Amended]

13. Paragraph (d) of § 270.165 is amended by replacing "district director or director of the service center" with "district director, director of the service center, or regional director (compliance)".

14. Section 270.165a is revised to implement the use of EFT for payment of taxes. As revised, § 270.165a reads as follows:

§ 270.165a Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on cigars and cigarettes by cask, check, or money order, as described in § 270.168, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including cigars, cigarettes, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–1—1.1563–4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 3071 or Form 2617, for each factory from which cigars or cigarettes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter, during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the tax payment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 270.165 or § 270.167. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return on as prescribed by § 270.168. Upon filing the first return which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 3071 or Form 2617, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 3071 or Form 2617, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 3071 or Form 2617.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the tax payment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a tax payment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 275 and 285 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512–0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

§ 270.167 [Amended]

15. Paragraph (b) of § 270.167 is amended by replacing "director of the service center and by forwarding a copy to the regional director (compliance)" with "district director, director of the service center, or regional director (compliance), in accordance with the instructions on the form".

PART 275—IMPORTATION OF CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

16. The table of sections in Part 275 is amended to reflect the addition of § 275.63, to read as follows:

Sec.

* * * * *

275.63 Payment of tax by electronic fund transfer.

* * * * *

17. Immediately after § 275.62, the following new § 275.63 is added to implement the use of EFT for payment of

taxes. As added, § 275.63 reads as follows:

§ 275.63 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars, in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including cigars, cigarettes, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, an importer includes a controlled group of corporations, as defined in 26 U.S.C 1563, and implementing regulations in 26 CFR 1.1563–1—1.1563–4.

(3) For the purposes of this section, (i) electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tapes, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service, and (ii) electronic fund transfer or EFT does not have the meaning defined in § 275.11 for use elsewhere in this part.

(4) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(b) *Effective date.* Any importer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter during calendar year 1983, shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85–859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

18. Section 275.115a is revised to implement the use of EFT for payment of taxes. As revised, § 275.115a reads as follows:

§ 275.115a Payment of tax by electronic fund tranfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes by cash, check, or money order, as described in § 275.115, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability of all taxes which are paid in accordance with this subpart, taxable withdrawals from premises in the United States, and importations during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563–7—1.1563–4.

(3) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate semimonthly return form or prepayment return form, for each factory which cigars, or cigarettes, or cigarette papers, or cigarette tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter during the previous calender year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank to make an electronic fund transfer in the amount of the taxpayment to the Treasury Account as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 275.105 or § 275.114. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 275.115. On the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to the semimonthly return form or prepayment return form, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the semimonthly return form or prepayment return form, information about remitting the tax for that return by EFT and shall file the return with the Officer-in-Charge.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable,

for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 285 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Approved by the Office of Management and Budget under Control Number 1512-0457)

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

PART 285—MANUFACTURE OF CIGARETTE PAPERS AND TUBES

19. The table of sections in Part 285 is amended to reflect the addition of § 285.27, to read as follows:

Sec.

* * * * *

285.27 Payment of tax by electronic fund transfer.

* * * * *

20. Immediately after § 285.26, the following new § 285.27 is added to implement the use of EFT for payment of taxes. As added, § 285.27 reads as follows:

§ 285.27 Payment of tax by electronic fund transfer.

(a) *General.* (1) Each taxpayer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT), as defined in paragraph (a)(3) of this section, of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes during the succeeding calendar year. Payment of taxes on cigars, cigarettes, cigarette papers, and cigarette tubes in any other form of remittance, as authorized in § 285.25, is not authorized for a taxpayer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including cigars, cigarettes, cigarette papers, and cigarette tubes brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer. Overpayments are not taken into account in summarizing the gross tax liability.

(2) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1—1.1563-4.

(3) Electronic fund transfer or EFT means any transfer of funds effected by the taxpayer's bank, either directly or through a correspondent banking relationship, via the Federal Reserve Communications System (FRCS) or Fedwire to the Department of the Treasury's General Account at the Federal Reserve Bank of New York.

(4) A taxpayer who is required by this section to make remittances by EFT, shall make a separate EFT remittance and file a separate return, Form 2137, for each factory from which cigarettes papers or cigarettes tubes are withdrawn upon determination of tax.

(b) *Requirements.* (1) On or before January 10 of each calendar year, except for a taxpayer already remitting the tax by EFT, each taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter during the previous calendar year, shall notify, in writing, the regional director (compliance), for each region in which taxes are paid. The notice shall be an agreement to make remittances by EFT.

(2) For each return filed in accordance with this part, the taxpayer shall direct the taxpayer's bank, any bank which has access to the Federal Reserve Communications System (FRCS) or Fedwire, to make an electronic fund transfer in the amount of the taxpayment to the Department of the Treasury's General Account at the Federal Reserve Bank of New York, as provided in paragraph (e) of this section. The request shall be made to the bank early enough for the transfer to be made to the Treasury Account by no later than the close of business on the last day for filing the return, prescribed in § 285.25. The request shall take into account any time limit established by the bank.

(3) If a taxpayer was liable for less than five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter during the preceding calendar year, the taxpayer may choose either to continue remitting the tax as provided in this section or to remit the tax with the return as prescribed by § 285.25. Upon filing the first return on which the taxpayer chooses to discontinue remitting the tax by EFT and to begin remitting the tax with the tax return, the taxpayer shall notify the regional director (compliance) by attaching a written notification to Form 2137, stating that no taxes are due by EFT, because the tax liability during the preceding calendar year was less than five million dollars, and that the remittance shall be filed with the tax return.

(c) *Remittance.* (1) Each taxpayer shall show on the return, Form 2137, information about remitting the tax for that return period by EFT and shall file the return with the director of the service center, district director, or regional director (compliance), in accordance with the instructions on Form 2137.

(2) Remittances shall be considered as made when a taxpayer unconditionally directs the bank to immediately make an electronic fund transfer in the amount of the taxpayment to the Treasury Account, in accordance with the procedures established by the bank.

(3) When the taxpayer directs the bank to effect an electronic fund transfer message as required by paragraph (b)(2) of this section, any transfer data record furnished to the taxpayer, through normal banking procedures, will serve as the record of payment, and shall be retained as part of required records.

(d) *Failure to request an electronic fund transfer message.* The taxpayer is subject to a penalty imposed by 26 U.S.C. 5761, 6651, or 6656, as applicable, for failure to make a taxpayment by EFT on or before the close of business on the prescribed last day for filing.

(e) *Procedure.* Upon the notification required under paragraph (b)(1) of this section, the regional director (compliance) will issue to the taxpayer an ATF Procedure entitled, Payment of Tax by Electronic Fund Transfer. This

publication outlines the procedure a taxpayer is to follow when preparing returns and EFT remittances in accordance with this part. The U.S. Customs Service will provide the taxpayer with instructions for preparing EFT remittances for payments to be made to the U.S. Customs Service.

(f) *Effective date.* Any taxpayer who was liable for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and Parts 270 and 275 of this chapter during calendar year 1983, (1) shall submit the notice required by paragraph (b)(1) of this section on or before September 30, 1984, and (2) shall begin making remittances by EFT, for remittances which are required to be paid on or after September 30, 1984.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); sec. 202, Pub. L. 85–859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

Signed: August 20, 1984.

Stephen E. Higgins,

Director.

Approved: September 11, 1984.

Edward T. Stevenson,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 84–25342 Filed 9–24–84; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Modifications of the Kentucky Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 917 by announcing the approval of certain amendments to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted by Kentucky are intended (1) to satisfy certain conditions imposed by the Secretary of the Interior on the approval of the Kentucky program, and (2) as further modifications to the Kentucky program. The amendments pertain to sediment pond design, permitting, groundwater, award of costs and expenses and administrative rules of procedure.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Secretary has determined that the modifications to the Kentucky program meet the requirements of SMCRA and the Federal permanent program regulations and the conditions are being removed. The Federal rules at 30 CFR Part 917 which codify decisions concerning the Kentucky program are being amended to implement these actions.

EFFECTIVE DATE: The approval of the program amendment is effective September 25, 1984.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504, Telephone: (606) 233–7327.

SUPPLEMENTARY INFORMATION:

I. Background

The Kentucky program was conditionally approved by the Secretary of the Interior on May 18, 1982 (47 FR 21404–21435). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

II. Submission of Program Amendment and Proposed Findings

By a letter dated October 31, 1983, Kentucky submitted to OSM pursuant to 30 CFR 732.17, certain revisions to the regulations previously approved by the Secretary and new regulations to modify its program. These modifications are intended to satisfy certain conditions placed on the Secretary's approval of the Kentucky program. The conditions addressed in the amendment are (d), (i), (j), (k), (o), and (p).

OSM announced receipt of the amendment and solicited public comment in the **Federal Register** dated November 17, 1983 (48 FR 52333). The public hearing scheduled for December 13, 1983, was not held because no requests for such a hearing were received. The public comment period closed December 19, 1983.

OSM reviewed the proposed modifications and asked Kentucky to clarify certain issues. On May 14, 1984, OSM received additional material from Kentucky pertaining to its civil penalty program and hearings provisions and its administrative rules of procedure relating to service, discovery and burdens of proof. OSM announced the receipt of this material and solicited public comment in the **Federal Register** dated June 28, 1984 (49 FR 26605).

III. Secretary's Findings

Finding 1, Condition (d)

Condition (d) requires Kentucky to amend its program to provide for civil procedures which are no less effective than those at 43 CFR Part 4. In the October 31, 1983 material, Kentucky submitted new regulations (405 KAR 1:0305, 1:040, and 1:050E) pertaining to administrative rules of procedure.

In response to concerns expressed by OSM, Kentucky revised its 405 KAR 1:040 provisions and submitted this material to OSM on May 14, 1984.

The submission as amended on May 14, 1984, contains provisions for (1) service of process, (2) discovery and (3) burden of proof. The Secretary's finding number 27.4, published in the **Federal Register** dated May 18, 1982, explained that Kentucky's program did not demonstrate which rules are pertinent for the above procedures. The Secretary finds that Kentucky's amendment satisfies the condition by providing specific procedures and rules for service of process, discovery and burden of proof that are no less effective than those established in 43 CFR Part 4.

Finding 2, Condition (i)

Condition (i) requires Kentucky to amend its program to provide standards acceptable to the Secretary for the design of sedimentation ponds without an emergency spillway. Kentucky submitted revised regulations (405 KAR 16:090E and 18:090E) that are intended to satisfy condition (i) of the Secretary's approval.

The Secretary imposed condition (i) because the Kentucky program allowed the approval of sedimentation ponds designed without an emergency spillway and did not provide any standards to be used in approving such ponds (Finding 13.27, 47 FR 21413). The Secretary finds that the revised regulations contain standards of approval for single spillway ponds at 405 KAR 16:090, section 5 paragraph 3 and 18:090, section 5 paragraph 5 which are no less effective than 30 CFR 816.46 and 817.46.

Finding 3, Condition (j)

Condition (j) requires the State to amend its program to limit the authority of the Kentucky Natural Resources and

Environmental Protection Cabinet (Cabinet) in deleting water quality parameters from the permit information to those instances approved by OSM. In conditioning the program, the Secretary basically agreed with the State flexibility justification submitted by Kentucky (KY–438), but did not believe that Congress intended the State to have unlimited flexibility to delete all parameters on a case-by-case basis. Therefore, the Secretary directed Kentucky to submit either a regulatory change or a clear policy statement indicating that the deletions allowed in the regulations would only be exercised for dissolved manganese, dissolved iron and sulfate for existing operations not expected to create significant new surface disturbance (47 FR 21416–21417).

Since the time of the Secretary's approval, OSM has revised its rules. The Federal standards that address the requirements to be satisfied are 30 CFR 780.21 and 784.14 as revised on September 26, 1983 (48 FR 43956).

Kentucky revised 405 KAR 8:030, section 15(2)(b) and 8:040, section 15(2)(b) to reflect clearly that deletions of required parameters on a case-by-case basis is not authorized by Kentucky regulation. The Secretary finds that these revised regulations provide standards no less effective than 30 CFR 780.21 and 784.14 and, therefore, Kentucky has satisfied condition (j).

Finding 4, Condition (k)

Condition (k) requires Kentucky to amend its program to establish standards of costs and expenses no less effective than those provided in 43 CFR 4.1294.

The Secretary found Kentucky's phrase "as the Secretary deems proper" to be less effective than the Federal standard that specifies explicitly who is required to pay the costs, and what showing is necessary to receive an award.

Kentucky's amended rule at 405 KAR 7:090, section 12, paragraph 5(a)–(e) specifies who may be awarded costs and expenses and what showing is necessary to receive such an award. The Secretary finds that Kentucky's revised regulations provide a standard for the award of costs and expenses which is no less effective than the Federal standard in 43 CFR 4.1294. The Secretary also finds that Kentucky's proposal provides the same or similar procedures as is found in the Federal regulations for the award of costs and expense. Therefore, the Secretary finds that the State has satisfied condition (k).

Finding 5, Condition (o)

Condition (o) requires Kentucky to amend its program to provide for recharge capacity to groundwater consistent with section 515(b)(10)(D) of SMCRA. To satisfy condition (o), Kentucky revised its regulations at 405 KAR 16:060. In this regulation, Kentucky provides that "Groundwater quantity shall be protected by handling earth materials and runoff in a manner that will restore the approximate premining recharge capacity of the reclaimed area as a whole, excluding coal processing waste and underground development waste disposal areas and fills, so as to allow the movement of water to the groundwater system." The Secretary finds Kentucky's revised regulation to be no less effective than 30 CFR 816.41 and 817.41 and is consistent with section 515(b)(10)(D) of SMCRA. Therefore, Kentucky has satisfied condition (o).

Finding 6, Condition (p)

Condition (p) requires the State to amend its program to provide standards for water diversions for coal waste banks which are no less effective than 30 CFR 816.83(b) and 17.83(b). The Federal standard for water diversions for coal waste banks has been revised since the condition was imposed. OSM published its revision in the **Federal Register** dated September 26, 1983 (48 FR 44006) and therefore the Federal standard is now 30 CFR 816.83 and 817.83.

Kentucky's revised regulations at 405 KAR 16:140E and 18:140E accompanied by previously approved 405 KAR 16:130 provides a standard for water diversions for coal waste banks both during and after construction that is no less effective than 30 CFR 816.83 and 817.83. Kentucky, therefore, has satisfied condition (p).

IV. Public Comment

1. Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(a)(10)(i), comments were solicited from various Federal agencies on the proposed State permanent program amendments. Of those agencies invited to comment, comments were received from the following agencies: The United States Environmental Protection Agency (EPA) and the Fish and Wildlife Service (FWS).

The EPA, by its letter dated January 26, 1984, concurred with the Kentucky modifications pursuant to the requirements of SMCRA.

The FWS recommended that Kentucky revise further several sections contained in 405 KAR 8:030. OSM appreciates the commenter's concern pertaining to requiring adequate permit information relating to the protection and consideration of fish and wildlife resources. However, Kentucky revised section 2 of 405 KAR 8:030 to address specifically a condition of approval pertaining to water quality parameters. The recommendations made by the FWS pertain to other areas within the regulation and are not a subject of this rulemaking. Therefore, OSM cannot require that Kentucky make these suggested changes.

2. The Applachian Research and Defense Fund of Kentucky, Inc. (ARDFK) commented on the initial submission and the subsequent revisions.

ARDFK indicates the revision to 405 KAR 1:030, 1:040 and 1:050 substantially satisfy condition (d) pertaining to Kentucky's rule for civil procedure. However, ARDFK registered several concerns with Kentucky's amendment. The first area of concern pertains to personal service versus service by certified mail of administrative summons documents. ARDFK believes that Kentucky's provision could be read to allow only for personal service which would severely strain agency resources and slow the administrative process. When ARDFK commented in response to the May 14, 1984 resubmission, it indicated that the revised material addressed ARDFK's concern and the comment was withdrawn. OSM agrees that the revision submitted by Kentucky adequately provides for personal service and service by certified mail.

ARDFK also commented initially on Kentucky's revision to 405 KAR 1:040 pertaining to free access to expert witnesses and trial preparation materials. In the revised amendment material submitted on May 14, 1984, the State clarified its provisions pertaining to "discovery". When ARDFK commented, on the resubmission, it indicated that the May 14, 1984 material addressed its concern and the comment was withdrawn. OSM agrees that Kentucky's revised regulation provides the same or similar procedures for "discovery" as the Federal rule in 43 CFR Part 4.

Additionally, ARDFK is concerned that where the permittee seeks to set aside an enforcement action taken by the Cabinet that the burden of proof rests with the Cabinet. The commenter believes that the Cabinet's action should be presumed valid and that the party seeking to upset a determination should bear the burden of proving the impropriety of such agency action.

OSM agrees with the commenter insofar as 43 CFR 4.1171 provides that

the burden of going forward rests with the agency in establishing a *prima facie* case as to the validity of such an agency determination. The Federal standard indicates that the ultimate burden of persuasion rests with the applicant to establish the grounds for the requested relief from the enforcement action. However, OSM believes that Kentucky's provisions provide for a similar standard on burden of proof and Kentucky affirmatively stated in the May 14, 1984 resubmission that the ultimate burden of proof rests with the applicant. Therefore, OSM finds that Kentucky's revised regulation (405 KAR 1:040) submitted on October 31, 1983, and the material submitted on May 14, 1984, provides the same or similar procedures as sections 521, 525 and 526 of SMCRA, and is no less effective than 43 CFR part 4.

3. The Tennessee Valley Authority (TVA) comments that it strongly supports Kentucky's efforts toward correcting program conditions.

V. Approval of Amendment

Accordingly, the amendments submitted by Kentucky on October 31, 1983, and May 14, 1984, to satisfy conditions (d), (i), (j), (k), (o) and (p) on the Secretary's approval of the Kentucky program are approved pursuant to 30 CFR 732.17.

VI. Additional Findings

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 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 917

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

Dated: September 19, 1984.

Leona A. Power,

Acting Assistant Secretary, Land and Minerals Management.

PART 917—KENTUCKY

§ 917.11 [Amended]

1. 30 CFR 917.11 is amended by removing and reserving paragraphs (d), (i), (j), (k), (o) and (p).

2. 30 CFR 917.15 is amended by adding paragraph (i).

§ 917.15 Approval of Amendments to State Regulatory Program.

* * * * *

(i) The following amendments are approved effective on September 25, 1984: Revisions submitted on October 31, 1983, to 405 KAR 7:020 and 7:030; 1:030, 1:040 and 1:050; 16:090 and 18:090; 8:030 and 8:040; 7:090; 16:060; and 16:140 and 18:140 accompanied by material submitted by Kentucky on May 14, 1984, pertaining to 405 KAR 1:030, 1:040, 1:050, and 7:090.

(Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*))

[FR Doc. 84-25341 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Approval of Amendments and Removal of a Condition on the Approval of the Ohio Permanent Regulatory Program Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments and the removal of a condition of the Secretary of the Interior's approval of the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

By letter dated June 15, 1984, the Ohio Division of Reclamation (the Division) submitted to OSM a set of proposed regulations intended to satisfy condition (c) of the Secretary's approval of the Ohio program concerning the preparation of maps and plans and the design and certification of structures by qualified registered professional engineers or registered surveyors.

After providing opportunity for public review and comment and conducting a thorough review of the program amendments, the Secretary has determined that the modifications to the Ohio program satisfy the condition of approval and meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary is removing the condition and approving the regulatory amendments. The Federal rules at 30 CFR Part 935 which codify decisions concerning the Ohio program are being amended to implement these actions.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43227; Telephone: (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register** (47 FR 34688). The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions—(a), (b), (c), (d), (e), (f)(1)-(f)(10)), (g), (h)(1)-(h)(3), (i)(1)-(i)(3), (j) and (k)(1)-(k)(5). Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register.** In accepting the Secretary's conditional approval, Ohio agreed to correct deficiencies (a), (b), (c), (h)(1) and (k)(1) by August 8, 1983; deficiency (e) by September 16, 1982; and the remaining deficiencies by February 8, 1983.

On January 6, 1983, Ohio submitted materials to OSM intended to, among other things, satisfy conditions (a), (b), (c), (d), (f), (g), (h), (i), (j), (k)(1) and (k)(2). On May 24, 1983, the Secretary approved certain of the amendments and removed conditions (b), (d), (f)(1) through (f)(6), (f)(8) through (f)(10), (g), (h)(2), (h)(3), (i), (j), (k)(1) and (k)(2). The Secretary established a deadline of August 8, 1983, for the State to meet conditions (a), (c)(and (h)(1), and extended to that same date, the deadline for the State to meet conditions (f)(7), (k)(3), (k)(4), and (k)(5). Additionally, the

Secretary imposed two new conditions (l) and (m) which also carried a deadline of August 8, 1983.

On July 26, 1983, the Chief of the Ohio Division of Reclamation wrote to OSM requesting that Ohio be granted an extension of time to meet conditions (c), (f)(7), (h)(1), (k)(3), (k)(4), (k)(5) and (m).

On October 11, 1983, after providing public notice and an opportunity to comment, OSM announced the Secretary's decision to extend the deadline for Ohio to satisfy these conditions. The Secretary extended the deadline for conditions (f)(7), (h)(1), (k)(3), (k)(4) and (k)(5) until February 8, 1984, and the deadline for conditions (c) and (m) until August 8, 1984. Conditions (f)(7), (k)(3), (k)(4) and (k)(5) were removed on May 1, 1984, and on July 5, 1984, the deadline for satisfying condition (h)(1) was extended to April 30, 1985. Condition (m) is the subject of a separate rulemaking notice (49 FR 32403, August 14, 1984).

Condition (c) stipulates that Ohio must amend its program to require that work be performed by qualified registered professional engineers in instances required by SMCRA and the Federal regulations. Ohio submitted an amendment to satisfy this condition on January 6, 1983. On May 24, 1983, the Secretary determined that the condition had not been satisfied because Ohio Revised Code (ORC) section 1513.07(B)(2)(n)(i) provided that registered surveyors would be allowed to perform all plans, maps, and certifications as they are authorized under ORC Chapter 4733. ORC Chapter 4733 provides for the registration of professional engineers and surveyors in Ohio. The Secretary found that this provision would allow surveyors to perform certain duties which SMCRA requires be done by engineers or geologists. The Secretary also found that the Ohio Administrative Code (OAC) had not been amended as required by condition (c).

Since that time, SMCRA has been amended to provide that, notwithstanding section 507(b)(14), cross-section maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans.

II. Submission of Revisions

By letter dated June 15, 1984, Ohio submitted proposed program amendments consisting of revised regulations and a Division Advisory Memorandum intended to satisfy condition (c) due August 8, 1984.

Specifically Ohio has:

(1) Proposed changes to paragraph (I) of rule 1501:13–4–04 concerning map preparation to remove the word "professional" from the phrase "registered professional surveyor";

(2) Proposed changes to paragraph (L) of rule 1501:13–4–04 concerning design maps and plans for ponds and other structures to remove the authority for registered surveyors to prepare and certify such maps and plans;

(3) Proposed changes to paragraphs (I) and (J) of rule 1501:13–4–13 concerning map preparation and certification to allow registered surveyors to prepare and certify such maps and to remove the dual certification requirements that both an engineer and a surveyor must certify such maps;

(4) Proposed changes to paragraph (L) of rule 1501:13–4–13 concerning design maps and plans for ponds and other structures to remove the authority for a professional geologist to prepare and certify such maps and plans;

(5) Proposed changes to paragraphs (B)(5) and (G)(15) of rule 1501:13–9–04 concerning drainage control systems to provide that structures shall be certified upon completion of construction either by a qualified registered professional engineer and a qualified registered surveyor, to the extent such joint certification is required or permitted by the chief, as meeting the dimensions and design criteria set forth in the engineering plans, drawings, and design details submitted as part of the permit application; and

(6) Submitted to OSM a copy of Division Advisory Memo No. 31 dated May 22, 1984, and addressed to all Ohio coal mine operators and consultants regarding certification of sediment ponds. The memo explains the Division's certification requirements and the authority of engineers and surveyors to perform various roles according to State and Federal law.

On July 24, 1984, OSM published a notice in the **Federal Register** announcing receipt of the amendments and requesting public comment on whether the proposed amendments are no less effective than the Secretary's regulations and whether the amendments satisfy the condition of approval. (49 FR 29804) The public comment period ended August 23, 1984. A public hearing scheduled for August 14, 1984, was changed to a public meeting because only one person expressed a desire to present testimony. On July 24, 1984, the Director, pursuant to section 503(b)(1) of SMCRA, requested the concurrence of the Environmental Protection Agency (EPA) on the proposed modifications to the Ohio program. The EPA provided its concurrence on September 10, 1984.

III. Secretary's Findings

The Secretary finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on June 15, 1984, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

The Secretary found that the Ohio program conditionally approved on August 16, 1982, allowed registered land surveyors to perform certain duties which SMCRA requires be done by qualified registered professional engineers or registered geologists. On May 24, 1983, the Secretary found that a January 6, 1963 Ohio amendment did not fully satisfy condition (c) because the Ohio Administrative Code (OAC) had not been amended as required. Since that time, SMCRA has been amended to provide that, notwithstanding section 507(b)(14), cross-section maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans. To implement the amendment to SMCRA, OSM has drafted proposed rules which will be published for comment in the Federal Register in the near future. The proposed rules will clarify what portions of the permit application may be prepared by land surveyors. Should the amendments to the Federal rules necessitate any further changes in the Ohio program, the Director of OSM will notify the State of any required program amendments.

The June 15, 1984 proposed program amendment included a copy of Division Advisory Memo No. 31 to all coal operators regarding the role of surveyors in the permit application process. The Memo states that:

1. Detailed design plans for sediment ponds required by OAC 1501:13–4–04(L) cannot be prepared and certified by surveyors, but must be prepared and certified by a professional engineer;

2. Registered surveyors may prepare the supplemental cross-sections, maps and plans for sediment ponds required by section 1513.07(B)(2)(n)(i) of the Ohio Revised Code and OAC 1501:13–4–04(J), and may prepare the application map required by OAC 1501:13–4–04(I); and

3. Certification that a pond is built according to design may be submitted

with an engineer's certification only, except that a surveyor may partially certify pond construction only to the extent that he is certifying that the measurements of the pond structure conform to the measurements contained in the detailed design plan submitted with the application and prepared by the engineer.

In Ohio, unlike some other States, State law does not permit surveyors to perform design functions. Therefore, even though SMCRA has been amended, surveyors in Ohio may not prepare detailed design plans, but may prepare general plans, maps and cross-sections which constitute measurement, rather than design functions.

The Secretary finds that the responsibilities set forth in the Memo are consistent with SMCRA, as amended, and the Federal regulations.

Ohio has amended paragraph (I) of OAC 1501:13–4–04, concerning preparation of a surface mining permit application map, to remove the word "professional" from the phrase "registered professional surveyor". In Ohio, a registered surveyor is a professional surveyor by definition. The inclusion of the word "professional" would be redundant. Therefore, the Secretary finds the amendment is consistent with SMCRA as amended.

Ohio has amended paragraph (L) of OAC 1501:13–4–04, concerning preparation and certification of detailed design plans and maps for surface mining ponds and impoundments, to remove the authority for a registered surveyor to prepare and certify such maps and plans. The Secretary finds that the amendment is no less effective than 30 CFR 780.25.

Ohio has amended paragraph (I) of OAC 1501:13–4–13, concerning preparation of an underground mining application map, to remove the requirement for dual certification by both an engineer and a surveyor and instead allow either an engineer or a surveyor to prepare and certify the map. The Secretary finds the amendment to be consistent with SMCRA as amended.

Ohio has amended paragraph (J) of OAC 1501:13–4–13 concerning preparation of supplementary maps, cross-sections and plans for underground mining applications, to allow either a qualified registered professional engineer or a registered surveyor to prepare and certify such maps, cross-sections and plans. The Secretary finds the amendment to be consistent with SMCRA, as amended.

Ohio has amended paragraph (L) of OAC 1501:13–4–13, concerning detailed design plans and maps for underground mining ponds, impoundments and coal waste structures, to remove the authority for professional geologists to prepare and certify such plans and maps. The Secretary finds the amendment to be no less effective than 30 CFR 784.16.

Ohio has amended paragraph (B)(5) of OAC 1501:13–9–04, concerning construction of drainage control systems, to provide that such structures shall be certified upon completion of construction either by an engineer or jointly by an engineer and a surveyor to the extent such joint certification is required or permitted by the Chief of the Division as meeting the dimensions and design criteria set forth in the design plan submitted as part of the permit application. The Secretary finds the amendment makes the Ohio rule no less effective than 30 CFR 816.49 and 817.49.

Ohio has amended paragraph (G)(15) of OAC 1501:13–9–04, concerning pond design and construction, to provide that ponds shall be inspected during construction and certified after construction by an engineer or jointly by an engineer and surveyor to the extent such joint certification is required or permitted by the Chief of the Division. The Secretary finds the amendment makes the Ohio rule no less effective than 30 CFR 816.49 and 817.49.

The Secretary finds, based on the Division Advisory Memo and the changes to the Ohio rules discussed above, that Ohio has satisified condition (c) regarding duties to be performed by engineers and surveyors in the Ohio program.

IV. Public Comments

At the public meeting held on August 14, 1984, several commenters objected to the proposed changes to OAC 1501:13–9–04(B)(5) requiring joint certification by engineers and surveyors of "as built" structures, stating that surveyors should be allowed to certify "as built" structures independently because such work is "measurement" work which surveyors are authorized and required to perform under Ohio law. One commenter also stated that construction certification requirements for small ponds (those not meeting the size or other criteria of 30 CFR 77.216(a)) are excessive and that in any event such certifications ought to be performed by surveyors.

The Division Advisory Memo makes clear that a surveyor may partially certify "as built" construction to the extent that he is certifying that the measurements of the structure conform to the measurements contained in the detailed design plan. Certification of stability, compaction, and detention time must be submitted by an engineer. This direction is consistent with the Ohio statute and with section 515(b)(10) of SMCRA and 30 CFR 816.46 and 817.46.

Two commenters stated that removal of the word "professional" from OAC 1501:13–9–04(I) was unnecessary. The Secretary has determined that the word "professional" is implicit in the phrase "registered surveyor" and its deletion does not change the meaning of the phrase.

Acknowledgements were received from the following Federal agencies:

Department of Labor—Mine Safety and Health Administration
Department of the Army—Office of the Chief of Engineers
Department of Agriculture—Farmers Home Administration

The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Secretary's Decision

The Secretary, based on the above findings, is approving the June 15, 1984 amendments to the Ohio program, and is removing condition (c). Part 935 of 30 CFR Chapter VII is being amended to reflect the above actions.

VI. 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 935

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

Accordingly, 30 CFR Part 935 is amended as set forth herein..

Dated: September 19, 1984.

Leona A Power,

Acting Assistant Secretary for Land and Minerals Management.

PART 935—OHIO

§ 935.11 [Amended]

1. 30 CFR 935.11 is amended by removing and reserving paragraph (c).

2. 30 CFR 935.15 is amended by adding a new paragraph (k) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(k) The following amendments submitted to OSM on June 15, 1984, are approved effective upon promulgation of the rules by the State, provided the rules adopted are identical to the rules submitted to and reviewed by OSM: Ohio Administrative Code sections 1501:13–4–04 (I) and (L); 1501:13–4–13 (I), (J), and (L); 1501:13–9–04 (B)(5) and (G) (15); and Division Advisory Memo No. 31.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 84–25339 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2679–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Enviromental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is revising the Federal Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the B.F Goodrich plant and the Ohio Edison Company's Beech Street power station in Summit County, Ohio. This revision is based on an urban modeling analysis submitted by the State of Ohio. The analysis demonstrates that this revision will not interfere with the attainment and maintenance of the SO_2 National Ambient Air Quality Standards. This action revises the B.F Goodrich SO_2 emission limits from 5.54 lbs SO_2/MMBTU to 7.0 lbs SO_2/MMBTU. In addition USEPA is revising the Ohio Edison Beech Street Plant emission limit from 2.79 to 0.0 because the plant is permanently shut down.

EFFECTIVE DATE: This final rulemaking becomes effective on October 25, 1984.

ADDRESSES: Copies of the Docket #5A–83–3 are on file at the following addresses for review. (It is recommended you telephone the contact person below before visiting the Region V office.)

U.S. Enviromental Protection Agency, Region V, Air and Radiation Branch 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Enviromental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Copies of the SIP revision request is also available for inspection at: Ohio Enviromental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation branch (5AR–26), Enviromental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On January 6, 1983, the Ohio Enviromental Protection Agency (Ohio USEPA) submitted a request for a revision to the SO_2 emission limitation for the B.F Goodrich South Main Street Plant in Summit County, Ohio. The submittal was intended as a request for a revision to the current Federal SIP, which was promulgated by USEPA on December 5, 1979 (44 FR 69928). Additional technical support was submitted to USEPA on April 15, 1983.

Ohio EPA requested that USEPA revise the emission limit for coal-fired Boilers No. 27 and 32 at the B.F Goodrich facility from 5.54 lbs SO_2/MMBTU to 7.0 lbs SO_2/MMBTU. The current Federal limit of 0.51 lbs SO_2/MMBTU for Boiler Number 31 and the nonsimultaneous operating restriction for Boilers Nos. 27 and 32 currently in the SIP are not being revised.

To determine if the 7.0 lbs SO_2/MMBTU limit will provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), B.F Goodrich performed a RAM urban modeling analysis. The results of the analysis demonstrate that the revision will not interfere with the attainment and maintenance of the SO_2 NAAQS. Therefore, USEPA is promulgating this revision to the Ohio SO_2 SIP. Fuirther discussion of the modeling analysis is contained in the technical support document for this revision, which is available for review at the Region V office.

The emission inventory prepared by the State and used in the modeling attainment demonstration did not include the Ohio Edison Beech Street Plant because it is permanently shut down. Therefore, as part of this rulemaking, USEPA is also revising the limit for the Ohio Edison Beech Street Plant from 2.79 lbs SO_2/MMBTU to 0.00 lbs SO_2/MMBTU.

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

USEPA also reviewed the proposed B.F Goodrich revision for consistency with section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling for the revision was limited to a 50 km radius around the B.F Goodrich plant. There is no other State within 50 km of the plant. Furthermore, although the revision would increase allowable emissions from the B.F Goodrich plant by approximately 1,200 tons per year, the revision for both B.F Goodrich and Beech Street taken together represent a net decrease in allowable emissions of about 5,200 tons per year and is not ex pected to result in an increase in actual emissions from historical levels. Therefore, the revision will not affect PSD increment consumption.

The modeling for this revision demonstrated that 3-hour and 24-hour ambient SO_2 concentrations resulting from B.F Goodrich's emissions decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in USEPA's judgment, the revision would not contribute significantly to SO_2 nonattainment in any other State.

Public Comment

On March 23, 1984 (49 FR 11103), USEPA proposed to revise the Federal Ohio SIP as noted above. No public comments were submitted to USEPA during the 30-day public comment period.

Final Action

USEPA is revising the B.F. Goodrich SO_2 emission limit from 5.54 lbs. SO_2/MMBTU to 7.0 lbs. SO_2/MMBTU and the Ohio Edison Beech Street Plant SO_2 emission limit from 2.79 to 0.0.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

This notice is issued under authority of section 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: September 14, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Ohio

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

Subpart KK—Ohio

Section 52.1881(b) is amended by revising paragraphs (59)(viii)(B) and (59)(xi) as follows:

§ 52.1881 Control Strategy: Sulfur Oxides (sulfur dioxide).

* * * * *

(b) * * *

(59) * * *

(viii) * * *

(B) 7.0 pounds of sulfur dioxide per million BTU actual heat input for coalfired Boilers #27 and #32.

* * * * *

(xi) The Ohio Edison or any subsequent owner or operator of the Ohio Edison Company's Beech Street power station in Summit County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at the Beech Street plant in excess of 0.00 pounds of sulfur dioxide per million BTU actual heat input.

* * * * *

[FR Doc. 84-25361 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-1-FRL-2679-7]

Approval and Promulgation of Implementation Plans; Massachusetts; Temporary Sulfur-in-Fuel Revision for James River Corporation, Hyde Park Mill in Boston

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the Massachusetts State Implementation Plan (SIP) which will allow James River Corporation, Hyde Park Mill in Boston, Massachusetts to increase the sulfur content of its residual fuel oil for up to 30 months. The burning of less expensive, higher sulfur content fuel oil will provide this source with some of the capital needed to implement permanent energy conservation measures.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene, (617) 223-5133.

ADDRESSES: Copies of the Massachusetts submittal, which is incorporated by reference, are available for public inspection during regular business hours at the Environmental Protection Agency, Region I, Room 2313, JFK Federal Building, Boston, Massachusetts 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 110 L Street, NW., Room 8401, Washington, D.C. 20460 and the Department of Environmental Quality Engineering, 8th Floor, One Winter Street, Boston, Massachusetts 02108.

SUPPLEMENTARY INFORMATION: On July 11, 1984, the Massachusetts DEQE submitted a SIP revision for James River Corporation, in Hyde Park Mill, Boston, Massachusetts. The revision allows the burning of 2.2% sulfur fuel in their boilers for 30 months or less. During this time period, James River Corporation has committed to implementing permanent energy conservation measures. The facility will use the savings realized during the temporary (30 months or less) utilization of less expensive 2.2% sulfur fuel oil to defray the costs of implementing the permanent energy conservation measures. The facility will return to burning 0.5% sulfur fuel oil by 30 months from the effective date of this Register.

Background

This temporary sulfur-in-fuel revision is being approved pursuant to the provisions of Regulation 310 CMR 7.19, "Interim Sulfur-in-Fuel Limitation for Fossil Fuel Utilization Facilities Pending Energy Conservation Measures." EPA approved the addition of this regulation to the Massachusetts SIP on March 19, 1981, (46 FR 82677). It specifies the requirements and conditions which sources must meet in order to qualify for temporary sulfur-in-fuel relaxations and the procedures which the Massachusetts Department of Environmental Quality Engineering (DEQE) must use to determine that the emissions will not violate any National Ambient Air Quality Standards (NAAQS). Only sources rated at less than 250 million Btu per hour heat input, which are currently burning residual fuel oil, and have made a commitment to either (a) convert to an alternate fuel, or (b) implement energy conservation measures, are eligible for a temporary sulfur-in-fuel revision not to exceed 30 months. Further details on the requirements of Regulation 310 CFR 7.19 and EPA's reasons for approving it were discussed in a Notice of Proposed Rulemaking (NPR) published on December 16, 1980 (45 FR 82675). In the NPR, EPA also proposed approval of all individual sources that meet the eligibility requirements of this regulation.

EPA Evaluation

EPA has determined that the DEQE has approved James River Corporation's request to burn higher sulfur fuel oil in accordance with the provisions of Regulation 310 CMR 7.19, and agrees that no air quality standards will be violated by the temporary burning of 2.2% sulfur fuel oil at this facility.

EPA received no comments on its December 16, 1980 (45 FR 82675) proposal to approve individual sources of sulfur-in-fuel relaxations, and DEQE received no comments on its proposed approval of the temporary sulfur-in-fuel relaxation at the James River Corporation, Hyde Park Mill facility in Boston. Since the public has had these other opportunities to comment, and since EPA published a generic NPR for all such sulfur relaxations, EPA believes that publishing a new NPR is unnecessary. Therefore, EPA is taking final action today to approve this SIP revision without first publishing a new proposed rulemaking. EPA finds good cause for making this action effective immediately because the implementation plan is already in effect under State law and imposes no additional regulatory burden.

Final Action

EPA is approving the proposed temporary sulfur-in-fuel relaxation revision for James River Corporation.

Under U.S.C. section 605(b), the Administrator has certified that this action will not have significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

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

Dated: September 14, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

Part 52, Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart W—Massachusetts

Section 52.1120, is amended by adding paragraph (c)(67) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(67) A revision submitted on July 11, 1984 allowing the burning of 2.2% sulfur content fuel oil at the James River Corporation Hyde Park Mill facility in Boston, Massachusetts for a period of up to 30 months, commencing on September 25, 1984.

[FR Doc. 84-25362 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[Docket No. MA 1462; A-1-FRL-2679-8]

Approval and Promulgation of Implementation Plans; Massachusetts; Sulfur Dioxide Revision for Boston Edison Co.; Mystic Station Unit 7

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These revisions renew a temporary, 30-month variance to 310 CMR 7.05(1)(d)2 to allow for the burning of 2.2% sulfur content fuel oil in boiler unit 7 (Unit 7) of the Boston Edison Company (BECo) Mystic Station facility (Mystic) in Everett, Massachusetts. The intended effect of this action is to allow for the continued use of higher sulfur content fuel oil at Mystic Unit 7. This action is taken pursuant to sections 110 and 301 of the Clean Air Act.

EFFECTIVE DATE: September 25, 1984.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2312, JFK Federal Building, Boston, Mass. 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408 and at the Division of Air Quality Control of the Massachusetts Department of Environmental Quality Engineering, 1 Winter Street, 8th Floor, Boston, Mass. 02108.

FOR FURTHER INFORMATION CONTACT: Jon Pollack, (617) 223-4867.

SUPPLEMENTARY INFORMATION: On April 25, 1984 (49 FR 17773), EPA published a Notice of Proposed Rulemaking (NPR) proposing to approve revisions to the Massachusetts SIP. These revisions would approve a variance to 310 CMR 7.05(1)(d)2 to allow for the continued use of 2.2% sulfur (S) content fuel oil at Mystic Unit 7 for a period of thirty months. A more complete discussion of the revisions and the rationale for EPA's proposed action is contained in the NPR. In addition, the NPR discusses a number of conditions that the Massachusetts Department of Environmental Quality Engineering has attached to the variance.

Two public comments supporting the proposed action were received in response to the NPR.

Final Action

EPA is approving revisions to the Massachusetts SIP that allow for the continued use of 2.2% S fuel oil at BECo's Mystic Station Unit 7 for a period of thirty months.

As noted in the NPR, the modeling demonstration supporting this action is based on full stack height credit (500 feet) for the stack serving Unit 7. This height is consistent with "good engineering practice" as the term is defined by the formula in EPA's existing stack height regulations, 40 CFR 51.1.

Portions of the stack height regulations promulgated on February 8, 1982 (47 FR 5864), have been overturned by a panel of the U.S. Court of Appeals for the D.C. Circuit. *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir., 1983). While EPA believes the actions taken today to be consistent with the court decision, these actions may be subject to modification when revised regulations are promulgated in response to the decision. This may result in revised emission limitations or may affect other actions taken by States and source owners or operators.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Authority: Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

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

Dated: September 14, 1984.

William D. Ruckelshaus,

Administrator.

PART 52—[AMENDED]

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

Subpart W—Massachusetts

Section 52.1120, is amended by adding subparagraph (c)(65) as follows:

§52.1120 Identification of plan.

* * * * *

(c) * * *

(65) A temporary variance to 310 CMR 7.05(1)(d)2 of "Sulfur Content of Fuels and Control Thereof for Metropolitan Boston Air Pollution Control District" submitted on January 6, 1984 to allow for the use of 2.2% sulfur content fuel oil in boiler unit 7 of the Boston Edison Company Mystic Station facility in Everett for thirty months commencing on September 25, 1984.

[FR Doc. 84-25363 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 147

[OW-10-FRL-2664-7]

Oregon Department of Environmental Quality; Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of Oregon has submitted an application under sections 1422 and 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing Classes I, II, III, IV, and V injection wells. After careful review of the application, the Agency has determined that the State's injection well program for Classes I, III, IV, and V injection wells meets the requirements of Section 1422 of the Act and, that the State's injection well program for Class II oil and natural gas related wells meets the requirements of section 1425 of the Act. Therefore, this application covering Classes I–V injections is approved.

EFFECTIVE DATE: This approval shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on October 9, 1984. This approval shall become effective on October 9, 1984.

FOR FURTHER INFORMATION CONTACT: Gerald Opatz, Mail Stop 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. PH: (206) 442-1225, FTS 399-1225.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA) provides for an Underground Injection Control (UIC) program. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection which endangers drinking water sources. The Administrator is also to list in the Federal Register each State for which, in his judgment, a State UIC program may be necessary. Each State listed shall submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State: (i) Has adopted after reasonable notice and public hearings, a UIC program which meets the requirements of regulations in effect under section 1421 of the SDWA; and (ii) will keep such records and make such reports with respect to its activities under its UIC program as the Administrator may require by regulations. After reasonable opportunity for public comment, the Administrator shall by rule approve, disapprove or approve in part and disapprove in part, the State's UIC program.

The SDWA was amended on December 5, 1980, to include section 1425, which establishes an alternative method by which a State may obtain primary enforcement responsibility for those portions of its UIC program related to the recovery and production of oil and natural gas (Class II wells). Specifically, instead of meeting Federal Regulations (40 CFR Parts 124, 144, and 147) and related Technical Criteria and Standards (40 CFR Part 146), a State may demonstrate that its program meets the more general statutory requirements of section 1421 (b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.

The State of Oregon was listed as needing a UIC program on June 19, 1979 (44 FR 35288). The State submitted an application under sections 1422 and 1425 on November 14, 1983, for a UIC program to be administered by the Oregon Department of Environmental Quality (ODEQ). On February 3, 1984, EPA published notice of receipt of the application, requested public comments, and offered a public hearing on the UIC program submitted by the ODEQ (49 FR 4216). Neither requests for public hearing nor requests to offer testimony at such hearings were received by EPA. Therefore, pursuant to the provisions of 40 CFR 145.31(c), the public hearing was cancelled because of lack of sufficient public interest.

After careful review of the application, I have determined that the Oregon UIC program submitted by the ODEQ to regulate Classes, I, II, III, IV, and V injection wells meets the requirements established by the Federal regulations pursuant to sections 1422 and 1425 of the SDWA and, hereby approve it. However, since there are no Class I, III, and IV wells and the State has elected to prohibit such injection, Class I, III, and IV injection will be banned. The effect of this approval is to establish this program as the applicable underground injection control program under the SDWA for the State of Oregon.

This approval does not, however, apply to that portion of the Memorandum of Agreement (MOA) between the USEPA and the ODEQ which deals with the State's National Pollutant Discharge Elimination System (NPDES) program. The existing NPDES MOA between the USEPA and the ODEQ remains in force and is neither superseded or modified by approval of the UIC program.

This approval will be codified in 40 CFR 147.1900. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators are incorporated by reference. These provisions incorporated by reference, as well as all permit conditions or permit denials issued pursuant to such provisions, are enforceable by EPA pursuant to section 1423 of the SDWA.

In this application, Oregon chooses not to assert jurisdiction over Indian lands or reservations for purposes of its UIC program. Therefore, the EPA will, at a future date, prescribe a UIC program governing injection wells on any Indian lands or reservations.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indians—lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

OMB Review

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1422 of the Safe Drinking Water Act of the application by the Oregon Department of Environmental Quality will not have a significant economic impact on a substantial number of small entities, since this rule

only approves State actions. It imposes no new requirements on small entities.

(42 U.S.C. 300 SDWA 1425 and 1422)

Dated: September 7, 1984.

William D. Ruckelshaus,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart MM—Oregon

Amend 40 CFR Part 147 by revising § 147.1900 as follows:

§ 147.1900 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Oregon is the program administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the Federal Register on September 25, 1984; the effective date of this program is October 9, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Oregon. This incorporation by reference was approved by the Director of the Federal Register effective October 9, 1984.

(1) Oregon Revised Statutes, Title 16, Ch. 164, section 164.785; Title 36, Ch. 468, sections 468.005, 468.065 to 468.070, 468.700 to 468.815; Title 43, Ch. 520 sections 520.005, 520.095, 520.155—520.330 (1983);

(2) Oregon Administrative Rules, 340 Division 44 sections 340–44–005 to 340–44–055 October 1983, 340–45–005 to 340–45–070 (June 1980); Ch. 632 sections 632–10–002 to 632–10–235 (Dated October 1982); 632–20–005 to 632–20–159; 632–20–170 to 632–20–180 (January 1981).

(b) *Other Laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) Oregon Revised Statutes, Chapter 183; 192.420, 192.500, 459.460(3), 468.005–468.605, 468.780–468.997; Chapters 516, 522 (1983);

(2) Oregon Administrative Rules, Ch. 137, Div. 3 (July 1982); Ch. 340, Div. 11 (November, 1983); Ch. 340, Div. 14 (November, 1983); Ch. 340, Div. 52 (November 1983); Ch. 632, Div. 1 (June 1980); Ch. 632, Div. 20 (January 1981);

(c)(1) The Memorandum of Agreement between EPA Region X and the Oregon Department of Environmental Quality, signed by the EPA Regional Administrator on May 3, 1984.

(d) *Statement of Legal Authority.*

(1) "Underground Injection Control Program Legal Counsel's Statement," October 1983, signed by the Assistant Attorney General, Oregon;

(2) Opinion of the Attorney General, Oregon, 35 Op. Attorney General 1042 (1972).

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[FR Doc. 84–24371 Filed 9–24–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 415

[WH–FRL–2678–4]

Inorganic Chemicals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This notice corrects typographical errors that appeared in the August 22, 1984 publication (49 FR 33402) of the Environmental Protection Agency's regulations on Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards. These regulations were promulgated under the Clean Water Act to limit the discharge of effluents to waters of the United States and the introduction of pollutants into publicly owned treatment works from inorganic chemical manufacturing facilities.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Fielding, (202) 382–7156.

SUPPLEMENTARY INFORMATION: We are amending 40 CFR Part 415, Inorganic Chemicals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards to correct typographical errors in the promulgated regulation.

Authority: Sections 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567 Pub. L. 95–217.

List of Subjects in 40 CFR Part 415

Inorganic chemicals, Water pollution control, Waste treatment and disposal.

PART 415—[CORRECTED]

The following corrections are made to 40 CFR Part 415 appearing in the August 22, 1984 issue on page 33402:

1. Page 33420, column 3, § 415.01(b), in the list of subparts, change "M" to "BM."

2. Page 33428, column 2, § 415.662, in the table, change "NSPS Effluent Limitations" to "BPT Effluent Limitations."

3. Page 33428, column 2, § 415.663, in the table, change "BPT Effluent Limitations" to "BAT Effluent Limitations."

4. Page 33428, column 3, § 415.666, in the table, change "BAT Effluent Limitations" to "PSNS Effluent Limitations."

5. Page 33429, column 1, § 415.672, in the table, change "BAT Effluent Limitations" to "BPT Effluent Limitations."

6. Page 33429, column 2, § 415.673 and § 415.674, and column 3, § 415.675, in all three tables change the effluent limitations for lead for the maximum for any one day from 0.6 milligrams per liter (mg/l) to 0.18 mg/l; and, in all three tables, change the effluent limitations for lead for the average of daily values for 30 consecutive days from 0.2 mg/l to 0.048 mg/l.

7. Page 33429, column 3, § 415.675, in the table, change "BPT Effluent Limitations" to "NSPS Effluent Limitations."

Dated: September 18, 1984.

Henry L. Longest II,

Acting Assistant Administrator for Water.

[FR Doc. 84–25350 Filed 9–24–84; 8:45 am]

BILLING CODE 6560–50–M

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 610, 611, 612, 613, 640, 650, and 670

Nomenclature Changes

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: This action makes technical corrections and conforming amendments to NSF regulations on procedures and criteria for resolving questions involving moral character or loyalty of applicants for and holders of NSF fellowships; effectuation of Title VI of the Civil

Rights Act of 1984, availability of information and records, implementation of the Privacy Act, compliance with the National Environmental Policy Act, Patents, and conservation of Antarctic animals and plants.

EFFECTIVE DATE: September 25, 1984.

ADDRESS: Any comments should be addressed to: Paralegal, office of the General Counsel, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Sukari S. Smith, Paralegal, Office of the General Counsel, National Science Foundation, Washington, DC 20550, 202–357–9580 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These changes are being made at this time so they can be incorporated into the next edition of Title 45 of the Code of Federal Regulations.

Explanation of changes

The changes made to Parts 610, 611, 612, 613, and 640 of Title 45 of the Code of Federal Regulations merely correct the titles of officals and organizational elements to conform to present NSF nomenclature.

The "Scope of Part" section of the NSF Patents regulation (Section 650.1 of Title 45 of the Code of Federal Regulations) is reworded to reflect the issuance of the Federal Acquisition Regulations.

In accordance with Transmittal Memorandum No. 1 to Office of Management and Budget Circular A–124 (published at 49 FR 10393), the standard patent rights clause contained in § 650.4(a) of Title 45 of the Code of Federal Regulations is amended as follows:

(a) "(April 1983)" in the title is changed to "(September 1984)".

(b) In subparagraph a(5), the words "means a small business concern" are replaced by "means a domestic small business concern".

(c) In subparagraph a(6), the words "means a university or other" are replaced by "means a domestic university or other" and the words "any nonprofit scientific" are replaced by "any domestic nonprofit scientific".

(d) In subparagraph c(2), the words "months of disclosure to the grantee" are replaced by the words "months of disclosure to grantee personnel responsible for patent matters".

(e) In paragraph d, "(1)" is deleted, "(i)" is changed to "(1)", "(ii)" is changed to "(2)", and "(iii)" is changed to "(3)".

(f) The following sentence is added to the end of subparagraph d(1), as redesignated: "NSF may only request title within sixty days after learning of the grantee's failure to disclose or elect within the specified times."

(g) In the last sentence of paragraph h, "35 U.S.C. 202(c)(5)" is replaced by "law".

In addition, in the first sentence of the last paragraph of the standard Patent Rights clause in § 650.4(a) of the Code of Federal Regulations, the words "Foundation, 20550" are replaced by the words "Foundation, Washington, DC, 20550" to correct a clerical error.

The entire section containing the Foundation's standard Patent Rights clause is being republished to allow these changes to be seen in context and to give interested parties a complete, up-to-date copy of that clause.

To bring the Foundation's procedure for waiver of rights to inventions into compliance with the Federal Acquisition Regulations, 48 CFR 27.304–1(f)(2), § 650.13(e) of Title 45 of the Code of Federal Regulations has been amended to require preparation of a written statement for waivers of rights to inventions made under contracts subject to the FAR.

To comply with an Office of Management and Budget requirement (5 CFR 1320.4(a)), information collection control numbers are added at the end of those sections in Chapter VI of Title 45 of the Code of Federal Regulations requiring Civil Rights Act compliance information (§ 611.6), containing the standard Patent Rights clause (§ 650.4), and dealing with application for permits to take plants or wildlife to or from Antarctica (§ 670.9).

Executive Order 12291

The Foundation has determined that this action is not a major rule as defined in Executive Order 12291 of February 17, 1983 (3 CFR 1981 Comp., p. 127).

These changes are mostly technical corrections and additions to existing regulations. The only substantive amendments are those made to conform the NSF Patents Rights clause to that contained in OMB Circular A–124, as amended by Transmittal Memorandum No. 1, and the public had an opportunity to comment on those changes when they were promulgated by OMB. Therefore, the Foundation found that obtaining public comment on this action before making it final was unnecessary.

List of Subjects

45 CFR Part 610:

Scholarships and fellowships, Students.

45 CFR Part 611:

Civil rights, Government procurement, Grant programs—science and technology, Nondiscrimination.

45 CFR Part 612:

Freedom of information.

45 CFR Part 613:

Privacy.

45 CFR Part 640:

Environmental protection.

45 CFR Part 650:

Government procurement, Grant programs—science and technology, Inventions and patents, Nonprofit organizations, Small businesses.

45 CFR Part 670:

Endangered and threatened wildlife, Natural resources, Research.

Arthur J. Kusinski,

Acting General Counsel.

September 20, 1984.

Accordingly, Title 45 of the Code of Federal Regulations is amended as provided below:

PART 610—[AMENDED]

§ 610.2 [Amended]

1. Section 610.2(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "the Associate Director (Scientific Personnel and Education)" with "the Assistant Director for Science and Engineering Education".

PART 611—[AMENDED]

§ 611.6 [Amended]

2. Section § 611.6 of Title 45 of the Code of Federal Regulations is amended by adding the OMB control number to read as follows:

(Approved by the Office of Management and Budget under control number 3145–0087)

PART 612—[AMENDED]

§ 612.2 [Amended]

3. Section 612.2(c) of Title 45 of the Code of Federal Regulations is amended by replacing "ADAO" with "AD/A" in the second sentence.

PART 613—[AMENDED]

§ 613.2 [Amended]

4. Section 613.2(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "Management Analysis Office" with "Division of Administrative Services".

§ 613.3 [Amended]

5. Section 613.3(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "Management Analysis Office" with "Division of Administrative Services".

PART 640—[AMENDED]

§ 640.2 [Amended]

6. Section 640.2(a) of Title 45 of the Code of Federal Regulations is amended by replacing the words "the Office of Government and Public Programs, and the Office of Planning and Resources Management" with "the Office of Legislative and Public Affairs, and the Office of the Comptroller".

PART 650—[AMENDED]

7. Section 650.1 of Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 650.1 Scope of part.

This part contains the policies, procedures, and clauses that govern allocation of rights to inventions made in performance of NSF-assisted research. It applies to all funding agreements entered into by the Foundation after September 30, 1984, that relate to performance of scientific or engineering research. As stated in the NSF Acquisition Regulation (Chapter 25 of Title 48 of the Code of Federal Regulations), the provisions of this part apply to contracts as well as to grants and cooperative agreements.

8. Section 650.4 of Title 45 of the Code of Federal Regulations is revised to read as follows:

§ 650.4 Standard patent rights clause.

(a) The following Patent Rights clause will be used in every funding agreement awarded by the Foundation that relates to scientific or engineering research unless a special patent clause has been negotiated (see § 650.5).

Patent Rights (September 1984)

a. Definitions

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(2) "Subject invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small business firm" means a domestic small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

b. Allocation of Principal Rights

The grantee may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world. If the award indicates it is subject to an identified international agreement or treaty, the Foundation also has the right to direct the grantee to convey to any foreign participant such patent rights to subject inventions as are required to comply with that agreement or treaty.

c. Invention Disclosure, Election of Title and Filing of Patent Applications by Grantee

(1) The grantee will disclose each subject invention to the National Science Foundation (NSF) within two months after the inventor discloses it in writing to grantee personnel responsible for the administration of patent matters. The disclosure to NSF shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NSF, the grantee will promptly notify NSF of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any such invention by notifying NSF within twelve months of disclosure to grantee personnel responsible for patent matters; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NSF to a date that is no more than 60 days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale or public use. The grantee will file patent applications in additional countries within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to NSF, election, and filing may, at the discretion of NSF, be granted.

d. Conditions When the Government May Obtain Title

The grantee will convey to NSF, upon written request, title to any subject invention:

(1) If the grantee fails to disclose or elect the subject invention within the times specified in c. above, or elects not to retain title. NSF may only request title within sixty days after learning of the grantee's failure to disclose elect within the specified times.

(2) In those countries in which the grantee fails to file patent applications within the times specified in c. above; provided, however, that if the grantee has filed a patent application in a country after the times specified in c. above but prior to its receipt of the written request of NSF the grantee shall continue to retain title in that country.

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

e. Minimum Rights to Grantee

(1) The grantee will retain a nonexclusive, royalty-free, license throughout the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in c. above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a party and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NSF except when transferred to the successor of that part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by NSF to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable

provisions in the Federal Property Management Regulations. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NSF to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NSF will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by NSF for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with applicable regulations in the Federal Property Management Regulations concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

f. Grantee Action to Protect Government's Interest

(1) The grantee agrees to execute or to have executed and promptly deliver to NSF all instruments necessary to: (i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the grantee retains title, and (ii) convey title to NSF when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly lin writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by c. (1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The grantee will notify NSF of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by the National Science Foundation. The Government has certain rights in this invention."

(5) The grantee or its representative will complete, execute, and forward to NSF a confirmation of a License to the United States Government within two months of filing any domestic or foreign patent application.

(6) The grantee or its representative will forward to NSF a copy of any United States patent covering a subject invention within two months after it is issued.

g. Subcontracts

(1) The grantee will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the case of subcontracts, at any tier, when the prime award by the Foundation was a contract (but not a grant or cooperative agreement), NSF, subcontractor, and contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Foundation with respect to those matters covered by this clause.

h. Reporting on Utilization of Subject Inventions

The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as NSF may reasonably require. The grantee also agrees to provide additional reports in connection with any march-in proceedings undertaken by NSF in accordance with paragraph j. of this clause. To the extent data or information supplied under this section is considered by the grantee, its licensee or assignee to be privileged and confidential and is so marked, NSF agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

i. Preference for United States Industry

Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NSF upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantilly in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. March-in Rights

The grantee agrees that with respect to any subject invention in which it has acquired title, NSF has the right in accordance with procedures in OMB Circular A–124 and NSF regulations at 45 CFR 650.13 to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, NSF has the right to grant such a license itself if NSF determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph i. of this clause has not obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

k. Special Provisions for Grants With Nonprofit Organizations

If the grantee is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of NSF, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the grantee);

(2) The grantee may not grant exclusive licenses under United States patents or patent applications in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) five years from first commercial sale or use of the invention, or

(ii) eight years from the date of the exclusive license excepting the time before regulatory agencies necessary to obtain premarket clearance,

unless on a case-by-case basis NSF approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed

commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The grantee will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

l. Communications

All disclosures, elections, confirmations of the Government license, copies of patents, and other routine communications should be sent to the NSF Patent Paralegal, Office of the General Cousel, National Science Foundation, Washington, DC, 20550. Requests for waivers and other exceptional communications with the Foundation regarding this clause should be addressed to the NSF Intellectual Property Attorney, Office of the General Counsel, National Science Foundation, Washington, DC, 20550.

(b) When the above clause is used in a funding agreement other than a grant, "grant" and "grantee" may be replaced by "contract" and "contractor" or other appropriate terms.

(Approved by the Office of Management and Budget under control number 3145–0084)

§ 650.13 [Amended]

9. Section 650.13(d) of Title 45 of the Code of Federal Regulations is revised to read as follows:

* * * * *

(d) The NSF Intellectual Property Attorney may waive on behalf of the Foundation and the Government some or all of the rights normally reserved in a subject invention if the award under which the invention was made was not controlled by the Bayh-Dole Act and the inventing organization demonstrates that the NSF made a very limited contribution to the discovery or that the interests of the United States and the general public will be served thereby. If the award under which the invention was made was subject to the Federal Acquisition Regulations, the Intellectual Property Attorney will prepare an accompanying written statement, as required by 48 CFR 27.304–1(f)(2).

PART 670—[AMENDED]

§ 670.9 [Amended]

10. Section 670.9 of Title 45 of the Code of Federal Regulations is amended by adding the OMB control number to read as follows:

(Approved by the Office of Management and Budget under control number 3145–0034).

Authority: Sec. 11(a) of the National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a).

[FR Doc. 84–25343 Filed 9–24–84; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 40675–4075]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule, extension of effective date.

SUMMARY: Emergency regulations amending the Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) are in effect through September 28, 1984. The Secretary of Commerce (Secretary) extends those regulations for an additional 90 days, through December 27, 1984, because the conditions within the fishery necessitating the original emergency rule are still prevalent. The intent of this extension is to continue management measures to prevent the fishery from exceeding its annual quota.

EFFECTIVE DATE: September 29, 1984, through December 27, 1984.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600 (ext. 273).

SUPPLEMENTARY INFORMATION: Under section 305(e)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) the Secretary issued emergency regulations amending the FMP on July 1, 1984 (49 FR 27156, July 2, 1984). The rule revised the New England Area surf clam management program to reflect the increased knowledge of the status of the resource by increasing the upper bound of the optimum yield (OY) range to 200,000 bushels, from which the annual quota is selected. It also: (1) Increased the 1984 annual quota to 200,000 bushels, the maximum amount within the OY range; (2) imposed a minimum size limit of 5½ inches for surf clams in the New England Area consistent with the size limit in the Mid-Atlantic Area; and (3) revised the effort control program to reflect better the particular regional characteristic of the New England Area fishery.

Emergency interim regulations implementing the above rule requested comments. No comments were received. A detailed discussion of the background, issues and regulations, and the classification of the rulemaking, is set forth in the preamble to the original emergency rule.

This action extends the emergency regulations for an additional 90 days by agreement of the Secretary, and the New England and Mid-Atlantic Fishery Management Councils, as provided by section 305(e)(3)(b) of the Magnuson Act, because the conditions within the fishery requiring the original emergency rule are still prevalent.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in Section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: September 20, 1984.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 84–25389 Filed 9–20–84; 4:23 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 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 Ch. IX

[Docket No. AO-84-1]

Sweet Peppers Grown in Florida; Notice of Recommended Decision To Terminate Proceedings on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document recommends terminating proceedings without prejudice on a proposed marketing agreement and order for sweet peppers grown in Florida. The proposal would have provided authority for the establishment of grade, size, quality and container standards, and also for production and marketing research. Because of apparent insufficient support among a number of growers, further development of the program is proposed to be terminated at this time.

DATE: Comments due October 25, 1984.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-5764.

SUPPLEMENTARY INFORMATION: Prior document in these proceedings: Notice of Hearing—Issued June 1, 1984, and published June 5, 1984 (49 FR 23186).

Preliminary statement. A public hearing was held in Belle Glade, Florida, on June 20, 1984, on a proposed marketing agreement and order for sweet peppers grown in Florida. 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).

Rulings on briefs. Briefs were submitted by Valjean Haley, John I. Whitworth, E. Wayne Dubois and Theodore W. Winsberg, Chairman, Sweet Pepper Steering Committee, regarding the proposal. The briefs indicate that the sweet pepper industry currently lacks a unified base to support efforts to develop and administer a marketing order program. They recommended that in view of this, these proceedings should be indefinitely suspended. However, the rules of practice do not provide for long suspensions of rulemaking proceedings. Further, because the hearing record will become stale with the passage of time, a new or reopened hearing record will become stale with the passage of time, a new or reopened hearing would be necessary even if the proceedings were "suspended" as opposed to "terminated". Also, the Department representatives are prohibited from making off the record, or ex parte, contact with interested persons during the pendency of a rulemaking proceeding and would continue to be so prohibited during a period of suspension, if these proceedings were to be suspended. This is not a desirable situation under the current circumstances in the sweet pepper industry. For the foregoing reasons, and in view of the hearing evidence and positions expressed in briefs filed by interested parties, these proceedings are proposed to be terminated without prejudice.

Findings and conclusions. It is concluded, therefore, that further promulgation of this proposed marketing agreement and order should not be undertaken at this time. Hence, since proceedings would be terminated without prejudice, there is no need for findings or conclusions on issues which relate to particular terms or provisions of the proposed program. It is understood, however, that if the industry later develops a greater degree of support for a proposed marketing order, new proceedings should be instituted without prejudice.

Signed at Washington, D.C., on September 20, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-25357 Filed 9-24-84; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1139

[Docket No. AO-374-A8]

Milk in the Lake Mead Marketing Area; Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision provides as additional option for computing the pool obligation of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of dairy farmer returns. Under the option, a plant operator may elect to pay the amount that the Class I price under the Lake Mead order exceeds the price under the State order on fluid milk sales that such plant makes in the Lake Mead marketing area. In other changes, milk produced on farms in Clark County, Nevada, and Mohave County, Arizona, that is diverted to a nonpool plant will be priced at the location of the pool plant from which diverted, and a maximum location adjustment of minus 35 cents per hundredweight will apply to milk from farms in Utah that is diverted to nonpool plants. Another change increases the amount of milk not needed for fluid (bottling) use which may be moved from producers' farms directly to nonpool plants for manufacturing use. Also, milk diverted by anyone other than the plant operator will not be included as a receipt in determining the pool qualification of distributing and supply plants.

The decision also adopts in the Lake Mead order the uniform classification provisions that have been incorporated in most other Federal milk orders. The order amendments, which are based on industry proposals considered at a public hearing in August 1983, are necessary to reflect current marketing conditions and to assure orderly

marketing in the Lake Mead marketing area.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administration action is governed by the provisions of Section 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Prior documents in this proceeding.

Notice of Hearing: Issued August 1, 1983; published August 5, 1983 (48 FR 35652).

Recommended Decision: Issued June 12, 1984; published June 15, 1984 (FR 49 24736).

Extension of Time for Filing Exceptions: Issued July 11, 1984; published July 17, 1984 (49 FR 28855).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and order regulating the handling of milk in the Lake Mead marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Las Vegas, Nevada, on August 16–17, 1983. Notice of the hearing was issued on August 1, 1983 and published on August 5, 1983 (48 FR 35652).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on June 12, 1984, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity of file written exception to it.

Further, William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that the amendments adopted herein, which are based on the hearing record, would not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "3. *Pricing of diverted milk.*", seven new paragraphs are added after paragraph 13.

2. Under the heading "4. *Diversion limits.*", the first paragraph is revised and two new paragraphs are added following such paragraph.

3. Under the heading "6. *Pool obligation of a partially regulated distributing plant,*", the last paragraph is revised and nine new paragraphs are added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. The definition of route disposition.
2. Milk to be include as "receipts" in the determination of pool plant qualification.
3. Pricing of diverted milk.
4. Diversion limits.
5. Classification of milk.
6. Pool obligation of a partially regulated distributing plant that is also regulated under a State order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *The definition of route disposition.* The definition of "route disposition" should be changed to include deliveries to other plants, except pool distributing plants. Currently, the definition of "route disposition" includes Class I fluid milk products delivered from a plant to a retail or wholesale outlet, except deliveries to other plants.

The Lake Mead Cooperative Association (LMCA) proposed that the route disposition definition be modified to include any transfers of Class I fluid milk products to a nonpool plant. Such change would allow a pool plant operator to include as route disposition any fluid milk products delivered to a nonpool plant that acts as a distributor for the pool handler's products. According to the witness, exclusion of such dispositions from a handler's route disposition could result in the handler's failure to meet the percentage of receipts required to qualify for pool plant status. To safeguard against the possibility that the same Class I milk might be credited as route disposition to more than one plant for qualification purposes, proponent witness suggested that Class I fluid milk products moved between pool plants should not be included as route disposition of the transferor plant. The witness testified that adoption of the proposed amendments to the "route disposition" definition would not affect the status of any pool plants or nonpool plants operating in the Lake Mead market at the present time.

The proposal to include deliveries of fluid milk products to nonpool plants in the "route disposition" definition should be adopted. In addition, deliveries of fluid milk products from a pool distributing plant to a pool supply plant should be included as "route disposition" from the distributing plant. Such modification of the cooperative's proposal is necessary to assure that milk which moves from a pool distributing plant to a pool supply plant which serves as a distribution point is included in determining the pool qualification of the distributing plant.

It is not necessary, as suggested by the cooperative, that fluid milk products that are moved from a pool distributing plant to a pool supply plant be excluded from the route disposition definition. The cooperative's concern that the same milk might be counted as route disposition of more than one plant is not warranted with respect to deliveries to a pool supply plant. A supply plant's qualification as a pool plant is unrelated to the amount of route disposition by the plant and is dependent solely upon its milk shipments to pool distributing plants.

2. *Milk to be included as "receipts" in the determination of pool plant qualification.* Milk that is diverted by a cooperative association from a pool plant to a nonpool plant should not be included as a receipt at the pool plant for purposes of pool qualification. Milk that is diverted to a nonpool plant by the operator of a pool plant for his own account should continue to be a receipt at the pool plant for the purpose of determining the plant's pool qualification.

The order presently provides that a pool distributing plant must have route disposition representing not less than 50 percent of its total receipts of Grade A fluid milk products. A pool supply plant is required to transfer 50 percent of its Grade A milk receipts from dairy farmers to pool distributing plants. The total receipts used in determining the pool qualification of both distributing and supply plants include all milk diverted from the pool plant to nonpool plants, as well as milk physically received at the pool plant.

The witness for LMCA proposed that milk diverted to a nonpool plant by a cooperative association not be included as a receipt at the pool plant from which it is diverted. He pointed out that under the current provisions of the order milk diverted from a pool plant by a handler other than the plant operator, which would cause the plant to become a nonpool plant, is not considered producer milk. While the intent of the provisions is to assure pool status for the plant, the provisions could result in the loss of producer milk status for some

of the milk diverted by the cooperative from the pool plant. To safeguard against that possibility, the cooperative proposed that the total receipts used in determining pool plant qualification be limited to milk physically received at the plant and milk caused to be diverted from the plant by the plant operator.

The principal reason for including all diversions from a pool plant in the plant's receipts for purposes of determining pool qualification is to assure that the quantities of milk that are pooled on the market by diversion bear some relationship to the fluid milk requirements of the individual plants. However, as pointed out by proponent cooperative, one of the problems with such an approach is that a plant operator has no control over whether or not milk in excess of the pooling requirements is diverted to nonpool plants. Furthermore a cooperative association diverting milk to nonpool plants on the basis of its deliveries to a pool plant may find that some of its member milk is ineligible for pooling if the plant operator or another cooperative has already met the limit of diversions as determined by the plant's route dispositions and actual physical receipts for that month.

As discussed in a later section dealing with diversion limits, the volume of milk that a cooperative association may pool on the Lake Mead market is limited by the quantity of milk that the cooperative delivers to pool plants. Thus, it is not necessary that a cooperative be limited in the percentage of milk that it may divert from each pool plant in order to assure that undue quantities of milk are not associated with market. Accordingly, the pool plant qualification standards should be changed to include only milk diverted by the operator of the plant.

3. *Pricing of diverted milk.* Producer milk delivered directly from the farms of producers located in Clark County, Nevada, and Mohave County, Arizona, to nonpool plants should be priced at the location of the pool plant from which diverted rather than at the location of the nonpool plant to which diverted. The diverted milk of all producers whose farms are located in Utah and whose milk is pooled under the Lake Mead order should be priced at the location of the nonpool plant to which diverted, subject to a minus location adjustment of not more than 35 cents per hundredweight regardless of where it is delivered. The diverted milk of all other producers should continue to be priced at the location of the nonpool plant receiving such milk

LMCA proposed that milk which is diverted to a nonpool plant for manufacturing uses be priced at the location of the plant from which diverted. The spokesman for the cooperative association maintained that location adjustments on diverted milk are an unwarranted financial burden on the individual producer members. The witness explained that individual producers incur substantial expenses in connection with the maintenance of a reserve supply of producer milk that is needed to assure consumers in the marketing area of an adequate and dependable supply of high-quality milk. Because there are no manufacturing facilities in or near the Lake Mead market, any milk surplus to the fluid needs of the market must be hauled to distant plants. The manufacturing outlet most commonly receiving Lake Mead surplus milk is located at Beaver, Utah, 221 miles from Las Vegas, with a location adjustment of minus 34.5 cents per hundredweight. For the period April 1982 through March 1983, over two-thirds of the milk of producer members of the Lake Mead Cooperative diverted to nonpool plants was moved to the Cache Valley plant at Beaver. Ogden, Utah, 447 miles, and Richmond, Utah, 509 miles from Las Vegas, are the locations of two other nonpool plants which frequently receive milk diverted from the farms of members of the Lake Mead Cooperative. The location adjustment on producer milk diverted to Ogden is minus 67.5 cents per hundredweight, and minus 76.5 cents per hundredweight on milk received at Richmond.

In addition to the negative effect of location adjustments on prices received for milk diverted to distant manufacturing outlets, the producer whose milk is diverted also incurs considerable costs in hauling the milk over the long distances involved. The witness observed that underlying the principle of pricing milk at the plant to which diverted is the assumption that the cost of hauling milk from the farm to a nonpool plant is less than if the milk is delivered to a pool plant. In the Las Vegas market, he asserted, that assumption clearly is not valid with but one exception. Except when the milk of producers located in Beaver County, Utah is diverted to the nearby Cache Valley Cheese plant, the witness testified that the cost of hauling producer milk to manufacturing outlets is substantially higher than the cost of delivering it to Las Vegas.

The cooperative's representative stated that the milk of producers whose farms are located in close proximity to a pool plant must be diverted on many occasions to nonpool plants. This is so particularly during the months of heavier production when there are considerable excess supplies. Also, it was indicated, the bottling schedules of the pool plants do not always accommodate the receipt of the nearby milk supplies. In addition, it was pointed out, close-in production often is displaced by the milk of more distant producers because the order requires that 20 percent of each producer's milk must be delivered to pool plants each month as a condition for diverting any of such producer's milk.

The witness noted that when the Las Vegas-area producers' milk is diverted, the individual producer must incur the cost of transporting the milk at least to Beaver. In other cases, the milk must be hauled beyond Beaver to Ogden or Richmond. For such milk, the producer receives the uniform price at Las Vegas less the applicable location adjustment. In addition, the member producers of the Lake Mead Cooperative incur a further loss on milk diverted to the Beaver plant. On such milk movements, the cooperative must account to the pool at the Class III price while it receives from the Beaver plant approximately one dollar less than the Class III price for such milk.

Proponent witness testified that the Cache Valley Cheese plant at Beaver is owned by his and operated for the benefit of its producers, who are members of a cooperative association of manufacturing grade producers. When the plant is able to accommodate milk in excess of the production of its own members, it receives limited quantities from members of the Lake Mead Cooperative Association. According to proponent witness, however, the cheese plant often is full, and the reserves for the Lake Mead market must be hauled to Ogden or Richmond. In such instances, the producer whose milk is diverted incurs increased hauling costs and at the same time receives a progressively lower pay price as the distance from Las Vegas increases. In this regard, the witness pointed out that the June 1983 Lake Mead uniform price, adjusted for location, was $13.375 at Beaver, $13.045 at Ogden, and $12.955 at Richmond.

The cooperative association spokesman pointed out that as a result of pricing milk at the location to which diverted, the burden of handling the market's reserve milk supply is borne exclusively by the cooperative's member producers, while the benefits of the Lake Mead Class I price, the marketwide pool, and a reserve milk supply managed by the cooperative accrue to all of the market's producers. In contrast, he noted, the milk production

of the only nonmember producer on the market is subject to minimal hauling costs and to no location adjustment. Proponent indicated that this producer's milk production, which represents nearly one-third of the total producer milk supply for the entire market, is received 7 days each week at a Las Vegas pool plant. Thus, the producer, unlike the cooperative association, does not need to maintain standby facilities to handle milk that is not needed locally or to haul any of his production to distant nonpool plants.

The present plant location adjustment structure of the Lake Mead order provides that the Class I and producer blend prices be reduced at the rate of 1.5 cents for each 10 miles that the plant is located from the county courthouse in Las Vegas, Nevada. According to this provision, milk received at plants located within 40 miles of Las Vegas is subject to no location adjustment. Class I and producer prices for milk received at the pool plants located in Logandale, Nevada, and Cedar City, Utah, however, are reduced by 9 cents and 27 cents per hundredweight, respectively. Logandale is 58 miles, and Cedar City is 171 miles, from Las Vegas. The nonpool plants to which Lake Mead pool milk is customarily diverted are located from 221 to 509 miles from Las Vegas. The location adjustments applicable to milk received at these manufacturing plants range from $.345 to $.765 per hundredweight.

As noted by proponent and reflected in the present location adjustment provisions of the Lake Mead order, an underlying assumption of location pricing policy is that milk received at a distributing plant in the market's population center should be priced at a higher level than milk delivered to a manufacturing facility at "county" location. Such differential pricing on the basis of location is necessary to provide an incentive for producers whose farms are located at a "country" location to incur the higher hauling costs necessary to move their milk to "city" locations.

In the Lake Mead market, however, the traditional location of farms with respect to the "country" and "city" locations is reversed with respect to producers supplying pool plants at Las Vegas and Logandale, Nevada. Producers located in the vicinity of Las Vegas and Logandale have a strong financial incentive to see that their milk is delivered to pool plants at those locations whenever it can be used there. Not only do they receive a higher price for milk delivered to Las Vegas and Logandale than for milk delivered to manufacturing outlets, but the proximity of the pool plant locations makes the cost of hauling milk to such plants much lower than the cost of delivering it to Beaver, Ogden or Richmond. Producers located in Clark County, Nevada and Mohave County, Arizona, fit in that category. Their farms are located closer to a city plant than a country plant. When the milk of such producers cannot be used at nearby distributing plants, but instead must be hauled to distant manufacturing outlets at the expense of the producers, they should not be penalized further by receiving a lower price for their milk. They should have their milk priced at the pool plant from which it is diverted. If such a producer's milk is received at more than one pool plant during the month, the quantity of milk deemed to have been diverted to nonpool plants from each pool plant shoud be determined on the basis of a pro rata assignment to the quantity of milk physically received at each pool plant.

Lake Mead producers whose farms are located in Utah should continue to have their milk priced at the location of the plant to which diverted. The cooperative's proposal to price the milk of all producers at the location of the pool plant from which diverted would provide a disincentive to move milk from the farms of producers in Utah to pool distributing plants when needed. Under the cooperative's proposal, a Utah producer whose milk is diverted to a nonpool plant would receive the uniform price at the location of the pool plant from which the milk is diverted. As a consequence, a Utah producer whose milk is diverted from the Las Vegas pool plant to the nonpool plant at Beaver would receive the uniform price applicable at Las Vegas. However, his hauling cost to the Beaver plant would be less than his hauling cost to the Las Vegas plant because of the shorter haul involved. In this regard, it is noted that Interstate Highway 15, the principal route between Las Vegas and Beaver, Utah, enters Utah at a point approximately 110 miles from Las Vegas, or almost exactly halfway between Las Vegas and Beaver. Thus, any producer whose farm is in Utah would be located closer to Beaver than to Las Vegas.

A further complication of pricing milk of Utah producers at the plant from which diverted could occur in that neighboring farmers delivering milk to the same nonpool plant would be paid different prices, depending on the locations of the pool plants from which their milk is diverted. From the record evidence, it is apparent that many of the Utah producers are located in close proximity to each other in the vicinity of Beaver and Cedar City, Utah. Other evidence in the hearing record indicates that the Utah producers represent approximately two-thirds of Lake Mead Cooperative Association's members and one-half of the association's milk supply. The remaining Utah producers on the Lake Mead market are member producers of Western General Dairies. Thus, if proponent's proposal were adopted, Western General producers whose milk is associated with the Cedar City plant, which has a minus 27-cent location adjustment, would receive the Cedar City price for their milk when it is diverted to Beaver, Ogden, or Richmond. However, the Lake Mead Cooperative's members who are also located in Utah would receive 18 to 27 cents more for their milk, depending on whether their milk was diverted from Las Vegas or Logandale, for milk delivered to any of the 3 nonpool plants in Utah. Such a situation certainly would not result in orderly marketing within the marketing area.

A further problem with pricing diverted milk of Utah producers at the plant from which diverted is that it may provide an incentive for Great Basin producers to estabish an association with the Lake Mead market. As noted by proponent, the blend price under the Great Basin order at Ogden and Richmond in June 1983 was $13.43, or 29 cents lower than the Lake Mead blend price at Las Vegas. Thus, adoption of the cooperative's proposal would give Great Basin producers whose milk is regularly delivered to Ogden and Richmond an incentive to associate their milk with the Lake Mead pool on the basis of one delivery a month to Las Vegas in order to obtain the higher price.

LMCA excepted to the findings and conclusions in the immediately preceding three paragraphs as unsupported by the record evidence. It was the cooperative's position that:

> There is no basis in the record for concern that pricing milk at the plant from which diverted would provide a disincentive to move milk from the farms of producers in Utah to pool distributing plants when needed. There is only one non-member producer on the order. That producer's entire production is received by Anderson Dairy and is never diverted. The remaining producers on the market, other than proponent Lake Mead Cooperative's (LMCA) members, are members of Western General Dairies which operates a bottling plant at Cedar City, Utah. All of Western General's Order 139 producers are pooled at the Cedar City, Utah plant. When that milk is not needed at the bottling plant, Western General moves the milk as producer milk to the Great Basin order.

All of the remaining Order 139 producers are members of proponent LMCA which has total control over the movement of its member milk. The sole purpose for which the cooperative exists is to supply its handler customers with their fluid milk requirements. There are not producers associated with the market who have either the power or opportunity to decide that they will deliver milk one day a month to a Las Vegas handler and divert their milk the remaining days of the month to a nonpool plant.

The Department's decision to adopt to a limited extent the pricing of milk that is diverted to a nonpool plant at the location of the pool plant from which diverted recognizes that LMCA does bear substantial hauling costs in balancing milk supplies for handlers in the Lake Mead market. However, the Department also concluded that there were other over-riding considerations why it would not be appropriate to price all diverted milk in such manner. As was pointed out in the recommended decision, it is necessary that producers be provided an incentive to move milk to pool distributing plants when such milk is needed by the plant operators. For this reason, it was concluded that it would not be appropriate to price milk that is diverted to nonpool plants from farms in Utah at the location of the plant from which diverted. One of the reasons why such pricing would not be practical is readily evident from comparing the blend prices that would apply for milk received at a nonpool plant at Beaver, Utah, with the price for milk received at the pool distributing plant in Cedar City. Under the cooperative's proposal, producer milk received at the Beaver plant as a diversion from the Las Vegas pool plant would be priced at the Las Vegas location while milk from farms in the same general location that is delivered to the Cedar City plant, a pool distributing plant which utilizes milk in fluid uses, would be priced 27 cents lower. It is obvious that such pricing, which would result in a dairy farmer receiving more for his milk if it were delivered to a nonpool plant for manufacturing use than if it were delivered to a pool plant for fluid uses, would not foster orderly marketing conditions.

Exceptor's further argument that no producer is currently in a position to come on the market and take advantage of the fact that milk diverted to a nonpool plant is priced at the pool plant from which diverted is not persuasive. There is no reason to presume that marketing conditions would remain static in this regard if the pricing changes that the cooperative proposed were adopted.

In response to the Department's conclusion that the pricing of diverted milk at the plant from which diverted could result in neighboring farmers being paid different prices depending upon the location of the pool plant from which their milk is diverted, LMCA contended "there is nothing unfair or inequitable in providing LMCA with a higher price on all of its diverted milk than the price applicable to the Western General Cedar City pooled milk. There is nothing in the record to show that the Cedar City producers or their cooperative bear any of the costs of balancing the market that LMCA bears."

With regard to LMCA's comments that neither the nonmember producer nor Western General's member producers are bearing any of the balancing costs, this is correct only in the case of the nonmember. It appears, however, that Western General member producers whose milk is received during part of the month at the Cedar City plant do bear some of the costs of balancing the market supplies for handlers in the Lake Mead market. In support of that position, it is noted that when the milk of these producers is not needed at the Cedar City plant, their milk is shipped from the farm to manufacturing plants at Ogden and Richmond, Utah. Thus, these dairy farmers or their cooperative bear the cost of delivering such milk to those manufacturing plants when their milk is received at the plants as producer milk under the Great Basin order. Likewise, these producers or their cooperative would incur the cost of such milk movements if their milk was reported as diversions from the Cedar City to the plants at Ogden or Richmond, Utah.

Although the proposal to price diverted milk at the location of the plant from which diverted should not be adopted for the milk of Lake Mead producers located in Utah, the amount of minus location adjustment applicable to the diverted milk of those producers should be limited to 35 cents. Such amount approximates the locations adjustment that applies at the location of the nonpool plant in Utah located nearest to the pool plants regulated under the order.

A limit of minus 35 cents to location adjustment provisions should be applied to the milk received from a Utah producer that is diverted to a nonpool plant. In the absence of this limit, the producer whose milk is diverted to one of the more distant nonpool plants would receive a blend price that would be reduced by the amount of the location adjustment at the Ogden plant ($.675) or Richmond plant ($.765) as well as incur the cost of transporting the milk from his farm to the nonpool plant.

Under usual circumstances, when a producer's milk cannot be utilized at a pool plant and is diverted to a nonpool plant, the producer receives a blend price that is reduced by the amount of the location adjustment but he also incurs a corresponding lower cost in delivering his milk to the market. The reason for the lower hauling cost is that the nonpool plant is located nearer to the producer's farm than the pool plant. This is not the case, however, in the Lake Mead market. In the Lake Mead production area, the only nonpool plant located close to producers' farms is the Cache Valley Cheese plant at Beaver, Utah. However, this nearby manufacturing outlet cannot handle all of the market's reserve milk supplies. During the spring and summer months when milk supplies are at their peak, the Beaver plant tends to be able to handle even less of the Lake Mead market's reserve, since their own producers' production is also at its highest level during such months.

The nonpool plant located at Ogden, Utah is the next closest outlet to Las Vegas for surplus milk on the Lake Mead market. The Ogden plant is more than twice as far from Las Vegas as the Beaver plant. Another nonpool plant is located at Richmond, Utah but such plant is more distant from Las Vegas than the Ogden plant. Because of the greater distances involved and the ensuing greater transportation costs, the nonpool plants at Ogden and Richmond are not outlets to which producers would choose to deliver their milk that is surplus to the fluid needs of the Lake Mead market. However, in those instances when the Beaver plant is unable to handle additional milk, it will be necessary for producers to deliver their milk to the more distant milk plants and incur the increased costs of hauling such milk to these locations. When milk must be delivered to the more distant locations, a minus 35-cent location adjustment, approximating the Lake Mead price at Beaver, is an appropriate maximum in the downward adjustment of prices received by Utah producers for milk diverted to Utah nonpool plants.

As previously noted, the Cache Valley Cheese plant at Beaver is the usual and customary outlet for Lake Mead reserve milk and is located in the vicinity of the Lake Mead producers most distant from the market. Thus, under the pricing structure provided herein, Beaver-area producers would continue to have an incentive to deliver their milk to the Lake Mead pool distributing plants at prices higher than those obtainable at the northern Utah manufacturing plants.

In addition, the cost to producers of hauling their milk to the pool plants would be no greater than the cost of delivering the milk to Ogden or Richmond. Furthermore, the 35-cent limit on the downward adjustment of location differentials would not provide an incentive for dairy farmers in northern Utah to associate unneeded milk supplies with the Lake Mead market. In that regard, it is noted that the uniform price at Las Vegas minus 35 cents was lower than the uniform price under the Great Basin order at Ogden and Richmond for all but 5 of the 18 months from January 1982 to June 1983.

According to proponent witness, there is no need to consider special pricing provisions for the diverted milk of producers located in nearby areas outside of Clark County, Nevada; Mohave County, Arizona; and the State of Utah who might become associated with the Lake Mead pool. The witness stated that producers located in California, or in the Great Basin or Central Arizona marketing areas, would have little or no incentive to associate their milk with the Lake Mead pool in view of the higher prices effective in those areas. Furthermore, the production of the Nevada and Arizona producers currently pooled in Lake Mead in conjunction with reserve supplies from the producers located in southwestern Utah represents an adequate supply for the present needs of the fluid market. Under the circumstances, it is concluded that milk diverted to nonpool plants from farms located outside of Clark County, Nevada and Mohave County, Arizona should continue to be priced at the location of the nonpool plant at which the milk is received except, as previously noted, that in the States of Utah the amount of the minus location adjustment shall not exceed 35 cents.

4. *Diversion limits.* The limitations on diversions of producer milk to nonpool plants should be relaxed to provide that one day's milk production of each producer be received at a pool plant each month. Also, a handler's diversions of producer milk to nonpool plants should not exceed 50 percent in the months of March through July, and 40 percent in other months, of the producer milk handled by the cooperative or plant operator. The provision which provides that at the request of cooperative associations the receipts and diversions of two or more cooperative associations may be combined for purposes of calculating allowable diversions should be retained, as well as the provision specifying that milk diverted in excess of the diversion limits shall not be producer milk.

The provision of the current order which provides that a pool plant shall not be depooled as a result of overdiversions by a cooperative that is also diverting milk from such plant should be deleted. In the recommended decision, it was stated initially that such provision should be retained. Then, in the concluding paragraph of such discussion it was stated that the provision should be deleted. Also, the amendatory language in the recommended decision did not provide for the retention of such provision.

Further review of the matter indicates that the retention of such provision would serve no useful purpose. In this regard, it is noted that changes in the pool plant provisions adopted herein, as discussed in detail in another section of this decision, delete the requirement that diversions from a pool plant by a cooperative association be included as receipts of the pool plant in determining whether such plant has pool status. Under such circumstances, the current provision of the order specifying that a pool plant shall not be depooled as a result of overdiversions by a cooperative has no valid application and should not be retained under the amended order adopted herein.

Under the present diversion limits, at least 20 percent of a producer's milk production must be received at a pool plant every month for any of the producer's milk to be eligible for diversion to nonpool plants as producer milk. In addition, the total quantity of milk moved directly from producer's farms to nonpool plants cannot exceed 30 percent in the months of March through July, and 20 percent in other months, of the milk caused to be delivered to pool plants during the month by the handler of the milk.

The proponent cooperative association proposed that the milk of each producer be received at a pool plant a minimum of one day each month, and that the percentage limits on the quantity of milk that may be diverted to nonpool plants by a cooperative association be eliminated. Because the cooperative's proposal included no limit on the quantity of milk that a cooperative may divert to nonpool plants, the cooperative requested that the current order provision that allows cooperatives to combine their receipts and diversions to meet the diversion limits be deleted. As an additional conforming change, the proponent's witness suggested that two provisions of the order relating to the status of overdiverted milk be deleted.

The witness for the proponent cooperative testified that the order's present diversion limits are too restrictive in view of the available milk supply, arrangements between producers and pool plants, and the location of producers' farms relative to the locations of pool plants. The witness explained that while the entire Lake Mead milk supply is not ordinarily needed at pool plants, the amount of milk in excess of pool plant needs is a necessary reserve for the market. He noted too that the supply of producer milk has not kept pace with fluid milk consumption in the Lake Mead market. In this regard, he pointed out that milk production had increased only 15 percent since 1974 compared to a 50 percent increase in packaged fluid milk product disposition. The witness noted too that the large share of the market's Class I milk dispositions supplied by California handlers is vulnerable to interruptions such as a May 1983 labor strike, which resulted in a 26-percent reduction from the previous month in the daily fluid milk product disposition in the Lake Mead market by California handlers.

Aside from a potential failure of California handlers, most of whom distribute milk only to their own stores, to supplement the fluid milk needs of the Lake Mead market, the witness stated that a large reserve milk supply is necessary because of seasonal variations and extreme day-to-day and week-to-week variations of demand peculiar to the market. The witness characterized the Las Vegas area as experiencing large increases of population over weekends and during conventions due to its nature as a resort community.

In addition to major variations in supply from out-of-area sources and in demand due to population fluctuations, the witness testified that the procurement arrangements of a large Las Vegas distributing plant require that a substantial reserve milk supply be available for the Lake Mead market. According to proponent, Anderson Dairy receives all of the production of a large nonmember producer representing 30 percent of the market's total milk production. This producer is assured of an outlet for all of his production every day of the week. At the same time, the witness stated, Anderson Dairy relies on proponent cooperative to balance the supply necessary to fill its 4- to 5-day per week bottling schedule. The cooperative also supplies milk to Knudsen Dairy at Logandale, Nevada, which has a similar bottling and processing schedule. Any milk produced by cooperative members which is not needed by these two pool plants must

be diverted for manufacturing use to a nonpool cheese plant at Beaver, Utah, 221 miles northeast of Las Vegas, or to surplus outlets located more than 400 miles from Las Vegas.

At times, the witness stated, the milk that is delivered from the farms of Utah producers to Logandale or to Las Vegas because of the order's pooling requirements that 20 percent of the milk of producers be delivered to Lake Mead pool plants each month displaces the milk of cooperative producers located closer to the pool plants. Consequently, closer-in milk must be hauled to one of the distant surplus outlets. According to the witness, producer milk must be moved to pool plants to fulfill the order's delivery requirements even when the milk is not needed at the pool plant. In those instances, milk is delivered to Las Vegas or Logandale and pumped into the plant, only to be pumped back onto the truck and hauled to Beaver, Ogden, or Richmond, Utah. The witness also stated that the percentage limits on the quantity of milk that may be diverted by a handler have caused the cooperative to undertake uneconomic hauling arrangements solely for the purpose of qualifying producer milk for pooling. The witness pointed out that the diversion limitation percentages of the order, with respect to individual producers and to the total milk supply of a cooperative or handler have been suspended many times in the past and are currently suspended pending the outcome of this proceeding.

With the elimination of percentage diversion limits, the cooperative spokesman claimed, the cooperative would be able to minimize the transportation of producer milk and thereby reduce hauling costs. With regard to the cooperative's proposal that milk from each producer must be received at a pool plant at least once each month, the spokesman believed that such requirement was sufficient to assure that producers continue to comply with the sanitary standards required for the production of Grade A milk. The witness remarked too that the adoption of the cooperative's proposals to delete the order's percentage diversion limits would minimize the costs incurred in qualifying the market's reserve supply for pooling. Currently, such costs are borne solely by the cooperative and its members.

The order should be amended to provide that milk of a producer must be received at least one day each month in order for any remaining milk of such producer that is moved directly from the farm to nonpool plants for manufacturing uses to be priced and pooled under the order. Under the current provisions which require that 20 percent of the milk of each producer must be delivered to pool plants, the milk of producers whose farms are favorably located with respect to pool distributing plants must be moved to distant surplus outlets. This action is necessary to allow the more distant producers an opportunity to associate their milk with a pool plant. Thus, the current diversion limits create a situation in which a handler must engage in uneconomic movements of milk in order to maintain the pool status of all his producers. In this regard, it is noted that one-third of the proponent cooperative's member producers are located in Nevada. However, two-thirds of its producers are located in Utah and the farms of such producers are located closer to the Beaver cheese plant than to the pool plants in Logandale and Las Vegas, Nevada. Also, the Nevada producers of the cooperative generally produce twice as much milk as those members more distant from the market. Thus, approximately one-half the cooperative's milk is supplied by producers for whom Beaver, Utah, is a nearby outlet for their milk while the cooperative's remaining milk supply is located nearby Logandale and Las Vegas. It is apparent, therefore, that a large part of the milk needed for Class I use at pool plants can be obtained from the farms of the producers near Las Vegas. Under these circumstances there is no reason to require that the milk of the more distant producers be delivered to pool plants more than once per month.

Allowable diversions to nonpool plants by a cooperative association or a proprietary handler should be changed to limit to 50 percent in the months of March through July and 40 percent in other months of the producer milk caused by the handler to be delivered to or diverted from pool plants during the month. It is apparent that the present diversion limits on the quantity of milk that handlers may divert to nonpool plants as producer milk are much too restrictive. The current limit on diversions to nonpool plants of 20 percent or less of the producer milk delivered to pool plants during August through February and 30 percent for the months of March through July are significantly less than the percentages of milk that handlers have been required to divert to nonpool plants during those months. For the period of April 1982 through March 1983, the proportion of the cooperative's milk that was diverted directly from producers' farms to nonpool plants ranged from 20.5 percent in August 1982 to 40.7 percent in May 1982, with an average for the 12-month period of 29.5 percent. When the cooperative's actual diversions for April 1982 through March 1983 are compared to the diversion limits, there is not a single month during that period in which the cooperative operated within the diversion limits of the order.

While the diversion limits currently contained in the order do not allow for the pooling of some producer milk which historically has been associated with the market, this does not necessarily mean that there should be no diversion limits at all. It is apparent that the proponent cooperative would be able to pool the milk supply of its member producers if the diversion limits were relaxed somewhat. Furthermore, unless some limits are retained, distant producers could attain pool status and dilute the marketwide pool by delivering only one day's milk production per month and diverting the rest of their milk to nonpool plants nearer their farms. A further reason why it is necessary to retain minimum performance standards for producers in the Lake Mead market is that the blend price in that market is high relative to surrounding markets and thus the relatively high blend price could attract additional milk supplies. In this regard, it is noted that the percentage of producer milk used in Class I seldom falls below 65 percent, and ranges as high as 85 percent.

The diversion limits adopted herein should be established somewhat higher than the level of diversions to nonpool plants by the proponent cooperative during the April 1982 through March 1983 period. During that period, proponent cooperative delivered from 59 percent to 79 percent of its total milk supply to pool plants. The average percentage of producer milk diverted to nonpool plants during March through July of that period was 34.8 percent. During the months of August 1982 through February 1983, the average percentage of the cooperative's producer milk diverted to nonpool plants was 25.3 percent. Furthermore, the deliveries and diversions that took place during these months, a period in which the percentage diversion limits of the order were suspended, should be representative of the level of performance within which the proponent cooperative can operate without having to engage in unnecessary and uneconomic movements of milk solely for qualifying the milk of its member producers for pooling. However, the diversion limits that are established should take into account

that variations may occur in producer delivery patterns, plant bottling schedules, production levels of the producers involved, and consumer demand for fluid milk. In recognition of these possible variations, the allowable diversion limits should be established about 15 percentage points greater than the average level of diversions that the proponent cooperative found necessary to make during the April 1982 through March 1983 period. On this basis, allowable diversions to nonpool plants by a cooperative or proprietary handler should be limited to 50 percent in the months of March through July and 40 percent in other months of the producer milk caused by a handler to be delivered to or diverted from pool plants during the month.

The provision which provides that milk diverted in excess of the diversion limits shall be other than producer milk should not be deleted as recommended by proponent. The deletion of the provision was predicated upon the removal of diversion limits from the order. Since those limits are not removed, but merely relaxed, the provision dealing with the status of milk diverted in excess of the percentage limits should be retained.

The provision which specifies that milk diverted for the account of a cooperative association should not be producer milk if diverted from the pool plant of another handler in amounts that would cause the pool plant to become a nonpool plant should be deleted, as suggested by proponent. The marketwide limit on the proportion of a cooperative's milk supply that may be diverted makes the retention of such provision unnecessary.

5. *Classification of milk.* The Lake Mead milk order should provide for the same uniform classification of skim milk and butterfat that is commonly provided in many other Federal milk orders. The changes adopted herein would reclassify from Class III to Class II skim milk and butterfat used in plastic cream, frozen cream, and anhydrous milk fat; in the production of custard, pudding, and pancake mixes; and in formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers. Also reclassified from Class III to Class II would be skim milk and butterfat disposed of to commercial food processing establishments.

The proposal to adopt the uniform classification provisions was made by LMCA, which supplies much of the milk used in the Lake Mead marketing area. The classification plan proposed was the same as that adopted in 39 Federal milk orders in 1974 following extensive hearings in 1971 on the issue of uniform classification and pricing provisions. The plan was modified slightly in 1975. In 1982 the same classification provisions were adopted in the Eastern Colorado, Western Colorado and Great Basin milk marketing orders.

The spokesman for the cooperative association testified that adoption of uniform classification provisions would facilitate accounting and reporting procedures in the market, especially those related to inter-market movements of milk and dairy products. According to the witness, the changes would not at this time affect any handler fully regulated by the order. He stated that the reasons for reclassifying from Class III to Class II skim milk and butterfat in the uses specified in their proposal are basically the same as the reasons for classifying as Class II milk used in cottage cheese, ice cream and other soft and semi-soft products. In his opinion, the products in question should not be Class I because they are not intended for fluid uses and need not be made from Grade A milk. The witness explained that the proposed additional Class II products are not as bulky or perishable as fluid milk products, and that the products compete for a market over a wide geographic area. In addition, the spokesman stated, the products proposed to be changed from Class III to Class II are not made for the purpose of providing a market outlet, in storeable form, for reserve milk supplies as are such products as butter, cheese, and dried milk. In addition, the witness testified, some of the products in question are used ultimately in the production of other Class II products. If for some reason a Class II product is reprocessed and used in a Class III product, the skim milk and butterfat would be reclassified as a Class III use.

The witness testified that at the time of promulgation hearing for the Lake Mead order, the proposed classification of skim milk and butterfat used in dairy products in the Lake Mead market was designed to correspond with the 39-market uniform classification recommended decision, which at that time had only recently been issued. The classification provisions adopted in Lake Mead were the same as those proposed, but the final decision on the uniform classification proceeding for the 39 markets changed the classification of some milk products from what was included in the recommended decision. The classification provisions of the Lake Mead order differ from those contained in most other Federal milk orders. The witness stated that such differences were unintentional, as the cooperative intended at the promulgation hearing that the Lake Mead order would incorporate the uniform classification provisions. For that reason, the witness stated, the Lake Mead classification provisions should be modified to be uniform with the other orders.

No testimony was received with regard to the extent or existence of inter-order movements of the products proposed to be reclassified. However, marketing conditions are much less local in nature now than at the time the order was promulgated, and differences in product classification between markets and corresponding differences in prices of milk used to produce the same products may be expected to cause marketing disorders when those products are moved between marketing areas.

Skim milk and butterfat contained in plastic cream, frozen cream and anhydrous milk fat; used to produce custard, pudding, and pancake mixes; used in formulas expecially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers; and disposed of in bulk to commercial food precessors to be used in the production of manufactured food products should be reclassified from Class III to Class II. These are products which can command a higher value than Class III products, but must be competitively priced below Class I in order to compete with non-dairy substitute products or manufactured daily products that can be used in making Class II products. The changes in classification adopted in this decision are those proposed by proponents and are identical to the uniform classification plan contained in most other Federal orders. That plan was based on exhaustive hearings held on the classification issue in 1971 for 39 markets. The final decision on the uniforms classification plan, cited in this proceeding, was issued February 19, 1974 (39 FR 8202, 8452, 8712, 9012). It contains a detailed discussion of the classification issue. A decision of the Assistant Secretary issued July 17, 1975 (40 FR 30119) modified certain provisions originally adopted in the 39-market decision. A further hearing was held on the classification issues for three western milk orders in February 1982, and the final decision for that proceeding was issued August 17, 1982 (47 FR 37178 and 37203), adopting the uniform classification provisions for those orders.

One of the participants at the hearing pointed out that the current order provides that if a handler adds nonfat milk solids to a Class II product, the modified Class II product shall be

classified as Class II only to the extent of the volume of the unmodified product that the added milk solids replaces. The participant questioned whether this procedure, which is the same as the procedure used in classifying fluid milk products that have been modified by the addition of nonfat milk solids, would be changed by the adoption of the uniform classification provisions.

Proponent cooperative's proposal that the entire weight of the skim milk equivalent of the solids added in modifying a Class II product be classified in Class II should be adopted. Such classification procedure comports with the uniform classification provisions resulting from the 39-market hearing on the reclassification issue. The decision on the reclassification issue points out that nonfat dry milk or condensed milk that is added to a Class II product is assigned directly to the handler's Class II use in the allocation provisions of the order. For this reason, the decision notes that classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation.

The uniform classification plan should be adopted in the Lake Mead milk order to coordinate the classification provisions of this order with the same provisions under most other orders. The classification changes adopted herein will have no effect on the operation of pool plants regulated by the Lake Mead order because the plants are not processing any of the products affected by the proposed reclassification changes. In addition, there was no opposition expressed to the adoption of the uniform classification provisions.

6. *Pool obligation of a partially regulated distributing plant.* The operator of a partially regulated distributing plant that is also regulated under a State order that provides for marketwide pooling of producer returns should be afforded an additional option in settlement of the plant's obligation to the producer-settlement fund. Under the added option adopted herein, a plant operator could settle his plant's obligation by paying the amount that the Class I price under the Federal orders exceeds the applicable State order prices on fluid milk sales that such plant makes in the Lake Mead marketing area.

Under the present provisions of the Lake Mead order, a partially regulated distributing plant operator has three options that he may use in settlement of his pool obligations:

(a) The plant operator incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another Federal order.

(b) The plant operator incurs no obligation under the order, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. Under this option, which is commonly referred to as the "Wichita" option, a plant operator whose payments for milk are less than the order's obligations may pay the difference either to his own dairy farmers or to the producer-settlement fund.

(c) The plant operator may choose to pay to the producer-settlement fund the difference between the Class I price and the producer blend price of the order (both prices adjusted for the location of the plant) on all fluid milk products distributed in the marketing area (less any purchases of milk classified and priced as Class I milk under under any Federal order).

Lake Mead Cooperative Association proposed initially that California handlers distributing milk in the Lake Mead marketing area be provided an additional option for computing their obligations to the Lake Mead producer-settlement fund. Under such option, their obligations would be computed on the basis of the difference between the California State price and Lake Mead Federal order Class I price on Fluid milk products that the California plants distribute in the Lake Mead marketing area. At the hearing the cooperative modified its initial proposal. Under its revised proposal, California-regulated handlers would be required to use the option proposed by the cooperative in accounting to the marketwide pool for milk distributed within the marketing area. However, handlers unregulated under any State or Federal order who distribute fluid milk within the Lake Mead marketing area would continue to be subject to the payment options presently in effect.

Proponent cooperative testified that more than one-quarter of the Class I route sales within the Lake Mead marketing area are by handlers located in California. Proponent noted that, although the total volume or milk involved represents a significant segment of the Lake Mead market, it does not represent a large enough precentage of each California handler's total route disposition to result in their being pooled under the Lake Mead order.

Witnesses testified that the California handlers are regulated under the California State Pooling Plan. They are required to pay for the milk they use, according to the class in which it is used, primarily on the basis of the butterfat and solids-not-fat contained in the milk. The value of all the milk received by each California handler is pooled on a marketwide basis and then redistributed to producers on the basis of the individual producer's production quota and base. Two witnesses made the point that, as a consequence, the payments received by dairy farmers supplying the individual plant have no direct relationship to the uses made of their milk by the handler receiving it, or to the amount paid into the pool by the receiving handler.

Proponents indicated that their primary interest in modifying the payment provisions for partially regulated distributing plants is to assure that the California handlers, who supply a substantial portion of the Lake Mead market, make payment for the milk they use at a rate equivalent to that paid by handlers fully regulated under the Lake Mead Federal milk order. In this regard, a witness for proponent cooperative testified that regulated handlers under a Federal order pay a price for milk used in fluid milk products that includes a Class I differential. He explained that the price differential for Class I use is a necessary incentive for dairy farmers to make available to the fluid market an adequate supply of high-quality milk. The witness stated that if the higher price paid for milk used in Class I is to serve its function of providing the additional income needed to induce an adequate milk supply, it must be insulated effectively from unfair competition. According to the witness, such insulation can be provided only by establishing compensatory payment provisions for the use of alternative lower-cost milk supplies in fluid milk products distributed in the marketing area. Such provisions, he testified, should require any fluid milk products distributed in the market by partially regulated distributing plants to meet the full price or cost requirements established under the order for milk used in fluid products by fully regulated plants.

In the case of fully regulated plants, the witness stated, the requirement that handlers operating such plants account fully for all milk and dairy products received serves to protect the fluid market from receipts of surplus milk for fluid use priced below the order's Class

I price. However, he testified, fully regulation of all handlers distributing fluid milk in the marketing area would not be a practicable solution to the problem of milk distributed in the marketing area that is priced below the level established by the order. In his opinion, subjecting plants that have only a minimal association with the market to full regulation may be unfair to those plants in meeting competition within their primary markets. In addition, full regulation of the plant would have the effect of diluting the blend price under the order if the plant has minimal Class I utilization.

Another approach discussed by the witness for dealing with the Class I sales in Federal order marketing areas of handlers not fully regulated is to treat such sales as surplus to the market from which they originate. Under this concept, the handler would be responsible to the pool for a payment on milk distributed within the marketing area at a rate determined by the difference between the Class I and Class III prices of the Federal order regulating such marketing area. The Class I-Class III price difference would eliminate the advantage gained by an unregulated plant disposing of its surplus milk in a regulated market. The witness rejected the use of this pricing concept for milk distributed in Lake Mead by California handlers since such milk is classified as a fluid milk use by the State of California and thus is subject to a higher price than the Lake Mead Class III price.

An alternative method of equalizing the cost of milk between regulated and unregulated handlers is to charge unregulated handlers the difference between the Class I price and the uniform price to producers. This alternative is already included in the Lake Mead order as an option that nonpool handlers distributing Class I milk I in the marketing area may elect in computing their obligation to the pool. The rationale for this option is that milk obtained by an unregulated handler in the vicinity of the marketing area would be available for purchase at a price approximating prices paid to producers whose milk is part of the pool. The witness pointed out that while this approach seems appealing on the basis of fairness, it lacks any real applicability to the nonpool plants currently distributing milk in the Lake Mead marketing area. For one thing, he stated, an assumption underlying the Class I-blend price difference charge to nonpool handlers is that such handlers carry their own surplus supplies. The witness testified that none of the California handlers distributing milk in the Lake Mead order carry their own reserve supplies. Furthermore, because of the California State milk pricing provisions, milk is not available to California handlers at a price approximating prices paid to producers whose milk is part of the pool.

Proponent witness detailed the origins and purpose of the "Wichita" option for determining the pool obligation of a partially regulated distributing plant. Under this option, the amounts paid to producers for milk received by a nonpool distributing plant are compared to the amount which would be due the marketwide pool for such milk if the plant were a pool plant. Any amount by which the pool value exceeds the value paid to producers is due the marketwide pool to equalize the competitive positions of pool and nonpool distributing plants. According to the witness, the "Wichita"-type option contained in the Lake Mead order is not a satisfactory method of dealing with milk sold in the Lake Mead marketing area by handlers regulated under the California order. He stated that dissimilarities in the pricing and classification rules and producer payment provisions between the Federal and State orders make it impossible for the market administrator to determine precisely the amounts paid to dairy farmers who supply the raw milk for processing by California handlers distributing milk in the Lake Mead area.

The witness expressed the opinion that equity between California handlers and Lake Mead handlers would be assured if the California handlers distributing fluid milk in the Lake Mead marketing area are required to pay to the Lake Mead pool for such sales at a rate equal to the amount by which the Lake Mead Class I price, adjusted for location of the California plant, exceeds the prices effective for such products under the California order. According to the witness, the options under which California handlers currently may choose to have their obligations to the Lake Mead pool calculated would not be needed for California plants if the proposed compensatory payment method were adopted. He indicated, however, that such other options should be retained in the order in case they are needed at some future time to deal with an unregulated plant other than a California plant that might begin to distribute milk in the Lake Mead market.

A brief was filed on behalf of 3 California plants, Knudsen Corporation, Safeway Stores and Lucky Stores, in opposition to the proposal by LMCA to require California plants to pay the difference between the California price and Lake Mead Class I price on route disposition within the Lake Mead marketing area in lieu of the current payment options provided under the order. The California plant operators stated that they were not given notice prior to the hearing that the cooperative intended to propose that the order be amended to deny California plants the use of the Wichita option and require that such plants must pay to the producer-settlement fund the difference between the California class prices and the Lake Mead Class I price, adjusted for the location of the California plant, on route disposition in the Lake Mead marketing area.

In their brief, the 3 California plant operators indicated they did not prepare testimony for presentation at the hearing and did not retain any experts to examine any of proponent's witnesses since: "(1) the Wichita plan was expressly preserved in the Cooperative's proposal, as set forth in the hearing notice, (2) the Department had advised the plant operators that the hearing would proceed on the basis of proposal's preserving the Wichita option and (3) no proposal was noticed for hearing such as that advanced at the hearing."

Opponents objected primarily to the modified proposal on the basis that affected persons were unaware of the scope of the hearing by virtue of the notice that was issued. Furthermore, they contended that any proponent of a proposal that is modified while the hearing is underway has an advantage over an opponent. They noted that a proponent can prepare testimony and exhibits in support of the modified proposal while opponent will be unprepared to respond and perhaps even be absent when proposals affecting their interests are considered.

On the surface, it appears that the Department and opponents of the payment plan may have been misled regarding changes that the cooperative intended to make in the payment plan for partially regulated distributing plants. Initially, the cooperative asked the Department to call a hearing on a proposal that would require a California partially regulated distributing plant to pay to the producer-settlement fund for each hundredweight of Class I sales in the Lake Mead marketing area a payment equal to the amount by which the Lake Mead Class I price exceeds the Class I price established by the California Bureau of Milk Stabilization. A second proposal that would have also affected the payment obligations of partially regulated distributing plants

would have eliminated location adjustments at plants located more than 200 miles from Las Vegas. Both proposals were withdrawn by the cooperative before a hearing notice was issued and amended proposals were submitted in their place. After the Department received the revised proposals and published them in a hearing notice, it wrote to the counsel for the three California plants in response to an inquiry and indicated

* * *

"The proposals noticed for hearing would retain the so-called 'Wichita' option for partially regulated distributing plants that provide the market administrator with information sufficient to compute and verify the plant's classified use value of milk at the Lake Mead order prices and its payment to producers. Plants subject to state regulation that do not elect the 'Wichita' option would be required to make a compensatory payment equal to the amount that the Lake Mead Class I price exceeds the appropriate class price under such state's regulation."

The Department agrees with the contention of the opponents that the payment arrangement for California partially regulated distributing plants that was proposed by the cooperative at the hearing is a substantial modification of the proposal initially noticed for hearing. However, in view of the conclusions reached herein relative to how the order should be changed, the alleged inadequacy of the hearing notice becomes a moot issue.

The cooperative's contention that the Wichita option should not be available to California plants due to shortcomings of this payment arrangement is not a valid reason for deleting the option. The shortcomings of the Wichita option with respect to California plants can be overcome by modifying this option rather than deleting it. Accordingly, the payment options presently provided in the order for partially regulated distributing plants should be retained.

It is appropriate, however, to modify the Wichita option to overcome the shortcomings of that option pointed out by proponent cooperative. As previously noted, the Wichita option provides that a plant operator incurs no obligation, except for an administrative assessment charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payments to dairy farmers and to the producer-settlement fund of any Federal order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. The shortcoming of the Wichita option, as noted by proponent cooperative, with respect to California plants is that the payments received by dairy farmers are not directly related to the payments made by the plant operator. The reason for this is due to California regulations which provide for the marketwide pooling of producer returns and the use of base milk and quota milk plans. As a consequence, the returns received by dairy farmers shipping to a given plant bear no direct relationship to the plant's obligation on milk received from such producers.

The shortcomings can be overcome by providing that a California partially regulated distributing plant (or any plant regulated under a State order that provides for marketwide pooling of producer returns) shall incur no obligations, except for an administrative charge on the volume of fluid milk products disposed of in the marketing area, if the operator's payment to the State for subsequent distribution to dairy farmers and the operator's payment to the producer settlement fund of any order are not less than the pool obligation that such operator would have incurred if such plant had been fully regulated under the order. In the absence of marketwide pooling and the allocation of returns to producers on the basis of quota milk and base milk, the payment that the California plant would have made to the State Milk Stabilization Board would have been received by the dairy farmers supplying the plant. Thus, the plant's payments to the State Milk Stabililzation Board can be used in lieu of the payments received by the dairy farmers supplying the plant. Under such circumstances, this arrangement, which in essence is a modification of the Wichita option, represents a reasonable alternative method for computing a partially regulated distributing plant's obligation to the pool.

As an alternative to the current payment options available to a partially regulated distributing plant, California plants should be given the further option of paying the amount that the Lake Mead Class I price exceeds the California class prices, all adjusted for the location of the California plant, on route disposition within the marketing area plus an administrative assessment on such sales. Such payment rate should result in equivalent Class I costs between California distributing plants and handlers fully regulated under the Lake Mead order on Class I sales in the Lake Mead marketing area. Currently, such rate represents a less costly alternative than the option of paying to the producer-settlement fund the difference between the Class I and uniform prices under the Lake Mead order on route disposition in the Lake Mead marketing area. Furthermore, adoption of the additional payment option will not have an adverse impact upon California plants because such payment method would be utilized only if such payment plan represents the least costly alternative.

LMCA submitted vigorous exceptions to the Department's conclusion that the payment arangements for California partially regulated distributing plants that were proposed by LMCA at the hearing represented a substantial modification of the proposal noticed for hearing. The argument raised by exceptor that such changes represented appropriate modifications of the proposal were considered in arriving at the initial conclusion. Accordingly, no basis exists for modifying the Department's conclusion in that regard.

LMCA excepted principally to the Department's conclusion that the Wichita option should be retained in the order for use by California partially regulated distributing plants. The cooperative's objection to the continued use of the option dealt in large part with the administrative feasibility of the option. In further support of its contention that the Wichita option should not be available to partially regulated distributing plants in California, LMCA argued that "the assessment rate applicable to the California partially regulated handler pursuant to § 1139.85 simply precludes the Market Administrator from computing, auditing and verifying the monthly pool obligation that the California partially regulated plant would have incurred if such plant had been fully regulated under the Lake Mead order."

The Department recognized in the recommended decision that there are administrative problems in applying the Wichita option to California plants. For this reason, the Wichita option was modified to alleviate the principal administrative problems encountered in the determination of the credit to be accorded a California plant in payment of its obligation for milk received from dairy farmers.

LMCA's argument that California plants should not be able to elect the Wichita option because of the cost of conducting audits of their full operations is not persuasive in view of their contention that the Wichita option should be available to partially regulated distributing plants that are not under State regualtions. Presumably, the non-California plants that elected to use the Wichita option would have to be audited to the same extent as the

California plant operators who elected the Wichita option.

It is the Department's position that the Wichita option should be uniformly available to any partially regulated distributing plant. Under such option, a partially regulated distributing plant's obligation for its milk supply is computed as though it were a fully regulated handler. As a consequence of such pricing, the partially regulated distributing plant's cost for fluid milk sold in a Federally regulated marketing area is equivalent to the costs incurred by a fully regulated handler on a similar volume of sales in such marketing area. Thus, it is not apparent from this record that a California partially regulated distributing plant that elects to use the Wichita option would have a competitive advantage over a fully regulated plant under the Lake Mead order. Under these circumstances, it is concluded that the Wichita option should be available for California handlers who elect such option as well as other handlers who elect to use such payment plan.

In retrospect, there appears to be little reason for a California partially regulated distributing plant to elect the option of having its payment obligation computed as though the plant were a fully regulated plant under the Lake Mead order. In support of that position it is noted that if the California plant is entirely a Class I operation and the California Class I price is at such a level that the plant is required under the Wichita option to make a compensatory payment to the producer-settlement fund of the Lake Mead order or to its dairy farmers at the difference between the Lake Mead Class I price adjusted for the California plant's location and the California class prices, the operator that elected the Wichita option would have to make such payment on 100 percent of his fluid milk products. In contrast, if the plant operator elected the payment proposed by exceptor, the operator could elect to make the payment rate previously detailed on only his fluid milk sales in the Lake Mead marketing area. In view of the pooling requirements under the order, such fluid milk sales would represent less than 10 percent of the plant's total fluid milk sales. In addition, the California plant that elects not to use the Wichita option would be spared the expense involved in submitting a full report of its receipts and utilization.

LMCA excepted to the Department's conclusion that California plants should not be denied the use of the option in § 1139.76(a) which permits a partially regulated distributing plant to pay to the producer-settlement fund of the Lake Mead order the difference between the Lake Mead Class I price and the blend price (both prices adjusted for the location of the plant) on fluid milk products distributed in the Lake Mead marketing area. While the cooperative contended that the use of such provision was appropriate for a plant that was not subject to State regulation, the cooperative claimed that the provision was not appropriate for California plants because they do not carry their own reserve supplies. Instead, the cooperative pointed out that such plants pay for milk on the basis of the individual plant's utilization while reserve supplies for such plants are borne by producers throughout California as the result of California's marketwide pooling of producer returns.

The Department concedes that such option should be available for use by California handlers in very limited circumstances. Such option should be available for use by California handlers only if such payment obligation results in a lesser payment obligation than the plant would incur under exceptor's proposal, i.e., the Lake Mead Class I price adjusted for the location of the plant minus the California class prices on fluid milk products distributed in the Lake Mead marketing area. Such limitation on the use of the option will meet one of the objections raised by the cooperative at the hearing to the use of such option by California handlers. In that regard, the cooperative pointed out that a compensatory payment by a California handler at the difference between the Lake Mead Class I price and the blend price in addition to the Class I price assessed under the California regulations could result in the California handler paying a higher price for milk sold in the Lake Mead marketing area than the cost for Class I milk sold in such marketing area by a fully regulated handler under the Lake Mead order. In further support of its position, the cooperative noted that a compensatory payment rate that results in a higher cost for raw fluid milk than the costs incurred by a fully regulated handler was declared invalid by the Supreme Court in its decision in the Lehigh Valley case.

The point raised by exceptor is valid and should have been discussed in detail in the Department's findings and conclusions set forth in the recommended decision. California handlers should not be assessed a higher cost than fully regulated handlers under the Lake Mead order on fluid milk distributed in the Lake Mead marketing area. Accordingly, the order should provide that the only time such option (Lake Mead Class I price less the blend price, both adjusted for plant location) should apply is when such payment rate results in a lesser payment than the difference between the Lake Mead Class I price adjusted for the plant's location minus the California Class I price on fluid milk products distributed in the Lake Mead marketing area.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusion are denied for the reason previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Lake Mead order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity sepecified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Amended hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Lake Mead marketing area which have been decided upon as the detailed and appropriate means of the effectuating of the foregoing conclusions.

It is hereby ordered, that this entire decision, except the attached 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 to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

June 1984 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Lake Mead marketing area is approved or favored by producers, as defined under the terms of the order as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

Order [1] Amending the Order, Regulating the Handling of Milk in the Lake Mead Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Lake Mead marketing area. 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 and procedure (7 CFR Part 900). Upon the basis of the evidence introduced at such hearing and the record thereof, it is followed that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to person in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof, the handling of milk in the Lake Mead marketing area shall be in comformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on June 12, 1984, and published in the **Federal Register** on June 15, 1984 (49 FR 24736) shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein, subject to a modification in § 1139.76 of the introductory text in paragraph (a) that precedes subparagraph (1).

[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 marketing orders have been met. The marketing agreement is filed as a part of the original document and is therefore not published in the Federal Register.

PART 1139—MILK IN THE LAKE MEAD MARKETING AREA

1. Section 1139.3 is revised to read as follows:

§ 1139.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to a retail or wholesale outlet (including any delivery through a distribution point, by a vendor, from a plant store or through a vending machine) except a delivery to a plant described in § 1139.7(a).

2. In § 1139.7, paragraphs (a) and (b) are revised to read as follows:

§ 1139.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that during the month has:

(1) Route disposition, except filled milk, representing not less than 50 percent of its total receipts of Grade A fluid milk products (including milk diverted by the operator of such plant to a nonpool plant pursuant to § 1139.13); and

(2) Route disposition, except filled milk, in the marketing area representing not less than 10 percent of such receipts.

(b) A supply plant from which during the month not less than 50 percent of its Grade A milk receipts from dairy farmers (including milk diverted by the operator of such plant to a nonpool plant pursuant to § 1139.13) is transferred to a pool distributing plant pursuant to paragraph (a) of this section as fluid milk products, except filled milk. Any supply plant that has qualified as a pool plant in each of the immediately preceding months of August through February shall be a pool plant in each of the following months of March through July unless written request for nonpool status for any such month is filed by the plant operator with the market administrator prior to the first day of any such month. A plant withdrawn from supply pool plant status may not be reinstated for any subsequent month of the March-through-July period unless it fulfills the transferring requirement of this paragraph for such month.

* * * * *

3. In § 1139.13, paragraph (d) is revised to read as follows:

§ 1139.13 Producer milk.

* * * * *

(d) The following conditions shall apply to milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Such milk shall be priced:

(i) At the location of the pool plant from which the milk is diverted (or on a prorata basis if the producer's milk is received during the month at pool plants having different location adjustments) if the dairy farm from which milk is diverted is located in Clark County, Nevada, or Mohave County, Arizona; and

(ii) Except as provided in paragraph (d)(1)(i) of this section, at the location of the nonpool plant to which the milk is diverted. However, the amount of price adjustment on milk originating from Utah farms that is diverted from a pool plant to a nonpool plant shall not exceed 35 cents per hundredweight.

(2) A cooperative association may divert for its account the milk of any producer (other than producer milk diverted pursuant to paragraph (d)(3) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 50 percent in the months of March through July and 40 percent in other months of the producer milk which the association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of the producer milk which the associations cause to be delivered to or diverted from pool plants if each association has filed a request in writing with the market administrator on or before the first day of the month the agreement is effective. This request shall specify the basis for assigning overdiverted milk to the producer deliveries of each cooperative according to a method approved by the market administrator.

(3) The operator of a pool plant (other than a cooperative association) may divert for his account the milk of any producer (other than producer milk diverted pursuant to (d)(2) of this section) from whom at least one day's milk production is received during the month at a pool plant. The total quantiy of milk so diverted may not exceed 50 percent in the months of March through July and 40 percent in other months of the milk received at or diverted from such pool plant from producers for which the operator of such plant is the handler during the month. The milk for which the operator of such plant is the handler during the month shall not duplicate milk diverted pursuant to paragraph (d)(2) of this section.

(4) Diversions in excess of such percentages shall not be producer milk, and the diverting handler shall designate the dairy farmers whose milk is not producer milk. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

4. In § 1139.31 paragraph (c) is revised to read as follows:

§ 1139.31 Payroll reports.

* * * * *

(c) Each handler operating a partially regulated distributing plant who elects to make payments pursuant to § 1139.76(a)(2) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

5. Section 1139.40 is revised to read as follows:

§ 1139.40 Classes of utilization.

Except as provided in § 1139.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1139.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section:

(3) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen desserts mixes;

(iii) Any concentrated milk product in bulk, fluid form other than that specified in paragraph (c)(1) of this section;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formula especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Any concentrated milk product in bulk, fluid form that is used to produce a Class III product;

(v) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(vi) Any product not otherwise specified in this section;

(2) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(3) In fluid milk products any products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1139.15; and

(6) In shrinkage assigned pursuant to § 1139.41(a) to the receipts specified in § 1139.41(a)(2) and in shrinkage specified in § 1139.41 (b) and (c).

6. In § 1139.50, the introductory text preceding paragraph (a) is revised to read as follows:

§ 1139.50 Class prices.

Subject to the provisions of § 1139.52, the class prices for the month per hundredweight of milk shall be as follows:

* * * * *

7. Section 1139.76 is revised to read as follows:

§ 1139.76 Payments by handler operating a partially regulated distributing plant.

(a) Each handler who operates a partially regulated distributing plant that is not subject to a milk

classification and pricing program which provides for marketwide pooling of producer returns and is enforced under the authority of a state government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the lesser of the amounts computed pursuant to paragraphs (a)(1) or (b)(1) of this section. If the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(iii) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(iv) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than Class III price); and

(v) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(1)(iii) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(2) An amount computed as follows:

(i) Determine the value that would have been computed pursuant to § 1139.60 for the partially regulated distributing plant if the plant had been pool plant, subject to the following modifications:

(*a*) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(*b*) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other plants that are classified in the corresponding class pursuant to paragraph (a)(2)(i)(*a*) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1139.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee-plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(*c*) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant § 1139.60 for such handler shall include, in lieu of the value of other source milk specified in § 1139.60(f) less the value of such other source milk specified in § 1139.71(b)(2), a value of milk determined pursuant to § 1139.60 for each nonpool plant that is not another order plant which serves as supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1139.7(b), subject to the following conditions:

(*i*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1139.30(b) and 1139.31(c) similar reports for each such nonpool supply plant;

(*ii*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*iii*) The value of milk determined pursuant to § 1139.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(ii) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (a)(2)(i) of this section, subtract:

(*a*) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated. If such plant is regulated under a State program which provides for marketwide pooling of producer returns, the amount to be subtracted in lieu of gross payments to dairy farmers shall be the gross payment obligation of the plant operator under such State's regulatory program for milk received from dairy farmers;

(*b*) If paragraph (a)(2)(i)(*c*) of this section applies, the gross payments by the operator of such nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(*c*) The payment by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if paragraph (a)(2)(i)(*c*) of this section applies.

(b) Each handler who operates a partially regulated distributing plant that is subject to a milk classification and pricing program which provides for marketwide pooling of producer returns and is enforced under the authority of a State government shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the lesser of the amounts computed pursuant to paragraphs (a)(1) or (b)(1) of this section. If the handler submits pursuant to §§ 1139.30(b) and 1139.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (a)(2) of this section:

(1) An amount computed as follows:

(i) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(ii) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(*a*) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(*b*) From another nonpool plant that is not an other plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any

Federal milk order is classified and priced as Class I milk and is used as an offset for any other payment obligation under any order;

(iii) Multiply the remaining pounds by the amount that the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) exceeds the applicable prices for such products as determined under the State program.

8. In § 1139.85, paragraph (c) is revised to read as follows:

§ 1139.85 Assessment for order administration.

* * * * *

(c) Route disposition in the marketing area from partially regulated distribution plant that exceeds the skim milk and butterfat subtracted pursuant to § 1139.76 (a)(1)(ii), or (b)(1)(ii), as the case may be.

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

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

September 19, 1984.

[FR Doc. 84-25388 Filed 9-24-84; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 118, 119, 120, 122, and 130

Business and Special Purpose Loans; Notice of Proposed Rulemaking

AGENCY: Small Business Administration.

ACTION: Proposed rulemaking.

SUMMARY: At present, SBA's regulations governing its financial assistance program appears in various parts of 13 CFR Chapter I. Therefore, it is often difficult to isolate the policies that apply to all loan programs from the policies that have limited application. The proposal is necessary to accomplish several purposes: (1) Codify policies of the Small Business Administration, (2) reflect amendments made to the Small Business Act by Pub. L. 97–35 (95 Stat 357), (3) remove duplications in the regulations, and (4) to clarify rules and procedures. The effect of this proposed rulemaking action would be to incorporate all basic loan policies, including borrower eligibility, and participant eligibility into Part 120 and specific loan programs into Part 122.

DATE: Comments must be received or postmarked on or before November 26, 1984.

ADDRESSES: Written comments, in duplicate, are to be addressed to the Director, Office of Business Loans, 1441 L Street, NW., Washington, D.C 20416.

FOR FURTHER INFORMATION CONTACT: Questions about this proposed rule may be directed to:

Part 120—Subpart B

Timothy O'Leary, Deputy Director, Office of Portfolio Management, (202) 653–6429

Part 120—Subpart C

Danny J. Gibb, Chief, Financial Institutions Branch, (202) 653–6076

Balance of Part 120 and All of Part 122

Everett E. Shell, Chief, Loan Processing Branch, (202) 653–6470

SUPPLEMENTARY INFORMATION: At present, SBA's regulations governing its financial assistance program appear in various Parts of 13 CFR Chapter I. Part 118 deals with Handicapped Assistance Loans, Part 119 with Economic Opportunity Loans, Part 120 with Loan Policy, Part 122 with Business Loans and Part 130 with Small Business Energy Loans. As presently published, basic loan policy appears in both Parts 120 and 122. This policy is presently incorporated into the other Parts either by reference or by duplication. Therefore, it is often difficult to isolate the policies that apply to all loan programs from the policies that have limited application.

When the President signed the Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981 (Pub. L. 97–35), SBA's statutory authority for extending financial assistance was extensively revised. Section 7(e), 7(h), 7(i) and 7(l) of the Small Business Act (15 U.S.C. 631 et seq.) (Act) were all effectively repealed and section 7(a) was amended to incorporate the special purpose loan programs that are to be continued. The Trade Adjustment Loan Program [section 7(e)] and the Pool Loan (Group Corporation) Program [section 7(a)(5)] were discontinued. These proposed regulations represent an effort to reorganize the various parts of existent regulations referred to above into two more cohesive Parts (120 and 122), and to accommodate the changes in the Small Business Act which occurred as a result of Pub. L. 97–35.

The following table provides a cross reference to specific regulations as they appear in both the existing regulations and this proposal. Because of repetition in the existing regulations and because the proposed regulations represent a rearrangement of some sections, several existing citations may have the same proposed citation as a reference or may have more than one citation in the proposed regulations as a reference. Those instances in which Pub. L. 97–35 appears as a reference indicates our authority was modified by the new law. Use of the word "out" appears as the indication that the existing regulation was dropped in this proposal. Discussion of these changes follows the table.

118.1(a)	122.51-2(e)—122.51-6.
118.1(b)	122.51.
118.2(a) and (b)	Out.
118.2(c)	120.101-1.
118.2(d)	120.2-1.
118.2(e)	122.51-2(c)—PL 97-35.
118.2(f)	122.51-2(d)—PL 97-35
118.2(g)	122.51-2(a).
118.2(h)	122.51-2(b).
118.11(a) and (a)(1)	122.51-2(c)—122.51-5.
118.11(a)(2) and (2)(i) and (ii)	120.103-2.
118.11(a)(2)(iii) and (iv)	122.51-5.
118.11(b)	122.51-2(d)—122.4
118.11(b)(1)	120.103-1.
118.11(c)	122.51-6.
118.11(d)	122.51-5(b).
118.21(a)	122.51-6.
118.21(b)	Out.
118.31(a) and (a)(1)	Pub. L. 97-35—122.7.
118.31(b)	122.51-3.
118.31(c)	Pub. L. 97-35—122.8.
118.31(d)	120.202-3.
118.31(e)	122.6-1—122.6-2.
118.41(a) and (a)(1)	120.3-4.
118.41(a)(2)	122.7-2—122.7-3.
118.41(a)(3)	120.104.
118.41(a)(4)	120.301-1.
118.51(a) and (a)(1)-(3)	120.103-2.
118.51(a)(4)	120.103-2.
118.51(a)(4)(i)	122.51-4(a).
118.51(a)(5)	120.103-2(c).
118.51(a)(5)(i)	122.51-4(c).
118.51(a)(5)(ii)	122.51-4(c).
118.51(a)(6)	120.103-2.
118.51(a)(6)(i)	122.51-4(b).
118.61	122.5—120.103-3.
118.71(a)	122.4.
118.71(b)	122.51-5(a).
119.1	Pub. L. 97-35—122.52.
119.2(a) and (b)	122.52.
119.2(c)	Out—Pub. L. 97-35.
119.11	120.2.
119.21(a)(b) and (b)(1)	122.52.
119.21(b)(2)	Out.
119.21(c) and (d)	122.52—120.101-2(a).
119.21(e)	122.52.
119.21(f)	120.103-1.
119.31(a)	122.7.
119.31(b)	122.5-122.6 Pub. L. 97-35.
119.31(c)(1)	122.8-1.
119.31(c)(2)	122.8-2.
119.31(c)(3)	120.202-3.
119.31(d)	120.103-2(c).
119.41(a)	122.7-3—Pub. L. 97-35.
119.41(b)	122.7-2—Pub. L 97-35.
119.51(a) and (b)	120.103-2—122.52.
119.51(c)	120.103-2.
119.51(d)	120.103-2(b).
119.51(e)	Out—Pub. L. 97-35.
119.61	122.5-3.
119.71	122.4.
119.81	122.52.
119.91	Out—Pub. L. 97-35.
120.1(a)	120.1.
120.1(b)	120.2-5.
120.1(c)	120.2-6.
120.1(d)	120.2-2.
120.2(a)	120.103-1.
120.2(b) and (b)(1)	120.3-4.
120.2(b)(2)	122.7-2 and 3.
120.2(b)(3)	120.301-1.
120.2(c)(1)	120.103-2.
120.2(c)(2) and (3)	120.102-6 and 7.
120.2(c)(4)	120.101-1(b).
120.2(c)(5)	120.101-(c).
120.2(d)(1)(i)	120.102-1.
120.2(d)(1)(ii)	120.102-3.
120.2(d)(1)(iii)	120.102-4.
120.2(d)(1)(iv)	120.102-11.

120.2(d)(2)	120.102-5.
120.2(d)(3)	120.101-2(a).
120.2(d)(4)	120.101-2(b).
120.2(d)(4)(i)	120.101-2(b).
120.2(d)(4)(ii)	120.101-2(b).
120.2(d)(4)(iii)	120.101-2(b).
120.2(d)(4)(iv)	120.101-2(b).
120.2(d)(4)(v)	120.101-2(b).
120.2(d)(4)(vi)	120.101-2(b).
120.2(d)(4)(vii)	120.101-2(b).
120.2(d)(5)	120.101-2(c).
120.2(d)(6)	120.102-8.
120.2(d)(7)	120.102-8—122.50.
120.2(d)(8)	120.102-9.
120.2(d)(9)	120.101-2(d).
120.2(d)(10)	120.101-2(e).
120.2(d)(11)	120.101-2(f).
120.2(d)(12)	120.101-2(g).
120.3(a)	122.6—122.6-1.
120.3(b)(1)	120.104.
120.3(b)(1)(i)	Out.
120.3(b)(1)(ii)	1Out.
120.3(b)(1)(iii)-(iv)	120.104.
120.3(b)(2)(i) and (ii)	122.8—Pub. L. 97-35.
120.3(b)(iii)(A)	Out.
120.3(b)(2)(iii)(B)	122.8-4.
120.3(b)(2)(iv)	122.8-3.
120.3(b)(2)(v)	120.202-3.
120.3(b)(2)(vi)	120.202-4.
120.3(b)(3)	120.104-2(a) and (b).
120.3(b)(5) and (5)(i)	120.104-2(d) and (e).
120.3(b)(5)(ii)	120.104-2(d) and (f).
120.3(b)(6)	120.103-2(e).
120.4(a)	120.300.
120.4(a)(1)	120.301-5(a).
120.4(a)(2)	120.301-5(b).
120.4(a)(3)	120.301-5(c).
120.4(a)(4)	120.301-5(d).
120.4(b)	120.302.
120.4(b)(1)	120.302-1(a).
120.4(b)(2)	120.302-1.
120.4(c)(1)	120.300.
120.4(d)	120.305.
120.4(d)(1)	120.305-1.
120.4(d)(2)	120.305-2.
120.4(d)(3)	120.305-3.
120.4(d)(4)	120.305-4.
120.4(d)(5)	120.305-5.
120.4(d)(6)	120.305-6.
120.4(d)(7)	120.305-7.
120.4(d)(8)	120.305-8.
120.5(a)(1)	120.102-10.
120.5(a)(2)	120.301-3.
120.5(a)(2)(i)	120.103-2(d) and (e).
120.5(a)(2)(ii)	Out.
120.5(a)(3)	120.301-2.
120.5(a)(4)	120.301-4.
120.5(b)	120.302.
120.5(b)(1)	120.302-2(d).
120.5(b)(2)	120.302-1(c).
120.5(b)(3)	120.302-1(e).
120.5(b)(4)	120.302-1(f).
120.5(b)(5)	120.302-1(g).
120.5(b)(6)	120.302-1(h).
120.5(b)(7)	120.302-1(i).
120.5(b)(8)	120.302-1(j) and (k) and (l).
120.5(b)(9)	120.302-1(m).
120.5(b)(10)	Out.
120.5(b)(11)	120.302-1(n).
120.5(b)(12)	120.302-1(o).
120.5(b)(13)	120.302-1(p).
120.5(b)(14)	120.302-1(q).
120.6(a)	120.303-1.
102.6(b)	120.303-2.
102.6(c)	120.303-3.
120.6(d)(1)	120.303-4.
120.6(d)(2)	120.303-5.
120.6(d)(3)	120.303-6.
120.7	120.304.
122.1	122.1.
122.2(a)	120.1—120.103-1.
122.2(b)	120.103-1.
122.2(c)	120.103-2.
122.2(d)	120.103.
122.2(d)(1)	Out.
122.2(d)(2)	Out.
122.2(d)(3)	Out.
122.2(e)	122.4.
122.2(f)	120.2-3—120.2-6.
122.3	122.4.
122.4	Out.
122.5(a) and (b)	122.7—Pub. L. 97-35.
122.6	Out.
122.7	120.3-2—122.7-2.
122.8	120.3-1.
122.9	Out Pub. L. 97-35.
122.10(a)(1)-(4)	Out.
122.10(a)(5)	120.202-1.
122.10(a)(6)	120.202-2—120.202-5.
122.10(b)(1)(i)-(iii)	Out.
122.10(b)(1)(iv)	120.202-5(e).
122.10(b)(2) and (3)	Out.
122.11	Out.
122.12	Out.
122.13	120.102.
122.14	122.6-1.
122.15	122.5.
122.15-1-3	120.103-3.
122.16(a)-(d)	120.103-2.
122.16(d)(1)(e) and (f) and (g).	120.103-2.
122.17	122.6-1.
122.18	120.104-2(e).
122.19	122.5-5.
122.20(a)	120.200-1.
122.20(b)	120.200-2.
122.20(c)(1)	Out.
122.20(c)(2)	120.201.
122.20(d)	Out.
122.21	120.203.
122.22(a)-(d)	120.204.
122.23(a)	120.204-1.
122.23(b)(1)-(7)	120.204-2.
122.24(a)-(d)	122.204-2.
122.25(a)-(c)	120.204-2.
122.302	122.55-2.
122.303	122.55-1.
122.304	122.66-1-122.55-3.
122.305(a)	122.55-5.
122.305(b)	122.55-4(a).
122.305(c)	122.55-4(b).
122.305(d)	122.55-4(c).
122.305(e)	122.55-4(c).
122.305(f)	122.55-5.
122.306(a)	122.55-5(a).
122.306(b)	122.55-5(b).
122.307	122.55-1(b).
122.308(a)	122.55-4(c).
122.308(b)	122.55-4(b).
122.308(c)	122.55-4(b).
122.308(d)	122.55-4(b).
122.309	122.103-1.
122.400	122.54-1—122.54-3.
122.401	122.54-2.
122.403	122.54-4.
122.404	122.54-1.
122.405	122.54-5.
122.406	122.54-6.
122.501	122.56-1.
122.502	122.56-2.
122.503	122.56-3.
122.504	122.56-4.
130.1	122.53-1.
130.2	122.53-1.
130.3	122.53-2.
130.4	120.101.
130.5	120.301-5.
130.6	122.53-3.
130.7	122.53-4.
130.8	122.5-1.
130.9	122.7.
130.10	122.8.
130.11	122.6.
130.12	122.4.
130.13-15	Out Pub. L. 97-35.
Table 1	Table 1, Pt. 122.

Part 120 of these proposed regulations sets forth the broad policies and principles SBA employs in deciding whether to grant or deny financial assistance to small businesses pursuant to section 7(a) of the Small Business Act. It also describes the steps SBA employs to administer such assistance once it has been made available to a small business, both with respect to the recipient and any lending institution with which SBA may participate in making the assistance, and the procedures which such a lending institution must follow in order to properly participate in the making of such assistance available.

Subpart A of proposed Part 120 is intended to set forth the policies that SBA follows in deciding to grant or deny financial assistance. Most of the proposed regulations contained in this Subpart are presently contained in Part 120 of 13 CFR. However, several of the sections in this Subpart reflect preexistent policies of the Agency which have not previously been stated in regulation form, and several others are a direct result of statutory change.

Section 120.1 sets forth several general provisions of a procedural nature which explain how SBA will interpret these regulations. Of particular note is § 120.1-3 which provides that financial assistance granted before the effective date of these regulations will be governed by the regulations and contractual provisions then in effect. In addition, § 120.1-2 allows the Administrator of SBA to suspend or modify SBA rules, for a limited period of time in a specified area, so long as the reasons for such suspension or modification are clearly explained by a notice in the **Federal Register.**

Section 120.2 sets forth a number of definitions commonly used in these regulations most of which are self-explanatory. Section 120.3 describes the various forms of SBA financial assistance available to businesses under these regulations. These are statutorily prescribed forms of assistance and the same, or very similar regulations, have been in effect since the Agency's inception.

Section 120.101 specifies the criteria of eligibility for an applicant for SBA business financial assistance. In this regard, this section specifies that an applicant must be a small business as defined by SBA in its size regulations (13 CFR Part 121) and may be an agricultural enterprise. In addition, this section provides that provision of loans to small businesses owned or controlled by Indian Tribes (as defined in § 120.2-7 of this proposal) is permissible. This provision is in the present regulations.

Subsection 120.101-2 of these proposed regulations establishes the general principle that SBA will make financial assistance available to most types of small businesses. It also sets forth in paragraphs (a)-(h) exceptions to this general rule and descriptions of the reasons for the exceptions and the circumstances under which they will be applied. In this regard, the only exception to the general rule which is different from those presently found in SBA's regulations involves loan packagers (§ 120.101-2(h)). This

provision indicates that any small concern, 30 percent of the business of which is the preparation of applications for assistance from SBA, is ineligible for SBA business financial assistance. In addition, the following small business concerns are currently, and will continue to be, excluded from financial assistance under the circumstances specified in these regulations: (a) Charitable, religious or other nonprofit institutions; (b) concerns engaged in the creation, organization, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content; (c) most concerns that derive any part of their annual gross receipts or whose principal owner(s) derive any part of their annual income from gambling activities; (d) concerns engaged in illegal activities; (e) concerns primarily engaged in the business of lending or investing or any otherwise eligible applicant where the purpose of the financial assistance is to finance investments that are neither related nor essential to the enterprise; (f) any concern where the proprietor, a holder of at least 20 percent of the stock, or a partner, officer or director is currently on parole or probation following conviction of a serious crime; and (g) any concern engaged in multilevel sales distribution plans of the "pyramid" type.

Section 120.102 of these proposed rules sets forth the general statutorily mandated principle that eligible recipients of SBA business financial assistance may utilize the assistance to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; for working capital; or at the discretion of SBA, to refinance outstanding debt. The section then specifies several uses of SBA assistance which are impermissible. For the most part, these impermissible uses are stated in SBA's present regulations. However, § 120.102–2, which prohibits the use of assistance for revolving lines of credit other than those specifically permissible under the Small Business Act, is a new regulatory provision. In addition, the provisions of the proposal regarding conflicts of interest (§ 120.102–10(a)–(f)) reflect an attempt to clarify the general proscription against creation of a conflict of interest or appearance of such a conflict between SBA and an applicant or a participating lender, by setting forth examples of such prohibited conduct which have arisen in the course of program administration.

Section 120.103 of the proposed regulations prescribes additional criteria which SBA employs in determining the eligibility of applicants for business assistance. In general, under these regulations, an applicant must demonstrate need for the assistance which cannot be satisfied by private sources. This is a statutory requirement which has been previously expressed in SBA's regulations. In addition, the proposal provides that SBA must in each case determine and take such steps as are needed to assure that the applicant's credit is such that there is reasonable assurance of repayment of the assistance. Section 120.103–2(a)–(h) of the proposal sets forth the means by which this assurance will be attained. These means are presently contained in SBA regulations. Finally, § 120.103 also contains the administrative provisions under which reconsideration of declined applications will be made. These provisions are also contained in SBA's present regulations.

Section 120.104 of the proposed regulations describes the types and amounts of fees which may be paid attendant to SBA business financial assistance, and circumstances under which they may be paid. In circumstances in which business financial assistance is made available by SBA in conjunction with a participating lender, the lender may be required to pay SBA a guaranty fee (§ 120.104–1). The regulations describe the amount, the terms of payment and the effect of payment of such fee. Such lenders are also permitted to charge SBA a servicing fee under certain circumstances (§ 120.104–2(a)) and the proposed regulations set forth those circumstances and the permissible amount of such fees. The proposed regulations further specify that no late payment or prepayment fees may be charged in connection with SBA assistance (§ 120.104–2(b)), and that enumerated commitment fees may be charged by participating lenders in connection with SBA's export line of credit program (§ 120.104–2(c)). Finally, the proposed regulations provide the terms and conditions under which fees may be paid by applicants for assistance to third parties who represent or otherwise provide services to them in connection with their attempts to obtain SBA assistance (§ 120.104–2(d)–(f)). All of these provisions are presently contained in SBA's regulations.

Subpart B of Part 120 of the proposed regulations contains the policies applicable to the administration of SBA business financial assistance. In most instances of financial assistance, other than loans made directly by SBA, the responsibilities for administration of the assistance lies with the lender. Pursuant to § 120.200–1, immediate participation loans which are closed by the lender will generally be serviced by the lender; immediate participation loans or direct loans closed by SBA will generally be administered by SBA. In addition, guaranteed loans will be serviced by the lender pursuant to § 120.200–2. The lender will receive all payments of principal and interest on the loan until SBA completes the purchase of its guaranteed share of the loan. The lender may, however, continue to service the loan after such purchase provided SBA gives written consent. Therefore, the major portion of this Subpart outlines the responsibilities of the lender to SBA and the borrower in the assistance and administration process. For example, § 120.201–1 specifies the instances in which SBA's prior consent is required to permit the lender to take a servicing action, and §§ 120.202–1 and 120.202–2 prescribe the circumstances under which SBA will purchase the guaranteed portion of a loan made by a participating lender. These provisions, for the most part, are reflections of SBA policy which have not previously appeared in regulations governing the program but rather have evolved as a matter of practice and administrative interpretation of relevant program documents.

Section 120.204 of the proposed regulations describes the practices and procedures SBA will employ to either sell or convert an evidence of indebtedness or liquidate collateral for business assistance when either step is necessary to collect an indebtedness. In general, SBA favors a policy of avoiding such steps in favor of pursuing any reasonable prospect of repayment. Paragraph 120.204–1(a) provides that liquidating the property securing a loan will not be resorted to if there is any reasonable prospect that the loan may be repaid within a reasonable time. Section 120.204–2 prescribe steps which may be taken when SBA determines repayment is not realistic. These steps are presently prescribed in SBA's regulations, and they are the normal practices any commercial lender would follow in realizing recovery on an indebtedness. Section 120.204–1(b)(1) authorizes SBA to sell any direct loan without the consent of the borrower. Direct loans may also be converted to guaranteed loans or to immediate participation loans (§ 120.204–1(b)(2)). Subparagraph 120.204–1(b)(3) authorizes the conversion of immediate participation loans to guaranteed loans or loans wholly owned by the participating financial institution

without the borrower's consent. Section § 120.204–2 prescribes provisions for the foreclosure of collateral. Paragraph 120.204–2(a) provides for the liquidation of the security when any one of seven specified conditions exists. Real and personal property, pledged as security for a loan which is in default, may also be sold in accordance with the provisions of the related security agreement (§ 120.204–2(b)).

Subpart C of Part 120 prescribes the regulations governing the functions of banks and other lending institutions which participate with SBA in making, servicing and collecting business financial assistance. In this regard, SBA is authorized by statute to participate with banks and other lending institutions on an immediate or guaranteed basis in making such assistance (see § 120.300). A major portion of Subpart C describes the conditions under which a lender may: (1) Participate with SBA (§ 120.301–1 proscribes lender preferences), (2) sell or transfer the guaranteed portion of a loan (§ 120.302–2), (3) provides services to a borrower (§ 120.301–3), and (4) otherwise hold itself out as a participant to the public (§ 120.301–4). The remainder of the Subpart describes the qualifications an otherwise regulated lender must possess in order to be allowed to participate in the business financial assistance program with SBA (see § 120.301–5), and the terms on which Small Business Lending Companies (SBLC's), which are regulated only by SBA, may so participate. These qualifications and terms are presently stated in SBA's regulations and are restated without significant change in the proposal. A proposed amendment of § 120.5(b)(2) of the existing regulation has been published which would increase the capitalization requirements for all small business lending companies to $1,000,000 from the present $500,000. Such increase would take effect one year after the amendment is published in final form in the Federal Register. Accordingly, section 120.302–1(c) herein proposed would reflect such amendment when promulgated as a final rule.

Part 122 of these proposed regulations sets forth the rules governing the making of financial assistance available to small businesses pursuant to section 7(a) of the Small Business Act, 15 U.S.C. 636(a), *et seq.* Subpart A of this Part sets forth the general rules governing the terms and conditions upon which such assistance is made available, including such features as the maturities, amounts available, percentages of loan amounts SBA will guaranty, interest rates and collection policies relative to such assistance. Subpart B of this Part describes the special features of certain loan programs which are provided for by statute such as financing residential or commercial construction or rehabilitation (Small Business Act sec. 7(a)(9)), subsidized loans to handicapped small business persons (sec. 7(a)(10)), loans to businesses located in areas of high unemployment or high proportions of low income individuals (sec. 7(a)(11)), loans to assist small businesses involved in energy related measures (sec. 7(a)(12)), loans for exporters (sec. 7(a)(14)), and loans to qualified employee trusts (sec. 7(a)(15)).

Sections 122.1–122.4 of the proposed regulations set forth general procedural rules of applicability governing this Part. Section 122.5 describes the requirements of the SBA loan application for the various types of assistance indicated above. In general, SBA will require satisfactory evidence that lending institutions have refused to either make or participate in the making of a loan to a given small business before it will either participate with a lending institution or make the loan directly to a small business (see §§ 122.5 and 120.103). If a lending institution will make assistance available in participation with SBA, it will prepare and submit the application to SBA. For assistance made directly by SBA, the application is made by the small business (§ 122.5–3).

Section 122.6 describes the terms under which SBA assistance may be made available. Most of these requirements are provided for within the provisions of section 7(a) of the Small Business Act. In general, loans have 25 year maturities, with additional periods as may be required for that portion of a loan made for acquiring real property or constructing, converting or expanding business facilities (see § 122.6–1). SBA may also extend or renew a loan maturity up to ten years in order to aid in the orderly liquidation of the loan, or refinance a loan under prescribed conditions (see § 122.6–1). In addition, the regulations provide for the granting of grace periods and moratoria on payments under certain prescribed conditions (see §§ 122.6–2 and 3 and Part 131 of this Chapter).

As the regulations in § 122.7 indicate, SBA is statutorily permitted to make a direct loan in the amount of $350,000, but has administratively limited the available amount of a direct loan to $150,000 per borrower. In immediate participation loans, SBA is authorized a participation of 90 percent of the loan or $350,000, whichever is less. However, again by regulation SBA has limited its participation to 75 percent of the loan or $150,000, whichever is less. With respect to guaranteed loans, SBA's exposure cannot exceed $500,000 in any circumstance. The proposed regulations also set forth statutorily prescribed percentages of SBA guaranty for certain sized loans (see § 122.7–3(a)–(c)).

Section 122.8 prescribes the interest rates which may be charged with respect to the various types of SBA loans. These, too, are statutorily prescribed (see sec. 7(a)(4) of the Small Business Act). Of note is § 122.8–4 of the proposed regulations which proposes a variation of SBA policy with respect to fluctuation of interest rates. Section 120.3(b)(2) of the present regulations, 13 CFR § 120.3(b)(2), authorizes a participating lender to charge a fluctuating interest rate which can be changed no more frequently than quarterly after an initial rate period of at least one full quarter. Section 122.8–4, as proposed herein, would permit the fluctuation to commence on the first business day of the month following full disbursement with subsequent fluctuations no more frequently than monthly. The proposed regulation provides that the base rate would be the low New York prime rate as printed in a national daily financial newspaper. This provision would clarify the uncertainty inherent in the present regulation which refers only to the prime rate as published in the media. In addition, the proposed regulation clarifies the amoritzation of the loan by allowing an interest spread of up to three percentage points. The present regulation makes no reference to such spread. The proposed regulation allows SBA to authorize unequal payments in order to amortize the loan. This is not in the present regulation but does reflect present policy and good lending practice.

Subpart B of proposed Part 122 sets forth provisions for special purpose loans. These regulations contain provisions concerning small general contractors, organizations for the handicapped, low-income areas, energy conservation, exporters, qualified employee trusts, and loans to veterans.

Section 122.50 describes the policy and the availability of loans to small general contractors to finance residential or commercial construction. Such loan funds cannot be used primarily for the acquisition of land (i.e., not more than 20 percent of the loan proceeds can be used for the acquisition of land). This section specifies eight conditions which must be met in order for these loans to be available (§ 122.50–2 to § 122.50–9). These conditions are: (1)

The applicant must be a construction contractor with a demonstrated ability in profitable construction or rehabilitation projects of a comparable type and size; (2) the maturity of the loan cannot exceed 36 months beyond the estimated time to complete the construction or rehabilitation; (3) loan proceeds may only be used for construction or significant rehabilitation of structures for sale; (4) loan funds cannot be used to purchase vacant land or to operate or hold rental property for investment purposes; (5) the constructed or rehabilitated structure cannot be rented, pending sale, without SBA's written approval; (6) the sale of the property must be both a beneficial and a legal change of ownership in the title to the property; (7) SBA must have at least a second lien on the property as collateral; and (8) the application must include three additional letters (as described in § 122.50–9).

Section 122.51 details the authorized loans to assist organizations for the handicapped or to assist handicapped individuals in establishing, acquiring or operating a small business concern. Subsection 122.51–2 contains definitions of various terms used in this section. It defines the terms "HAL–1," "HAL–2," "organization for the handicapped," "handicapped individual," and "supportive services." HAL–1 applicants must submit evidence that the organization has the capability and experience to successfully perform the HAL–1 requirements (§ 122.51–4(b)). In addition, pursuant to § 122.51–5(a), these applicants must submit copies of bylaws, incorporation papers, or other evidence that they meet the definition of HAL–1 organizations. This application must also show that private credit is not available and that funds from other government programs are not being duplicated by SBA. An applicant for an HAL–2 type loan must submit written information from a physician, psychiatrist or other qualified professional as to the permanent nature of the handicap and the limitations it places on the applicant (§ 122.51–5(b)). Section 122.51–6 describes the uses to which the proceeds of both HAL–1 and HL–2 loans may be put.

Section 122.52 authorizes loans to establish, preserve or strengthen small business concerns: (1) Located in areas with high proportions of unemployed or low-income individuals, or (2) owned by low-income individuals.

Section 122.53 describes the authorized loans to assist small business concerns to utilize energy measures designed to conserve the Nation's energy resources. Subsection 122.53–2 defines what the term "energy measures" encompasses, including: solar thermal energy equipment; photovoltaic cells; hydroelectric power equipment; and wind energy conversion equipment. Loan proceeds may be used to acquire vacant land necessary for the construction of a plant and any other equipment or materials which are required to effectively employ eligible energy measures (§ 122.53–3). Subsection 122.53–4 recognize that because greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under Subpart B.

Section 122.54 sets forth the provisions governing an authorized revolving line of credit for pre-export financing and for export purposes to enable small concerns to develop foreign markets. An applicant for an Export Revolving Line of Credit must have been in operation for 12 full months before filing an application in order to be eligible (§ 122.54–2). The proceeds of such a loan may only be used to penetrate or develop a foreign market and to finance labor and materials for pre-export production (§ 122.54–3). This subsection then gives a few examples of what would constitute both eligible and ineligible uses of proceeds. These stated examples are by no means intended to be exclusive. Subsection 122.54–5 requires that only collateral that is located in the United States, its territories and possessions will be acceptable security for these loans. In addition, applications for these loans must contain a projected cash flow chart for the term of the loan and monthly progress reports (§ 122.54–6).

Section 122.55 describes the specifications for authorized guaranteed loans to qualified employee trusts. Such guaranteed loans are authorized to finance growth and to effect a change of ownership in business concerns that are small or that would be small after the purchase is accomplished (§ 122.55–1). Subsection 122.55–2 contains definitions of various terms used in this section. It defines the terms "employee," "employee organization," "employee trust," "employer concern," "ESOP," "qualified employee trust," and "qualifying employer securities." These definitions do not amend or modify the definitions in the Internal Revenue Code, and the regulations thereunder, or The Labor Department definitions. Subsection 122.55–3 clarifies the fact that the $500,000 statutory limit which SBA may guarantee applies to the *combined total* of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the agregate. The individual personal assets of the employee-owners cannot be considered in determining whether to guarantee a loan. However, SBA may consider business experience where certain employee-owners assume managerial responsibilities (§ 122.55–4(c)). Paragraph 122.55–5(a) specifies eight requirements which must be met in order for a qualified employee trust to be eligible for an SBA loan guarantee, including the provision that the SBA guaranteed loan can only be used for the purchase of qualifying employer securities. Pursuant to § 122.55–5(b), in order for a trust to be treated as a qualified employee trust for the purposes of an SBA loan guaranty, such trust must: (1) Be maintained by an employee organization which represents at least 51 percent of the employees of such concern; (2) be part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA, provided the plan contains certain specified requisites; and (3) enter into an agreement with SBA setting forth the eight requirements cited in paragraph (a) of § 122.55–5.

The veterans loan program discussed in §§ 122.56—122.56–4 reflects the regulations promulgated in §§ 122.501—122.504. The specific statutory authority, as stated in § 122.56–1 may be found in the Veterans Small Business Loan Act of 1981 (Pub. L. 97–35) and the Second Continuing Resolution of 1983 (Pub. L. 97–377). Section 122.56–2 states that it is a direct loan program. Section 122.56–3 sets forth the eligibility rules. Section 122.56–4 prescribes that the veteran loan status may be used only once.

Compliance With Executive Order 12291 and Regulatory Flexibility Act

As indicated above, this proposed rule constitutes primarily a reorganization of existent regulations and a revision of certain of the provisions to account for statutorily mandated changes in the operation of SBA's business financial assistance program. For purposes of this analysis, SBA has chosen to look upon the proposal, therefore, as one rule rather than to consider individual sections of it separately. It is anticipated that over the course of 1984, after this proposal becomes final, there will be multiple efforts to revise individual sections of Parts 120 and 122 by the rulemaking process which will afford the public an opportunity to participate.

Taken as a whole, these proposed rules do constitute major rules for the purpose of E.O. 12291 and will have a significant economic impact on a

substantial number of small businesses. In this regard, the rules provide the general framework by which an annual program of approximately $2¼ billion is administered. Under this program, SBA annually approves approximately 30,000 applications for assistance from small businesses.

1. Description of Potential Benefits

The benefits to be derived from this rulemaking are non-financial in nature. This rulemaking constitutes a procedural simplification of our present regulations which should assist all applicants for assistance to more easily understand the program. It eliminates repetitious regulations, more clearly codifies existent policies, and updates the regulatory format governing the program to reflect statutory changes.

2. Potential Costs

These proposed regulations impose no costs in and of themselves, with one exception: examination fees for existent non-bank lenders only, of which there are 16, would be increased. There are no new application or recordkeeping requirements imposed.

3. Net benefits

See paragraph 1 above.

4. Alternative Approaches

These proposed rules, as indicated above, constitute a necessary general reorganization (see paragraph 1 above). It is anticipated that individual revisions of certain sections will be proposed in the future, subsequent to publication of this revision.

These proposed regulations do not duplicate or overlap any existent regulations. They impose no new application or recordkeeping requirements, but inherent in them as the requirements that applicants provide information and records to SBA to enable determination of eligibility and creditworthiness. Professional assistance in preparing such material may be required, i.e., accounting or bookkeeping assistance. Normally, however, applicants are capable of preparing the applications themselves. The statutory basis for these proposed rules is section 5(b)(7), (15 U.S.C. 634(b)(7)) and section 7(a), (15 U.S.C. 636(a)) of the Small Business Act.

Compliance With Paperwork Reduction Act

The approved information collection requirements in this part have been identified by Office of Management (OMB) approval number. The remaining information collections have been or will be submitted to OMB as required by 44 U.S.C. 3501, et. seq. Information collections affecting nine or less entities that are not subject to the Paperwork Reduction Act are also identified.

List of Subjects

13 CFR Part 118

Loan programs—business, Small businesses.

13 CFR Part 119

Loan programs, Small businesses.

13 CFR Part 130

Energy, Grant programs—energy, Loan programs—energy, Small businesses, Solar energy.

13 CFR Part 120

Loan programs—business, Small businesses.

13 CFR Part 122

Handicapped, Employee benefit plans, Loan programs—business, Small business, Trusts and trustees, Energy, grant programs—energy, Loan programs—energy, Solar energy.

PARTS 118, 119, AND 130—[REMOVED]

Accordingly, pursuant to the authority in section 5(b)(6) of the Small Business Act (15 U.S.C. 631 et seq.), Parts 118, 119, and 130, Chapter I, Title 13 of the Code of Federal Regulations would be removed and Parts 120 and 122 would be revised to read as follows:

PART 120—BUSINESS LOAN POLICY

Sec.

120.1 General.
120.1–1 Scope.
120.1–2 Pilot programs.
120.1–3 Savings clause.
120.2 Definitions.
120.1 Act.
120.2–2 Associate.
120.2–3 Financial assistance.
120.2–4 Financial institution.
120.2–5 Lending institution or lender.
120.2–6 Participant and participating lender.
120.2–7 Qualified Indian tribe.
120.2–8 Small Business Lending Company (SBLC).
120.3 Type of loans.
120.3–1 Direct loans.
120.3–2 Immediate participation (IP) loans.
120.3–3 Guarantee (GP) loans.
120.3–4 Priority of loan type.

Subpart A—Loan Making Policy

120.100 General.
120.101 Eligibility of applicant.
120.101–1 Applicant Business Concern.
120.101–2 Type of Businesses.
120.102 Limitation of loan purposes.
120.102–1 Refinance unsecured loans.
120.102–2 Revolving credit.
120.102–3 Pay obligations to owners.
120.102–4 Refund debt to SBIC.
120.102–5 Speculation.
120.102–6 Change of ownership.
120.102–7 Recreational or amusement Enterprises.
120.102–8 Investment in property.
120.102–9 Monopoly.
120.102–10 Conflict of interest.
120.102–11 Replacement of funds.
120.103 Lending criteria.
120.103–1 Evidence of need.
120.103–2 Credit evaluation.
120.103–3 Reconsideration after decline.
120.104 Fees.
120.104–1 Guarantee fees.
120.104–2 Service and commitment fees.
120.105 Other legal requirements.

Subpart B—Loan Administration

120.200 General.
120.200–1 Servicing direct or immediate participation loans.
120.200–2 Servicing guaranteed loans.
120.201 Servicing requirements.
120.201–1 SBA's prior consent required.
120.202 SBA purchase of guaranteed loans.
120.202–1 SBA purchase determination.
120.202–2 No waiver.
120.202–3 Rate of interest to borrower.
120.202–4 Accrued interest to holder.
120.202–5 When SBA does not purchase.
120.203 Collection policy.
120.204 Liquidation of loans and security.
120.204–1 Liquidation policy.
120.204–2 Foreclosure of collateral.

Subpart C—Loan Participants

120.300 Policy.
120.301 Operation of all loan participants.
120.301–1 Preferences.
120.301–2 Sale or transfer of guaranteed portion.
120.301–3 Service to borrowers.
120.301–4 Advertisement of relationship with SBA.
120.301–5 Requirement for all participants.
120.302 Loan participants regulated by SBA.
120.302–1 Small business lending companies.
120.303 Reports to SBA by small business lending companies.
120.303–1 General.
120.302–2 Financial reports to SBA.
120.303–3 Litigation reports.
120.303–4 Reports to stockholders.
120.303–5 Reports of changes.
120.303–6 Miscellaneous reports.
120.304 Examination of Small Business Lending Companies.
120.305 Suspension and revocation of eligibility to participate.
120.305–1 Service of notice.
120.305–2 Service of papers other than notice.
120.305–3 Service of papers upon SBA.
120.305–4 Effect of failure to respond.
120.305–5 Answer.
120.305–6 Initial decision.
120.305–7 Final decision.
120.305–8 Effect of decision.
Appendix A—Memorandum of understanding between the Small Business Administration and the Department of Agriculture, Farmers Home Administration.

§ 120.1 General.

§ 120.1–1 Scope.

This Part sets forth the broad policies and principles that the Small Business Administration (SBA) follows in deciding to grant or deny Financial Assistance under the authority of section 7(a) of the Small Business Act, 15 U.S.C. 636(a), administering and servicing loans, and overseeing the operations of all loan participants. Frequently firms seeking a loan do not need financial assistance but are in need of management or financial counseling. SBA will, in these cases, provide such assistance through its various counseling programs.

§ 120.1–2 Pilot programs.

(a) In order to explore new directions or improved delivery of SBA services to small concerns, the Administrator of SBA may from time to time publish a notice in the **Federal Register** that certain rules will be suspended or modified for a limited period of time in a specified area.

(b) Such notice in the **Federal Register** shall clearly explain the reasons or grounds for the suspension or modification of SBA rules and comply with all applicable statutes and regulations.

§ 120.1–3 Savings clause.

Financial Assistance granted before (the effective date of this revision) shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such Financial Assistance granted pursuant to contractual terms no longer in use and prior regulations no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 120.2 Definitions.

The following terms have the same meaning wherever they are used in this Part dealing with loan programs or financial assistance.

§ 120.2–1 Act.

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

§ 120.2–2 Associate.

Associate means an associate of the Lender. This includes any of the following persons who have, or had, an interest in the applicant during the period six months before the date of the application or at any time thereafter while the loan is outstanding:

(a) An officer or director of the Lender; an employee authorized to approve loans on the Lender's behalf; a holder directly or indirectly of 10 percent or more of the value of the Lender's stock, debt instruments and other securities; or a close relative or partner of any such person.

(b) Any person, business or other entity that, directly or indirectly, controls, is controlled by or is under common control with the Lender, or a close relative or partner of such person.

(c) Any enterprise in which 10 percent or more of the value of the stock or ownership interest, debt instruments and other securities are owned or controlled by one or more persons or entities acting in concert and named in paragraphs (a) and (b) of this definition (except a Small Business Investment Company licensed by SBA), or where any such person or entity is an officer, director or partner.

(d) A "close relative" as used in paragraphs (a) and (b) of this definition only, means ancestor, lineal descendant, brother or sister or the lineal descendant of either, spouse, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law that is a member of the person's household.

§ 120.2–3 Financial assistance.

Financial assistance means any SBA loan, whether made directly by SBA or as an immediate participation or guarantee loan made in cooperation with a financial institution.

§ 120.2–4 Financial institution.

Financial institution means banks, or other concerns whose regular course of business entails the making of commercial and industrial loans. The terms participating lender, participant, non-bank lender, small business lending company, bank or lender refer to financial institutions that are eligible to participate with SBA and have executed participation agreements.

§ 120.2–5 Lending institution or lender.

(See definition for Financial Institution, 120.2–4.)

§ 120.2–6 Participant and participating lender.

(See definition for Financial Institution, 120.2–4.)

§ 120.2–7 Qualified Indian Tribe.

Qualified Indian tribe means an Indian tribe, as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 4506), which owns and controls 100 percent of a small business concern.

§ 120.2–8 Small business lending company (SBLC).

(See definition for Financial Institution, 120.2–4.)

§ 120.3 Types of loans.

§ 120.3–1 Direct loans.

These loans are made by SBA without a Financial Institution's participation.

§ 120.3–2 Immediate participation (IP) loans.

These are loans where either SBA or a Financial Institution agree to purchase from the other, immediately upon disbursement, an agreed percentage of each disbursement.

§ 120.3–3 Guaranty (GP) loans.

These loans, which are referred to as "deferred participations" in the Act, are loans made by a Lender to a small business under a guaranty agreement between the Lender and SBA. The agreement may be an individual agreement that pertains to one specific loan only or a blanket agreement that pertains to all such loans submitted by the Lender and agreed to by SBA. The Lender advances the total funds for the loan and SBA agrees to purchase, upon demand by the Lender and subject to specific conditions, an agreed portion of the outstanding balance.

§ 120.3–4 Priority of loan type.

Every applicant for a direct loan, immediate participation or guaranty loan must show that the loan is not available without SBA assistance. In addition, an applicant for a direct loan must show that neither an immediate participation nor a guaranty loan is available; an applicant for an immediate participation must show that a guaranty loan is not available.[1]

Subpart A—Loan Making Policy

§ 120.100 General.

This subpart outlines the general loan policies covering eligibility, basic loan principles, interest rates, fees and other matters that apply to all SBA Financial Assistance.

§ 120.101 Eligibility of applicant.

§ 120.101–1 Applicant business concern.

(a) *Size.* To receive Financial Assistance from SBA the business applicant must qualify as a small business as defined in Part 121 (Size Standards) of this Chapter.

(b) *Loans to agricultural enterprises.* Small concerns engaged in farming and related businesses will be assisted by

[1] OMB No. 3245–0016.

SBA in accordance with the Memorandum of Understanding signed by the SBA and the United States Department of Agriculture, Farmers Home Administration (FmHA), which appears as Appendix A to this Part.

(c) *Loans to Indian tribes.* Eligibility of small business concerns under section 7(a) of the Act shall not be adversely affected because any such concern is owned or controlled by an Indian Tribe as defined herein (see 120.2–7).

§ 120.101–2 Type of business.

Most small concerns are eligible for financial assistance. the following types of businesses are, however, not eligible for SBA assistance except where otherwise stated in this Section (120.101–2).

(a) *Charitable, religious or other non-profit institution.* Eleemosynary (charitable) institutions, other non-profit enterprises, government-owned corporations, consumer and marketing cooperatives, churches and organizations promoting religious objectives. An otherwise eligible small concern owned in whole or in part by a private non-profit organization is eligible, as is such concern when owned and controlled by a qualified Indian Tribe. Sheltered workshops for the handicapped are eligible under a special program, see Section 122.51. Producer cooperatives, including farm cooperatives, are eligible if "small" under Part 121 of this Chapter, and if they are totally owned by otherwise eligible small concerns that share a common need, the cooperative is for the exclusive use of the members and the cooperative provides raw materials, equipment, inventories, supplies or the benefits of research and development or the facilities for such purposes. For qualified employee trusts, see Section 122.56.

(b) *Media and similar concerns.* Concerns engaged in the creation, origination, expression, dissemination, propagation or distribution of ideas, values, thoughts, opinions or similar intellectual property, regardless of medium, form or content. Financial Assistance to such applicants is barred in order to avoid Government interference, or the appearance of such interference, with the constitutionally protected freedoms of speech and press.

(1) Such concerns include:

(i) *Publishing.* Concerns that are publishers, including so-called "vanity" publishers, and producers, importers, exporters or distributors of communications, including newspapers, magazines, books, greeting cards, sheet music, pictures, posters, film, tape, live broadcasts, recordings or reproductions of sight, sound or musical programs or products, motion picture theaters or theatrical productions, and transportation concerns limited to the distribution or delivery of such products.

(ii) *Book distributors.* Concerns that are book distributors, that specialize in selling products (books, newspapers, etc.) that promote or advocate ideas, including ideological, political, artistic or philosophical viewpoints. This does not prohibit assistance for a general merchandise store that is also selling books, newspapers, magazines, records, etc. or a general (as distinguished from a specialized) book, music, record, or videotape store.

(iii) *Schools.* Concerns operating schools that teach academic subjects. Nursery and pregrade schools if they are not primarily (50% or more of the time) engaged in teaching academic subjects, and vocational, technical or other non-academic schools that do not also teach academic subjects are eligible. English taught in a vocational school may be considered a nonacademic subject if the instruction focuses on grammar, spelling, vocabulary, syntax or communications.

(2) Financial Assistance may, however, be extended to:

(i) *Printing.* A concern solely engaged in commercial or job printing, if there is no common ownership or other affiliation with another concern that is ineligible under this Section 120.101–2(b), and the printer has no direct financial interest in the commercial success of the material produced.

(ii) *Advertisements and technical material.* A concern that produces advertisements and promotional material for a client's goods and services or technical or instructional material relating to a client's goods and services.

(iii) *Shoppers' newspapers.* A concern that publishes shoppers' newspapers or circulars consisting of advertising material only, without editorial, narrative or filler material.

(iv) *Reproduction of material.* A concern that provides motion picture, videotape, sound recording or theatrical technical production facilities, or the technical reproduction of motion picture, videotape or sound recordings without editorial or artistic participation, provided that the applicant concern has no direct interest in the commercial success of the material produced and that there is no common ownership or other affiliation between the applicant and the concern interested in the success of the material being produced.

(v) *Broadcasting and cable TV.* A concern operating a commercial broadcasting (radio or television) station or a cable TV system under the regulatory jurisdiction of the Federal Communications Commission (FCC) or a cable TV franchise granted in conformity with FCC standards. Concerns engaging in predominantly religious or political programming are not eligible.

(c) *Gambling.* Concerns that derive any part of their annual gross receipts, including rental income, or whose principal owner(s) derive any part of their annual income from gambling activities: *Provided, however,* That an otherwise eligible concern shall not become ineligible if it obtains less than one-third of its annual gross income (either before the loan application or during the life of the loan) from (1) commissions from the sale of official State lottery tickets under a State license or (2) from gambling activities in those States where such activities are legal and supervised by the State.

(d) *Illegal activities.* Concerns that are engaged in an illegal activity or are engaged in the production, servicing, or distribution by sale or otherwise of products or services used in connection with an illegal activity. This includes, but is not limited to, the production, servicing, distribution of paraphernalia, products or services that are used or intended to be used primarily or exclusively in connection with the unlawful use of drugs or controlled substances.

(e) *Lending or investment, "alter ego".* Concerns primarily engaged in the business of lending or investing or any otherwise eligible applicant where the purpose of the financial assistance is to finance investments that are neither related nor essential to the enterprise: *Provided, however,* That a small concern (alter ego) owning and leasing or proposing to own and lease real or personal property to an otherwise eligible small concern (operating company) shall be eligible if all the following conditions are met:

(1) The alter ego must be a business organized and operated for profit as an individual proprietorship, partnership or corporation.

(2) It must be in the business of owning and leasing real or personal property to the operating company.

(3) It must propose to use loan proceeds for purposes that would be eligible uses for the operating company.

(4) It must use the loan proceeds solely to acquire or improve real or personal property (including eligible refinancing) for the exclusive use of such operating company.

(5) It must have ownership interest(s) completely identical with and in the

same proportion as the ownership interest(s) in the operating company and agree in writing that such identity of ownership shall remain unchanged until the loan is paid in full or unless SBA gives written approval for an earlier change.

(6) It must pledge the lease between it and the operating company having a remaining term at least equal to the term of the loan and a lien on the property itself as collateral for the loan.

(7) The operating company must be either a guarantor or coborrower on the loan and the owner(s) of the operating company must guarantee the loan.

(f) *Parole or probation.* Any concern if the proprietor, a holder of 20 or more percent of the stock, or a partner, officer or director is currently incarcerated, on parole or on probation following conviction of a serious crime. The concern remains ineligible if the probation or parole is lifted solely because it is an impediment to obtaining a loan.

(g) *Multilevel sales distribution plan.* Generally, any concern engaged in multilevel sales distribution plans of the "pyramid" type.

(h) *Loan packager.* Any small concern, where a substantial part (30% or more of its annual business volume) is the preparation of applications seeking Financial Assistance from the SBA. This is not intended to preclude Financial Assistance to an otherwise eligible small concern that regularly provides accounting or legal services to the public.

§ 120.102 Limitations on loan purposes.

Small manufacturers, wholesalers, retailers, service concerns and other firms may borrow to finance construction, conversion or expansion; to purchase equipment, facilities, machinery, supplies or materials; to obtain working capital; or, at the discretion of SBA, to refinance outstanding notes payable. For additional special rules applicable to refinancing loans, see § 122.7–3(c). Financial Assistance shall not be granted if the direct or indirect purpose or result of granting the loan would be to:

§ 120.102–1 Refinance unsecured loans.

Pay off inadequately secured creditor(s) who could suffer a loss if debt is not refinanced, and SBA would probably sustain all or part of the same loss, or if SBA determines that the loan will not benefit the small concern: *Provided, however,* That (subject to intervening adverse change) SBA may reimburse a lender's interim advance from loan proceeds if made in compliance with a loan authorization previously issued by SBA. SBA shall not decline to gurarantee a loan solely because such loan will refinance existing indebtedness of a small concern.

§ 120.102–2 Revolving credit.

Except as permitted under § 122.54, create a revolving line of credit, such as "floor plan" financing.

§ 120.102–3 Pay obligation to owners.

Provide funds for payments, distributions or loans to owners, partners or shareholders of the applicant, exclusive of ordinary compensation for services rendered, and excluding the proceeds of loans to change ownership of the business as described in Section 120.102–6 below.

§ 120.102–4 Refund debt to SBIC.

Refund a debt owed to a Small Business Investment Company (SBIC) (see part 107 of this Chapter). However, applications may be accepted from business applicants financed by an SBIC if SBA's collateral position will be superior to that of the SBIC.

(a) *Participation with an SBIC.* SBA shall not participate on either an immediate or guaranty basis with an SBIC (Section 120–2 and 3): However, this does not limit the granting of a loan to an applicant which has or will have a loan or equity capital from an SBIC if SBA's collateral position is superior to that of the SBIC.

(b) *Loans to firms owned or controlled by SBIC.* A loan may be made to a firm which is otherwise eligible but temporarily owned or controlled by an SBIC in compliance with the regulations in Part 107 of this Chapter.

§ 120.102–5 Speculation.

Provide or free funds for speculation in any kind of real or personal property, whether tangible or intangible. Examples of speculation include "wildcatting" in oil and dealing in commodity futures.

§ 120.102–6 Change in ownership.

To effect a change in the ownership of the applicant unless the change (a) will promote the sound development or preserve the existence of a small concern or (b) will contribute to a well-balanced national economy by facilitating ownership of a small concern by person(s) whose participation in the free enterprise system has been prevented or hampered because of economic, physical or social disadvantages or because of disadvantages in residential or business location.

Note.—It is not intended that the Agency permit an individual(s) to borrow funds to purchase an interest in a business (except under a qualified ESOP).

§ 120.102–7 Recreational or amusement enterprises.

Finance the construction, acquisition, conversion or operation of recreational or amusement enterprises unless (a) they are open to the general public and (b) they are properly licensed by the appropriate State or local authority.

§ 120.102–8 Investment in property.

Finance the acquisition, construction, improvement or operation of personal or real property that is, or is to be, held for sale or investment (rental income) or is not to be used in connection with the applicant's otherwise eligible small business. (But see section 122.50 of this Chapter.)

§ 120.102–9 Monopoly.

Have the effect of encouraging a monopoly or be inconsistent with the accepted standards of the American system of free enterprise.

§ 120.102–10 Conflict of interest.

Create, or appear to create, a conflict of interest. Without the prior written approval of the responsible district office, SBA shall not participate in or guarantee a loan to a business where the lender or an Associate has, or acquires while the loan is outstanding, an interest in any form which constitutes a conflict of interest, or the appearance thereof, with respect to the loan or the small concern. A field office reviewing a request for approval must determine whether a conflict of interest exists or appears to exist because of preferential treatment or the loss of independent, impartial and objective judgment. It must determine what corrective action, if any, will eliminate the actual or apparent conflict of interest and allow immediate processing of the loan application. The field office determination shall be based on such factors as the nature of the relationship between the Lender and its Associate, the significance of an Associate's influence on the actions or decisions of the Lender the nature of the relationship with a close relative (e.g. would it tend to prejudice an objective decision) and such other factor(s) as may, directly or indirectly, contribute to or negate a conflict of interest. The following are examples (not an all inclusive listing) of where SBA shall not participate in or guarantee a loan:

(a) *Non-disclosure.* When the Lender's application to SBA does not contain a full disclosure, including negative

statements to the best of its knowledge, from the Lender and from the small concern, relative to all relationships discussed in section 120.2–2 and an undertaking that no such relationship shall knowlingly be created as long as the loan is outstanding. For an exception relating to the handicapped see section 122.51–5(a).

(b) *Purchase from lender.* When the proceeds will directly or indirectly finance the purchase of real estate, personal property or services (including insurance) from the Lender, its Associate, or the designee of either. SBA may permit such on a case by case basis by making a written determination that the purchase is in the best interest of the applicant and will not impair the lender's objective judgment in any decisions with respect to the making, servicing or liquidation of the loans. The applicant shall not contract with the lender or an associate for goods or services without written approval by SBA.

(c) *Reduce exposure.* When the proceeds will reduce the exposure of the Participant unless SBA makes a written determination that it is in the best interest of the applicant and meets the requirements of subsection 122.7–3(c) of this chapter.

(d) *Repay associate.* To repay or refinance a debt due an Associate unless SBA makes a written determination that the documentation in the file supports the repayment or refinancing. The evidence shall show that the terms of the existing debt are causing the applicant undue hardship, that refinancing the debt will relieve the hardship and that relief from the hardship is not available through extension or modification of the original debt or through refinancing with private lending sources.

(e) *Forward commitment.* Where the Lender has issued a real estate forward commitment to a builder/developer with respect to a project of such builder/developer and the applicant for Financial Assistance proposes to use the proceeds to acquire space in such project.

(f) *Reinvestment in lender.* When the applicant or its principals invest funds in the Participant Lender: *Provided, however,* That if the enabling authority of a Participant (such as a Production Credit Association) requires such investment, Participant may make a "side loan" not guaranteed by SBA and subordinated to SBA's Financial Assis'ance except that Lender may hold a first lien on the securities representing such investment, and *Provided, further,* That the interest rate applicable to such side loan does not exceed SBA's maximum for guaranteed loans and the maturity is no shorter than that of SBA's Financial Assistance.

§ 120.102–11 Replacement of funds.

Replace funds already used for the purposes described in § 120.102.

§ 120.103 Lending criteria.

§ 120.103–1 Evidence of needs.

Applications for financial assistance shall be considered only when the desired credit is not otherwise available on reasonable terms from non-federal sources. To establish that the credit is not otherwise available, SBA shall [1]

(a) *Proof of refusal.* (1) Direct or immediate participation loans: Require written proof of refusal [1] from (i) the applicant's bank of account or, if the amount of the loan exceeds that bank's legal or normal lending limit, from a correspondent bank with a legal or normal lending limit that is adequate to cover the loan, and (ii) from a second Financial Institution in cities with a population exceeding 200,000 the proof of refusal must be dated and signed and include the amount and terms requested and the reason for denial:

(2) Guaranty loans: The certification a lender makes in its application [1] for a guaranty by SBA will generally be accepted as sufficient documentation in lieu of a letter(s) of decline.

(b) *Funds otherwise available.* Determine from financial statements or other financial information provided whether it appears that the funds are available (1) from a private of public sale of securities issued by the applicant, (2) by disposal at a fair price of assets not necessary to the applicant's operation or growth, (3) through utilization, without undue hardship, of the owners, partners, management or principal shareholders.

§ 120.103–2 Credit evaluation.

In evaluating a loan application,[1] SBA attaches importance to many factors including the character and reputation of the applicant and its principals, experience and depth of management, in inherent soundness of the business enterprise, the past earnings record and future prospects, the long-range possibilities of successful operation, and whether the granting of financial assistance has a sound business purpose.

(a) *Repayment.* The Act specifies that "* * * all loans shall be of such sound value or so secured as to reasonably assure repayment * * *" Therefore no financial assistance shall be extended unless there is reasonable assurance that the loan can be paid from the earnings of the business.

(b) *Sound finances.* The applicant must have enough equity invested or to invest so that, if SBA financial assistance is approved, it can operate on a sound financial basis.

(c) *Collateral.* Adequate collateral is required to reasonably protect the interest of the Government. The amount of collateral needed considered along with other credit factors, is determined on a case-by-case basis. Proprietors, partners, officers, directors and owners of 20 percent or more of the business shall generally be required to guarantee repayment of the loan and, in some instances, to pledge personal assets to secure the guarantee. Inadequate collateral will not mormally be used as the sole reason for decline unless the applicant refuses to pledge whatever worthwhile collateral is available.

(d) *Special reports.* SBA may require professional appraisals of the applicant's assets, an engineering survey, a feasibility study of the applicant's operation, earnings, management, competitive position or other such factors. The need will be determined by a review of the application and, when needed, the applicant is generally required to purchase the service and submit the report [2] to SBA.

(e) *Insurance coverage.* A small business is generally required to purchase and maintain hazard insurance and Federal Flood Insurance (see Part 116 of this Chapter). In some instances life insurance on the principal(s) may also be required. The borrower may select the agent and carrier from whom the insurance is purchased and any new or additional insurance required should be reducing term insurance with an original face amount no greater than the amount of the loan. Any variation in the type of life insurance shall be authorized by SBA in writing. Any fee or commission for insurance purchased from the Lender or an Associate must be reported as a fee paid to the Lender. The purchase of insurance from the Lender or an Associate shall not be required as a condition to accepting processing, or approving a loan.

(f) *Compliance with other parts.* All financial assistance under this part shall require compliance with parts 112, 113, 116 and 117 (when promulgated) of this Chapter. With respect to any financial assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect

[2] Subject to OMB approval.

to all recipients of SBA financial assistance. Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA financial assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA financial assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. When promulgated, Part 117 will cover the prohibition of discrimination based on age.

(g) *Tax requirements.* If any portion of the loan proceeds will be used for paying wages of additional employees, the applicant shall be current on all payroll taxes, both Federal and State. It shall have a depository plan in operation for payment of future employee withholding taxes.

(h) *Bonding requirements.* On all construction loans, a 100 percent payment and performance bond and builders risks/workman's compensation insurance must be supplied unless waived by SBA.

§ 120.103-3 Reconsideration of decline.

Any applicant that is declined for size may appeal the decision only in accordance with Part 121 of this Chapter. Any applicant whose request (including request for a modification of an existing loan condition) has been declined shall have the right to present new or additional information [2] to overcome the reason(s) for decline and request a reconsideration.

(a) *File within 6 months.* Applicant shall submit a written request for reconsideration to the office that processed and declined the application, within six months of the date of the initial decline. After six months a new application is required. A request for reconsideration of a guaranty loan application must be submitted by the Lender.

(b) *Additional information.* The written request for reconsideration must contain significant new or additional information which is expected to overcome the reason(s) for decline. Reconsideration requests without such information shall not be accepted.

(c) *Reasons for decline.* Decline of an application for one reason(s) does not waive the Agency's right to decline a request for reconsideration for another reason(s).

(d) *Appeal of declined reconsiderations.* An applicant whose request was declined on reconsideration shall have the right to request reconsideration at the next higher office. Such written requests for further reconsideration must be submitted to the office that processed the loan within 30 days of the last decline action, shall specifically request reconsideration at the next higher office, and shall contain the written justification for requesting a reversal of the decline action.

(e) *Finality of review:* The decision of the regional office is final. *Provided, however,* That the Regional Administrator may refer a case to the Associate Administrator for Finance and Investment (AA/F&I), or the AA/F&I may request that a file be forwarded to the Central Office because of special circumstances. The term "special circumstances" refers to a policy reconsideration, or reevaluation of an existing policy by the Agency, conflicting policy interpretations between two regional offices, alleged improper acts by SBA personnel, or other such considerations.

§ 120.104 Fees.

§ 120.104-1 Guaranty fees.

The Financial Institution shall pay a guaranty fee to SBA for each loan. Acceptance of the guaranty fee by SBA shall not waive any right of SBA arising from the Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement or the loan authorization.

(a) *Amount.* SBA shall charge a guaranty fee on loans with maturities in excess of twelve months, equal to one percent (1%) of the guaranteed portion of the loan. For loans with a maturity of twelve (12) months or less, the guaranty fee shall be one-quarter (¼) of one percent of the guaranteed portion of the loan. (See sections 122.6 of this Chapter with respect to loan maturities.)

(b) *When payable.* The Lender shall pay the guaranty fee on a loan with a maturity of 12 months or less at the time the Lender submits the application for guaranty.[1] The Lender shall pay the guarantee fee on a loan with a maturity in excess of 12 months within 90 calendar days of the date of SBA's approval as stated in the loan authorization. Like fees shall be paid for increases in the loan amount. If the guaranty fee is not paid by the Lender within this time period, SBA shall send the Lender a written notice (bill) requesting payments. The guaranty will be subject to termination if SBA does not receive the fee within the time period stated in the notice.

(c) *Who pays.* The Participating Lender is responsible for paying the guarantee fee to SBA. For guaranty loans having a maturity of 12 months or less, the Lender (having paid the fee to SBA) may charge the borrower for the guaranty fee upon approval of the loan by SBA. For guaranty loans with maturities exceeding 12 months, a lender (having paid the guaranty fee to SBA and made the first disbursement on the loan) may charge the borrower for the guaranty fee. The borrower may use loan proceeds to pay the fee.

(d) *Reinstatement of guaranty.* SBA may, at its sole discretion, reinstate a guaranty that was cancelled for failure to pay the guaranty fee, where SBA determines that such Lender's failure was not intentional and not part of a recurring pattern. SBA shall not reinstate a guaranty if the fee is unpaid at the time the borrower defaults and if such default continues uncured for sixty days or if SBA determines that there has been a substantial adverse change in the borrower's condition.

(e) *Refunds.* (1) SBA shall refund the guaranty fee submitted with the application for loans with a maturity of 12 months or less, when an application is withdrawn prior to approval by SBA, or declined by SBA. When SBA substantially changes the Lender's loan terms and then approves the loan, the Lender must request a refund in writing [2] within thirty calendar days of such approval, if the changed terms are not accepted. (2) SBA shall refund the guarantee fee for a loan with a maturity exceeding 12 months only when the Lender has not made any disbursement on the guaranteed loan and requests the refund and cancellation of the guaranty in writing.

§ 120.104-2 Service and commitment fees.

(a) *Service fees.*—(1) *Regular service.* The Lender may charge SBA a service fee for servicing immediate participation loans or guaranty loans where SBA has purchased its guaranty portion but has not assumed responsiblity for servicing the loan. The Lender may also charge a service fee where the guaranty portion has been transferred with SBA's consent by the Lender to a third party. The Lender shall deduct such fee only from interest collected for the account of SBA or a third party and only so long as the Lender is servicing the loan. The fee shall not be added to any amount the borrower is obligated to pay under the loan. Fees on guaranty loans after SBA purchase are determined by the initial percent of SBA guarantee. Where SBA's share of an immediate participation or guananteed loan is seventy-five (75)

percent or less, the service fee shall be three-eighths (⅜) of one (1) percent per annum on the unpaid principal balance of SBA's share of the loan. Where SBA's share of any immediate participation or guaranteed loan is in excess of seventy-five (75) percent, the service fee shall be one-fourth (¼) of one (1) percent per annum of the unpaid principal balance of SBA's share of the loan. The fee a Lender receives for servicing a loan for the benefit of a third party is negotiated between the two parties and is not subject to the limitations set forth above.

(2) *Loan extension.* An additional service fee not exceeding one (1) percent of the outstanding amount of the principal may be paid by the borrower to the Lender in consideration for extending the term or refinancing the indebtedness where the extension results in a term that exceeds ten years.

(3) *Extraordinary service.* Subject to prior written SBA approval, if a loan will have extraordinary servicing needs, a Lender may charge the applicant a service fee not to exceed 2 percent per annum on the outstanding balance of such loan (2 percent of the amount approved, in the case of construction loans). If the extraordinary services are required only for part of the loan, or for part of the collateral for a loan, such service fee shall be applied only to that part of the loan, or for the part secured by such collateral. In no event may such service fee represent additional interest or profit on the loan. The fee charged shall be commensurate with the extra service provided and shall be requested by the Lender and justified in writing prior to approval of the loan.[2]

(b) *No late payment or prepayment fees.* Fees for handling late payments and fees or penalties for partial or full prepayment of the loan shall not be charged in connection with any SBA loans.

(c) *Commitment fee for Export Revolving Line of Credit (ERLC) loans.* After SBA approves a loan under the ERLC program, a Lender may charge the borrower a commitment fee of one-quarter (¼) of one (1) percent (or $200 minimum) of the loan. (See § 122.54–4 of this Chapter relating to Export Revolving Lines of Credit.)

(d) *Fees for representatives.* Except as herein provided, no applicant for SBA Financial Assistance shall be required to pay the Lender, an Associate of the Lender or any party designated by either, any fees or charges, for any goods or services, including insurance, as a condition of the Lender's participation in an SBA loan. See also Parts 103 and 104 of this Chapter, expecially section 103.13–5.

(e) *Fees for other services.* Payment of bonus, or brokerage fees or commissions for the purpose of, or in connection with, obtaining financial assistance through SBA is prohibited. A Lender or Associate may charge an applicant reasonable fees on an hourly basis for necessary services actually performed at the request and for the primary benefit of the applicant. Nothing contained herein shall be deemed to authorize any Lender to impose upon an applicant fees or charges (including origination or packaging fees), any part of which defrays the Lender's overhead cost; for example, payments for services of counsel, accountants, financial analysts, etc., who are salaried employees of the Lender or its Associate. An opinion on the validity of the loan or its compliance with SBA requirements serves the interest of the Lender and is part of its overhead cost. If the Lender needs additional appraisals, abstracts of title or other record searches for the processing or as a condition of the disbursement of a loan, the Lender or an Associate (with the consent of the applicant in either case) may prepare such documentation for a reasonable fee. Legible copies of any such documents shall be made available to the applicant, together with any supporting workpapers that the applicant may request. If the same law firm represents both Lender and applicant, with the applicant's consent and pursuant to applicable bar and court rules, such law firm may charge applicant reasonable fees for the services rendered to and for the benefit of the applicant. SBA has no national standard as to what is reasonable. The SBA district offices determine what fee is reasonable on a case by case basis. A Lender may be reimbursed by the borrower for any reasonable out-of-pocket expenses incurred for filing or recordation necessary to perfect a security interest in the assets of the borrower, including title insurance. A Lender shall not require that borrower pay points, and add-on interest may not be used. A Lender may receive the fees authorized under this paragraph, and no others, whether or not the requested loan is made. See also §§ 120.104–2(a) and 120.301–3 of this chapter.

(f) *Report on fees.* The applicant shall certify the names of all attorneys, accountants or other representatives, including the Participating Lender or its Associate, engaged by the applicant for a fee in connection with the Financial Assistance being requested, as well as the amounts paid. SBA Form 159 (Compensation Agreement) shall be used therefor.[2]

§ 120.105 Other legal requirements.

SBA loans are also subject to the provisions and requirements of other legislation such as the Freedom of Information, Privacy, Right to Financial Privacy, Paperwork Reduction, Flood Disaster Protection, Lead-Based Paint Poisoning Prevention, Equal Credit Opportunity, Occupational Safety and Health, Consumer Credit Protection Acts, Civil Rights Legislation and various Executive Orders. Therefore, SBA may [2] request data, agreements, or acknowledgements to support or document compliance with, and respond to reporting requirements of, these statutes in addition to the data required to make an informed credit decision. (See Parts 112, 113, 116 and 117 (when issued) of this chapter.)

Subpart B—Loan Administration

§ 120.200 General.

This subpart outlines the general loan administration policies applicable to SBA Financial Assistance.

§ 120.200–1 Servicing direct or immediate participaton loans.

Immediate participation loans which are closed by the Lender shall be serviced by the Lender, and immediate participation loans or direct loans closed by SBA shall be administered by SBA. However, SBA reserves the right to transfer the servicing of an immediate participation loan from the Lender to SBA and, with mutual agreement, from SBA to the Lender.

§ 120.200–2 Servicing guaranteed loans.

Guaranteed loans shall be serviced by the Lender. The Lender shall hold the note, instruments of hypothecation, and all other agreements, documents, and instruments required in connection with such loans. The Lender shall receive all payments of principal and interest on the loan until such time as SBA may complete the purchase of its guaranteed share of the loan, i.e., when SBA perfects the paperwork necessary to process disbursement and SBA's purchase of its share of a guaranteed loan is complete. The Lender shall thereupon assign the note and the other loan instruments to SBA and loan servicing shall become the responsibility of SBA. With SBA's written consent the lender may continue to service the loan after purchase. In such case, the Lender shall execute a certificate of interest evidencing SBA's percentage of the loan and shall continue to service the loan and be the holder of the note and the other instruments, until SBA makes a written request for the transfer of loan servicing the SBA; the Lender shall

thereupon assign and deliver to SBA all loan instruments immediately after the receipt of such a transfer request from SBA[2].

§ 120.201 Servicing requirements.

§ 120.201-1 Prior consent required.

The holder of the note shall not, without the prior written consent of the other participant:

(a) *Alteration.* Make or consent to any substantial alteration in the terms or conditions of any loan instrument. For the purpose of this paragraph, "substantial" includes, but is not limited to, increases in principal amount or interest rate or any action that benefits or confers a preference on the holder;

(b) *Release of collateral.* Make or consent to release of collateral having a cumulative value as reasonably determined by the holder of the note, which is more than 20 percent of the original loan amount;

(c) *Accelerate maturity.* Accelerate the maturity of any note;

(d) *Sue.* Sue upon any loan instrument;

(e) *Waive claim.* Waive any claim against any borrower, guarantor, obligor, or standby creditor arising out of any loan instrument;

(f) *Increase amount of prior lien.* Increase the amount of any prior lien held by the Lender on property securing an SBA-guaranteed loan.

§ 120.202 SBA purchase of guaranteed loans.

§ 120.202-1 SBA purchase determination.

SBA shall have the right at any time to purchase its guaranteed percentage of the loan if SBA shall determine that such purchase is in the best interest of the Government.

§ 120.202-2 No waiver.

Purchase by SBA of its guaranteed share shall not waive any right of SBA arising from Lender's negligence, misconduct or violation of these regulations, the guaranty agreement or the loan instruments.

§ 120.202-3 Rate of interest to borrower.

When SBA purchases its share of a loan, the rate of interest payable by the borrower on SBA's share shall be the same as the rate of interest provided in the note. On those loans with a fluctuating interest rate, the interest paid to SBA shall be the rate in effect at the time of default where a default has occurred, or at that rate in effect at the time of purchase where no default has occurred.

§ 120.202-4 Accrued interest to holder.

When SBA purchases its guaranteed share, its payment to the holder of accrued interest to the date of purchase shall be at the rate of interest provided in the note. On those loans with a fluctuating interest rate, the SBA's payment of accrued interest shall be at that rate in effect at the time of default where a default has occurred, or at that rate in effect at the time of purchase where no default has occurred.

§ 120.202-5 When SBA does not purchase.

SBA shall be released from obligation to purchase its share of the guaranteed loan unless the Lender has substantially complied with all of the provisions of these regulations, the Guaranty Agreement and the loan authorization, or upon the happening of any one or more of the following events:

(a) *Defective closing.* Failure of the Lender to close and disburse the loan substantially in accord with the terms and requirements of the loan instruments, or to service the loan in a prudent manner, either of which may result in a substantial loss on the loan;

(b) *Full payment.* Payment in full of the amount due on the note;

(c) *Request to terminate.* Receipt by SBA of written request from the Lender to terminate the guarantee; or

(d) *Non-payment of guaranty fee.* Failure of the Lender to pay the guaranty fee as required by Section 120.104-1 (c) and (d);

(e) *Late demand.* Failure of the Lender to demand purchase of an unpaid guaranteed portion or to request an extension of maturity within one year after the maturity of the note: *Provided, however,* That if SBA denies the request to extend the loan, the Lender shall have 6 months from the date of such denial to demand that SBA purchase the guaranteed portion of the loan.

§ 120.203 Collection policy.

It is the policy of SBA to insist upon prompt payments, and upon compliance with all conditions of the note, mortgage and loan agreement. Any request for relief should be directed to the Participating Lender or the SBA field office, whichever is servicing the loan. In order to aid and assist borrowers in the discharge of their financial obligations, it is the policy of SBA to advise and counsel with borrowers in all aspects of their business, with a view to the development of a healthy, growing concern [2].

§ 120.204 Liquidation of loans and security.

§ 120.204-1 Liquidation policy.

(a) *Assist and protect business.* It is the policy of SBA to aid, counsel, assist and protect small concerns to which loans have been made. Ordinarily, the liquidation of the property securing a loan will not be resorted to if there appears to be any reasonable prospect that the loan may be repaid by the borrower or a guarantor (other than SBA) within a reasonable period.

(b) *Sale and conversion of loans.*—(1) *Sale of direct loan.* SBA is authorized to effect the sale of any direct loan upon payment of the full amount of the borrower's obligation. The consent of the borrower is not required.

(2) *Conversion of direct loans.*

Direct loans may be converted to guaranteed loans or to immediate participation loans.

(3) *Conversion of immediate participation loan.*

An immediate participation loan may be converted to a guaranteed loan or a loan wholly owned by the participating institution without the borrower's approval upon payment of the unpaid amount of SBA's participation in such loan, together with accrued interest due thereon and any advances that may have been made by SBA.

§ 120.204-2 Foreclosure of collateral.

(a) *Liquidation of collateral.* Liquidation of the security may be approved when any one of the following conditions exists:

(1) A borrower is in default in the payment of one or more installments due under a note or has defaulted in the performance of conditions contained in the note, loan agreement, other instrument, or a security instrument, and the failure to cure, or to attempt to cure, such defaults is due to (i) lack of diligence; (ii) lack of managerial ability which the borrower has failed to correct; (iii) other circumstances within the borrower's control; or (iv) the inability of the borrower to remedy the default;

(2) Foreclosure or other creditor's rights proceedings have been instituted which may jeopardize the interests of the Government;

(3) A borrower has filed a voluntary petition or an involuntary petition has been filed against the borrower pursuant to any of the provisions of the Bankruptcy Code, as amended;

(4) A receiver has been appointed or other judicial action taken for the purpose of liquidating the borrower's assets;

(5) The borrower has made an assignment for the benefit of creditors;

(6) The borrower is in default and has discontinued or abandoned the business or has not submitted an acceptable plan of payment;

(7) The borrower has failed to disclose in the loan application any fact deemed by SBA to be material or any false statement or material misrepresentation by, on behalf of, or for the benefit of the borrower has been made in any document submitted in connection with a loan application.

(b) *Disposal of collateral.* Real and personal property, including contracts and claims, pledged as security for a loan which is in default may be sold in accordance with the provisions of the related security instrument.

(1) *Competitive bids or negotiated sale.* SBA or the participating lender generally shall offer acquired or collateral properties for public sale. Such sales, unless otherwise authorized, will be ordinarily effected through competitive bids at an auction sale or a sealed bid sale. Where property cannot be sold advantageously at auction or sealed bid sale, a negotiated sale of the property may be authorized. The right, title and interest of SBA in property sold will, unless otherwise authorized, be conveyed by an appropriate bill of sale or deed, without representation or warranty.

(2) *Lease of acquired property.* SBA does not favor renting or leasing acquired property or the granting of options to purchase. In those instances where the property cannot be sold advantageously and it appears to be in the interests of the Government to lease the property, proposals for a lease will be considered. Any such proposals shall provide for termination by SBA upon the giving of reasonable notice when a favorable offer to purchase is received.

(c) *Recoveries and security interests shared.* All payments or recoveries on a loan as well as all reasonable expenses (including advances for the care, preservation, and maintenance of collateral securing the loan) incurred by SBA or the Participating Lender, and any security interest or guaranty (excluding SBA's guaranty) which the Participating Lender or SBA may hold or receive in connection with a loan shall be shared ratably by SBA and such Lender in accordance with their respective interests in the loan.

(d) *Guarantors.* Guarantors of financial assistance, other than SBA, shall have no rights of contribution against SBA on a guaranteed loan. SBA shall not be deemed to be a coguarantor with any other guarantors.

Subpart C—Loan Participants

§ 120.300 Policy

SBA is authorized to make in its discretion participation loans in cooperation with banks and other Lending Institutions, excluding small business investment companies licensed by SBA, through agreements to participate on an immediate or deferred (guaranty) basis. Such agreements do not obligate SBA to participate in any particular loan or loans that a lender may submit. The existence of a participation agreement does not limit SBA's right to determine from time to time, as a matter of general policy or with respect to particular loans, the ratio between its share of a loan and the Lender's share, or SBA's right to withhold, at its sole discretion, approval of a proposed transfer of the guaranteed portion of any loan.

§ 120.301 Operation of all loan participants.

§ 120.301-1 Preferences.

No agreement to participate under the Small Business Act shall establish any preferences in favor of the Participant. "Preferences" as used in this regulation include, but are not limited to, (a) any arrangement giving a Participating Lender a preferred position over the SBA position as regards repayment, collateral or guarantees in connection with the loan, (b) any requirement that the borrower accept a separate or companion loan which results in a preferred position for the Participant or (c) any requirement that a borrower purchase a certificate of deposit or maintain a compensating balance which is not under the unrestricted control of the borrower. For loans made in participation with offices of the Farm Credit Administration see Section 120.102-10(f).

§ 120.301-2 Sale or transfer of guaranteed portion.

As provided in SBA Form 750 and 750B (Loan Guaranty Agreements) a Lender may transfer the entire guaranteed portion pursuant to a transfer instrument (hereinafter referred to as a secondary participation agreement): *Provided,* That prior to the execution thereof:

(a) *Documents.* The duly executed note and settlement sheet(s) underlying the transaction, and such other documents as SBA may expressly require have been submitted by the Lender to SBA [2];

(b) *Fees approved.* All fees, including fees to agents (as defined in Section 103.13-2 of this Chapter) paid or to be paid by the borrower in connection with the loan have been approved by SBA;

(c) *Full disbursement.* The full amount of the loan, as authorized, has been disbursed by the Lender to the borrower;

(d) *Guaranty fees paid.* All guaranty fees, including fees otherwise payable in installments, have been paid in full; and

(e) *Terms.* The terms of sale do not obligate the Lender or SBA to repurchase under any circumstances other than those provided for in the said secondary participation agreement. Execution of the said secondary participation agreement by SBA shall not relieve any Lender of the obligation of compliance with all legal requirements relating to the sale or other transfer of securities, including (but not limited to) "Blue Sky" laws, and the statutes administered by the Securities and Exchange Commission.

§ 120.301-3 Service to borrowers.

Subject to Section 120.102-10, Lenders, their Associates or the designee of either may provide services to and contract for goods with any small concern only after full disbursement of the loan to the small concern or to an account not controlled by the Lender, Associate or designee of either. Where Lender or any Associate or the designee of either provides services permitted under Subpart A of this Part, such services shall be furnished on a time basis pursuant to a written contract approved by the board of directors, partners, or proprietor of the small concern. Records of time spent and charges made for such services shall be maintained for examination [2] by SBA. Charges made shall not exceed those charged by established professional consultants providing similar services.

§ 120.301-4 Advertisement of relationship with SBA.

A Lender may make reference in its advertising to its participation with SBA by the use of phrases such as "a participation with SBA in loans to small business" or "solely engaged in participant with SBA in loans to small business": *Provided, however,* That no such advertising shall state or imply that such Lender, or any of its borrowers, will enjoy preferential treatment from SBA; or be false or misleading in any other respect; and *Provided, further,* That such advertising shall not make use of SBA's seal or any facsimile thereof.

§ 120.301-5 Requirement for all participants.

A participating Financial Institution must meet all of the following requirements:

(a) *Capability.* Have a continuing capability to evaluate, process, close, disburse, and service loans authorized to be made by SBA to small business concerns. Such capability will be deemed to exist when the Financial Institution's operations are at all times conducted by persons possessing the above listed capability. The Financial Institution shall hold itself out to the public as engaged in the making of such loans, and shall maintain a reasonably accessible office in its own name, have a listed telephone number, and be open to the public during regular business hours.

(b) *Good character and reputation.* Have continuing good character and reputation. A lending institution will be deemed to possess good character and reputation if each holder, direct or indirect, of ten (10) percent or more of its voting power, and all members of its management (including managers and other key employees, officers and directors) possess good character and reputation. Good character and reputation shall be deemed absent if any of the above mentioned is or are currently incarcerated, on parole or probation, or has or have been indicted for, formally charged with or convicted of a felony, or suffered an adverse final judgment in any case involving a breach of trust or the violation of a law or regulation protecting the integrity of business transactions.

(c) *Financing subsidiaries.* Not be engaged (or planning to engage) primarily in financing the operations of an affiliate as defined in Part 121 of this Chapter.

(d) *Supervision and examination.* Be a financial institution subject to continuing supervision and examination by a State or Federal chartering, licensing, or similar regulatory authority as SBA may deem satisfactory, such as a State or National bank, or a State or Federal savings and loan association.

§ 120.302 Loan participants regulated by SBA.

§ 120.302-1 Small Business Lending Companies.

Prior to January 4, 1982, SBA Regulations provided that any lending institution which was not subject to continuing supervision and examination by a State or Federal regulatory authority, could be approved as a Participating Lender subject to certain conditions. Such a Lender was referred to as a "Subsection (b) Lender" and is presently known as a "Small Business Lending Company" or "SBLC". Effective January 4, 1982, SBA does not accept aplications for SBLC status but existing SBLC's continue to participate with SBA and be subject to supervision and examination by SBA.[3] In addition to the requirements set forth in Section 120.301-5(a) through (c), an SBLC shall:

(a) *Business purpose.* Be a corporation (profit or non-profit) engaged solely in the making of loans under Section 7(a) (except Section 7(a)(13)) of the Act in participation with SBA.

(b) *Subject to SBA supervision.* Maintain a written agreement with SBA whereby it will be subject to supervision and examination by SBA and to conduct its business operations in accordance with all applicable SBA regulations.

(c) *Capital structure.* Have unencumbered paid-in capital and paid-in surplus of at least $500,000 or ten percent of the aggregate of its share of all outstanding loans, whichever shall be more.

(d) *Capital impairment.* Maintain at all times an unimpaired capital. Impairment shall be deemed to exist when the retained earnings deficit exceeds fifty percent of the combined paid-in capital and paid-in-surplus, excluding treasury stock. SBA shall be given prompt written notice of any capital impairment. Until the said impairment is cured, a Lender shall not present any loans to SBA for guaranty.

(e) *Issuance of securities.* Without prior written SBA approval, it shall not issue any securities including stock options and debt securities except stock dividends and common stock issued for cash or direct obligations of, or obligations fully guaranteed as to principal and interest by, the United States.

(f) *Voluntary capital reduction.* Without prior written SBA approval, it shall not voluntarily reduce its capital, or purchases and hold more than two (2) percent of any class or combination of classes of its stock.

(g) *Reserves for losses.* Maintain a reserve in the amount of anticipated losses on loans and receivables.

(h) *Maintenance of records.* Maintain accurate and current financial records, including books of account.[4] All financial records, minutes of meetings of stockholders, directors, executive committees, or other officials, and all documents and supporting materials relating to its transactions shall be maintained at its principal business office. *Provide, however,* That securities held by a custodian pursuant to a written agreement shall be exempt from this requirement.

(i) *Preservation of records.* Preserve, for the periods hereinafter specified and in a manner that permits the immediate location thereof, such documents which are the basis for financial statements required by Section 120.303-2 (and of the accompanying independent public accountant's opinion),[4] and shall:

(1) Preserve permanently—

(i) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(2) Perserve for all least six years following final disposition of the related loan—

(i) All applications for financing

(ii) Lending, participation, and escrow agreements;

(iii) Financing instruments;

(iv) All other documents and supporting material relating to such loan, including correspondence.

Records and other documents referred to in this paragraph (i) may be preserved by reproduction: *Provided, however,* That said Lender shall cause a duplicate to be made on a current basis and stored separately from the original for the time required, and shall maintain at all times facilities for the projection and reproduction of the records.

(j) *Internal control.* Adopt a plan designed to safeguard its funds and other assets, to assure the reliability of its personnel, and the accuracy of its financial data.

(k) *Dual control.* Maintain dual control over disbursement of funds and withdrawal of securities. Disbursements shall be made only by means of checks or wire transfers authorized by the signatures of two or more officers covered by the said Lender's fidelity bond, except that checks in amount of $1,000 or less may be signed by one bonded officer. Two or more bonded officers, or one bonded officer and a bonded employee, shall be required to open safe deposit boxes or withdraw securities from safekeeping. The SBLC shall furnish to each depository bank, custodian, or entity providing safe deposit boxes, a certified copy of the

[3] OMB approval No. 3245 0077 will be amended to include all unapproved SBLC reporting and recordkeeping requirements.

[4] OMB approval No. 3245-0077.

resolution implementing the foregoing control procedures.

(l) *Fidelity insurance.* Maintain a Brokers Blanket Bond, Standard Form 14, or Finance Companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000 executed by a surety holding a certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. Section 6–13.

(m) *Change of ownership or control.* Report any proposed change of ownership or control to SBA. Any change of ownership or control is prohibited without prior written approval of SBA. Lender shall file request for approval of any such change with the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416. Pending such approval, Lender shall neither register the proposed new owners on its transfer books, nor permit them to participate in any manner in the conduct of its affairs. Change of ownership or control shall include:

(1) Any transfer of ten percent or more of any class of the SBLC's stock, and any agreement providing for such transfer;

(2) Any transfer that could result in the beneficial ownership by any person or group of persons acting in concert of ten (10) percent or more of any class of its stock, and any agreement providing for such transfer;

(3) Any merger, consolidation, or reorganization; or

(4) Any other transaction or agreement that in fact transfers control (as defined in Section 121.3–2(a) of this chapter). If transfer of ownership or control is subject to the approval of any State or Federal chartering, licensing, or similar regulatory authority, copies of any document filed with such authority shall, at the same time, be transmitted to the SBA District Office serving the area in which the Lender's principal office is located.

(n) *Common control.* Not control, be controlled by or under common control with, another SBLC. Without prior written SBA approval, Lender shall not have any officer, director, or holder of ten (10) percent or more of its voting securities who is an officer, director or holder of ten percent or more of the voting securities either of another SBLC or of any entity which directly or indirectly controls or is under common control with another SBLC.

(o) *Management services.* Employ a manager only with SBA approval. An SBLC may employ a manager or advisor or may contract for managerial or advisory services, subject to prior written approval of SBA and subject to the supervision of its board of directors. The contract shall specify the services to be rendered to the SBLC and to its applicants and borrowers.

(p) *Prohibited financing.* Not make a loan to a small business concern which has received financing (or commitment therefore) from a small business investment company licensed by SBA which is its "Associate", as defined by section 120–2.

(q) *Borrowed Funds.* Without SBA prior written approval be capitalized with borrowed funds. Shareholders owning ten (10) percent or more of any class of its stock shall not use borrowed funds in purchasing such stock unless the net worth of such shareholders is at least twice the amount borrowed or unless such shareholders receive SBA's prior written approval of a lesser ratio.

§ 120.303 Reports to SBA by Small Business Lending Companies.

§ 120.303–1 General.

All reports required to be filed hereunder [2] shall be transmitted to the Associate Administrator for Finance and Investment, SBA, Washington, D.C. 20416.

§ 120.303–2 Financial reports to SBA.

Within three months after the close of each fiscal year, every Small Business Lending Company shall submit a financial report prepared by an independent public accountant approved by SBA. When requested by SBA, interim financial reports shall also be submitted.

§ 120.303–3 Litigation reports.

When a Small Business Lending Company becomes a party to litigation or other legal or administrative proceedings, including any action commenced by it, or by a security holder thereof in a personal or derivative capacity, against an officer, director, or employee of the SBLC for alleged breach of official duty, it shall within ten (10) days thereof file a report with SBA describing the proceedings, identity of and the SBLC's relationship to other parties involved and, upon request, submit copies of the pleadings and other documents specified by SBA. Where such proceedings have been terminated by settlement or final judgment, the company shall within ten (10) days advise SBA of the terms thereof. The requirements of this paragraph are in addition to the requirements of SBA's Form 750 and 750B (Loan Guaranty Agreement).

§ 120.303–4 Reports to stockholders.

At the time any report is furnished to its stockholders (including any prospectus, letter, or other publication concerning the financial operations of said Lender or any of its borrowers) it shall file three copies of such report with SBA.

§ 120.303–5 Reports of changes.

A Small Business Lending Company shall, within thirty (30) calendar days of the event in question, notify SBA in writing (using an SBA Form, where appropriate) of:

(a) *Name or address.* Any change in its name, address or telephone number;

(b) *Charter or bylaws.* Any change in its charter or bylaws, or of its officers or directors (to be accompanied by a statement of personal history);

(c) *Capitalization.* Any change in capitalization not otherwise required by Section 120.302–1(f) to be reported to SBA; or

(d) *Continued eligibility.* Any change in the circumstances affecting the validity of representations on the basis of which SBA determined that the Lender was an eligible participant.

(e) *Pledge of stock.* Whenever ten (10) percent or more of its stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior written approval of SBA is required under section 120.302–1(m), written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty (30) calendar days following the date of the transaction.

§ 120.303–6 Miscellaneous reports.

Each Small Business Lending Company shall file with SBA such other reports as SBA may require from time to time by written directive.

§ 120.304 Examination of Small Business Lending Companies.

Each Small Business Lending Company is subject to periodic examinations by the Inspector General of SBA,[2] and the cost of such examination shall be assessed against it, except for the first examination. SBA may waive examination in the case of a company whose operations have been suspended, or which is in receivership. As a general rule, SBA will not assess examination fees for special examinations to obtain specific information. The fee structure for examinations is based on the company's assets as of the date of the latest audited financial statement submitted to

SBA before the examination. The rate table is as follows:

Total assets	Total fee	
	Base fee	Additional fee
$500,000 or less	$800	None.
$500,001 to $1,000,000	800	0.12 percent over $500,000.
$1,000,001 to $3,000,000	1,400	0.030 percent over $1,000,000.
$3,000,001 to $5,000,000	2,000	0.016 percent over $3,000,000.
Over $5,000,001	2,320	0.006 percent over $5,000,000.

For example, an SBLC with total assets of $2,000,000 would pay an examination fee of $1700 ($1400+0.030 percent of $1,000,000). SBA may assess an additional fee of $250 per day required to complete an examination that is delayed or prolonged beyond twenty days if, in the judgment of SBA, such delay or prolongation is caused by the SBLC's failure to keep or maintain its books or records in the manner prescribed herein or by failure to cooperate in such examination.

§ 120.305 Suspension and revocation of eligibility to participate.

SBA reserves the right to revoke the eligibility of any Lender to participate with SBA or to suspend temporarily the eligibility of any Lender to participate with SBA, as a result of any violation of SBA regulations, any breach of any agreement with SBA, or any change of circumstances resulting in the Lender's inability to meet the operational requirements set forth herein; *Provided, however,* That such suspension or revocation shall not invalidate any guaranty previously entered into by SBA. Suspension or revocation shall be accomplished in the manner set forth below.

§ 120.305–1 Service of notice.

SBA shall serve upon a Lender notice of its intention to suspend or revoke its eligibility (Notice), which Notice shall set forth in detail the basis of SBA's intention to suspend or revoke the Lender's eligibility. The Notice shall be served upon the Lender by registered or certified mail, return receipt requested, addressed to the Lender's principal business office.

§ 120.305–2 Service of papers other than notice.

Papers other than Notice may be served upon a Lender as provided in § 120.305–1, or by service in the manner provided therein upon an attorney at law or other agent designated by the Lender.

§ 120.305–3 Service of papers upon SBA.

Papers in connection with the suspension or revocation [2] of a Lender's eligibility shall be served upon SBA by:

(a) Delivery to the Associate Administrator for Finance and Investment, SBA, 1441 L Street, NW., Washington, D.C. 20416; or

(b) Registered or certified mail, return receipt requested, addressed to the Associate Administrator for Finance and Investment at the above listed address.

§ 120.305–4 Effect of failure to respond.

The revocation or temporary suspension of a Lender's eligibility to participate shall become effective as of the close of business on the tenth calender day following the Lender's receipt of the Notice unless, prior to the expiration of the aforementioned time period, SBA shall receive notice of the Lender's intention to submit an answer.

§ 120.305–5 Answer.

A Lender that has notified SBA of its intention to file an answer shall be given twenty (20) additional days to submit to SBA such answer, including briefs and affidavits, showing why its eligibility should not be suspended or revoked. SBA may, in its sole discretion, extend the period permitted hereunder for the filing of an answer. Suspension or revocation of the eligibility of any Lender that has filed an answer shall not become effective pending final determination by SBA.[5]

§ 120.305–6 Initial decision.

SBA's Notice, together with the Lender's answer thereto, including briefs and affidavits, shall be referred by the Associate Administrator for Finance and Investment to an SBA employee designated by him or her (designee) for initial determination of any material issues of fact or of law. No person who has participated in the preparation or approval of the Notice to the Lender, or in any investigation or other fact-finding procedure in connection therewith shall participate in the preparation of the initial determination; and no person who has participated in the Lender's case, as aforesaid, shall communicate with, or otherwise attempt to influence the initial decision of the designee, who shall as soon as possible prepare proposed findings and conclusions and present them to the Associate Administrator for Finance and Investment.

[5] Because this request involves nine or less respondents, it is not subject to OMB Review under this Act.

§ 120.305–7 Final decision.

The decision of the Associate Administrator for Finance and Investment shall give appropriate weight to the recommended findings and conclusions of the designee and shall, without further proceedings, be the decision of SBA, subject to the Lender's right to appeal such decision to the Office of Hearings and Appeals, Section 101.2–2 of this Chapter.

§ 120.305–8 Effect of decision.

Suspension or revocation of a Lender's eligibility to participate with SBA shall become effective upon the Lender's receipt of notification of SBA's decision, but shall not relieve that Lender from its obligation to service any loan made in participation with SBA, nor any other obligation arising out of, or out the breach of, any agreement with SBA, or any regulation promulgated by SBA.

Appendix A—Memorandum of Understanding Between the Small Business Administration and the United States Department of Agriculture, Farmers Home Administration

Preamble

Pub. L. 94–305, which amended the Small Business Act, authorized the Small Business Administration (SBA) to assist small businesses engaged in farming and related activities under its existing programs. The legislation did not create any new SBA loan programs but merely included the agricultural industries among the industries eligible for SBA assistance. Neither did the legislation diminish, in any way, the responsibility of the Farmers Home Administration (FmHA) to meet the financial and other needs of farmers.

The joint memorandum reaffirms the mutual desire of SBA and FmHA to cooperate in the use of their respective loan making authorities to complement the activities of each other and, to the extent possible, to improve and expand the delivery of financial assistance to the agricultural production segment of the country; all with the least possible degree of overlapping, confusing or duplicating activities.

1. The FmHA administers its financial assistance programs through its State, District and County offices.

The SBA administers its financial assistance programs through its Regional, District and Branch offices.

FmHA State Directors and SBA District Directors will exchange addresses of their offices and identify the geographical areas served by each. This information will be available in all field offices of both agencies so applicants can be referred to the appropriate offices. These same oficials will make arrangents to inform the personnel within their jurisdictions of the other agency's current loan making and servicing policy so the referral advice given to

potential applicants will be as accurate as possible.

2. FmHA and SBA will establish a liaison at both the State Director/District Director level and the National level and periodically coordinate their activities to: (a) Exchange detailed information concerning loan programs, (b) define areas of cooperation between the two agencies, (c) assure that their programs are servicing the intended recipients, (d) establish new methods to serve the public more expeditiously, and (e) achieve maximum utilization of their respective resources.

The SBA and the FmHA agree that the interests of agricultural industries will be best served and that each agency will achieve better utilization of available resources through the following operating guidelines:

3. Potential *applicants* may contact either agency for an interview but may file an application with only one agency at a time. However, SBA will encourage those potential applicants that have been or are borrowing through the FmHA to continue their relationship with that agency.

4. Potential applicants meeting FmHA eligibility requirements will, at the time of initial interview, be advised by SBA to contact the appropriate FmHA County Office for assistance.

FmHA personnel will, at the time of initial interview, refer potential applicants who are not eligible for FmHA assistance, (such as corporations, partnerships or aliens, applying for certain loans) to SBA if they appear to be eligible for SBA assistance.

5. Potential applicants are not to be referred back and forth between FmHA and SBA. Representatives of each agency must be reasonably certain that the applicant and proposed use of proceeds may be eligible for assistance from the other agency before a referral is made.

6. Neither agency will refuse a loan request from an applicant who prefers to file with that agency.

7. Agricultural applicants filing for financial assistance from either agency will give written permission for FmHA and SBA to exchange whatever prior or current loan application and loan experience information, including appraisals, either may have in its files.

8. Applicants who are denied FmHA assistance for any reason, including lack of FmHA funding, may contact SBA for assistance.

9. Applicants filing for financial assistance from either agency must use the forms and procedures of the agency being requested to provide the assistance. An applicant who is denied assistance by either agency must use a new application to file with the other in accordance with that agency's forms and procedures.

10. Applicants should not have to apply to two Federal agencies to borrow funds for a single purpose. Therefore, if either FmHA or SBA can make the entire loan, the applicant should not be referred to the other agency for part of the funds needed. If either FmHA or SBA cannot make the entire loan, the applicant should be referred to the other agency. Joint funding with shared collateral between the agencies is not encouraged and should be used only as a last resort.

Description of Lending Policies

11. The FmHA makes guaranteed loans and insured loans. Guaranteed loans are loans where the lending institution advances the entire funds from its account and the FmHA guarantees repayment of a certain percentage of principal and interest. Insured loans are those made from one of FmHA's insurance funds.

The SBA makes guaranteed, immediate participation and direct loans. The Guaranteed loans are those where the lending institution advances the entire loan and the SBA agrees to purchase a percentage of the outstanding balance at time of default. Immediate participation loans are those where SBA disburses a percentage of the loan and the lender disburses the remainder from its account. Direct loans are made with SBA funds alone.

FmHA Loan Programs for Farmers

12. Operating Loans.

a. Eligibility. Be a citizen of the United States.

Be unable to obtain credit elsewhere (exclusive of SBA.)

Be the operator of a family farm.

Note.—A "family farm" is defined as "one that will produce agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence: one that will provide substantial income by itself and which together with any other dependable income will enable the family to pay necessary family and other operating expenses, including maintenance of essential chattel and real property and pay debts; and one for which the operator and his immediate family provide the management and are actively engaged in the operation by providing a major amount of the farm and any non-farm enterprise labor. A reasonable amount of hired labor may be used during seasonal peakload periods."

b. Loan purposes. Finance livestock, machinery and operating expenses.

Refinance debts.

Finance non-farm enterprises.

c. Terms. Up to seven years with five-year renewal.

Interest rate based on the cost of Treasury borrowings.

d. Loan limit—$50,000.

13. Farm Ownership Loans.

a. Eligibility. Be a citizen of the United States.

Be unable to obtain the credit from other sources (exclusive of SBA).

Be the owner-operator of a family farm after loan is closed.

b. Loan purpose. Buy land.

Construct and repair farm buildings.

Develop land and pollution control measures.

Develop farm irrigation facilities and domestic water supply.

Refinance debt.

Finance non-farm enterprise.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. $100,000.

Maximum debt on security with other credit is $225,000.

14. Soil and Water Loans.

a. Eligibility. Be unable to obtain the credit elsewhere (exclusive of SBA).

Be a farm tenant, owner, partnership or corporation engaged in farming.

b. Loan purposes. Develop land and pollution control practices.

Water development.

Purposes related to soil and water conservation.

c. Terms. Up to 40 years.

Five (5) percent interest.

d. Loan limits. $100,000.

Maximum debt on security with other credit is $225,000.

15. Recreation Loans.

a. Eligibility. Be a citizen of the United States.

Be unable to obtain the credit elsewhere (exclusive of SBA).

Be an individual engaged in farming when the loan is applied for.

b. Loan purposes. Convert all or part of the farm to outdoor recreation enterprises.

Acquire land and easements for recreational uses.

Refinance debts.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. $100,000.

Maximum debt on security with other credit is $225,000.

16. Rural Housing.

a. Eligible. Be a U.S. citizen or permanent resident.

Be unable to obtain credit elsewhere (exclusive of SBA).

Be a farmowner without decent, safe and sanitary housing for his own use or the use of tenants, sharecroppers, farm laborers or farm manager.

b. Loan purpose. Buy, build or repair dwellings of modest size, design and cost.

c. Terms. up to 33 years.

Interest rate established periodically based on housing money market rate.

d. Loan limit. The cost of providing modest, decent, safe and sanitary housing.

17. Business and Industry Loans.

a. Eligibility. If an individual, a U.S. Citizen.

A cooperative, corporation, partnership, trust, Indian tribe, or other legal entity.

b. Loan purposes. Pollution control measures.

c. Terms. Up to 30 years.

Interest rate is negotiated between lender and applicant.

d. Loan limits. No statutory dollar limit; determined by cost of project and credit factors.

18. Grazing Association Loans.

a. Eligibility. Be a nonprofit association.

Be unable to obtain credit elsewhere (exclusive of SBA).

Provide seasonal grazing for association members.

b. Loan purposes. Acquire land for grazing.

Develop land for grazing.

Pollution control measures incidental to other authorized purposes.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. No statutory or regulatory dollar limit—determined by value of security.

19. Irrigation, drainage and soil and water association loans.

a. Eligibility. Be an association composed primarily of farmers and other rural residents.

Be unable to obtain credit elsewhere (exclusive of SBA).

Provide a facility to serve farmers and other rural residents within the service area.

b. Loan purpose. Install or improve drainage facilities.

Install, repair or enlarge irrigation facilities.

Install or improve soil conservation and water control facilities including pollution abatement.

Special-purpose machinery and equipment.

c. Terms. Up to 40 years.

Five (5) percent interest rate.

d. Loan limits. No statutory or regulatory dollar limit-determined by value of security.

Note.—In addition to the eligibility requirements for specific programs listed above, the following eligibility requirements must be met by all FmHA borrowers:

Have the experience to carry out the proposed operation to be financed.

Have the ambition to carry out the proposed operations.

Have the management ability to carry out the obligations required in connection with the loan.

SBA Loan Programs for Agricultural Enterprises

In addition to the specific eligibility factors listed under the following SBA programs, a borrower must be of good character, be an eligible small business under SBA rules and regulations (13 CFR Parts 121 and 122), be organized for profit, and be able to evidence reasonable assurance of ability to repay the loan from the profits of the business. Can be proprietorship, partnership or corporate business organization, and need not be a citizen of the U.S.A.

20. Regular Business Loans—7(a).

a. Eligibility. Be eligible under SBA rules and regulations (13 CFR Part 120).

Be unable to obtain the credit from non-Federal sources thrbugh utilization of personal resources or otherwise.

b. Loan purpose. Purchase of land and buildings and land improvements (fencing, irrigation systems, etc.) including pollution control facilities essential to the small business.

Construction, renovation or improvement (including water systems of (i) farm building other than residential buildings or (ii) residential buildings essential to the business if not available from other Federal sources.

Purchase of farm machinery and equipment (appliances and other household contents used for residential purposes are not eligible).

Operating expenses directly related to the farming operation excluding personal or family living expenses.

Refinancing of debt directly related to the farming operation, but excluding personal or family debt.

c. Terms. The interest rate on direct and SBA share of immediate participation loans is based on a legislative formula.

The lender's interest rate on immediate participation and guaranty participation loans is established by the lending institution, within SBA policy, but cannot exceed SBA's maximum which is periodically published in the **Federal Register.**

Maturity of the loans will generally not exceed one year for annual seed, feed, fertilizer and other annual needs, 7 years for that portion of the loan used for working capital 10 years for that portion of the loan used for livestock and/or farm machinery and equipment, and 20 years for that portion of the loan used for acquisition or construction of real estate. However, all borrowers are expected to repay the loan as soon as possible and these maximum maturities are not automatically available in every case.

SBA loans are generally repaid in even monthly payments of principal and interest. However, quarterly, semiannual, annual or seasonal payments can be arranged when necessary.

d. Loan limits. Direct loans have an administrative limit of $150,000.

Immediate participation loans have an administrative limit of $150,000, SBA share. (Both the direct and immediate participation administrative limits can be waived in exceptional situations by SBA's Regional Directors.)

Guaranty participation loans have a limit of $350,000, SBA share, except that in exceptional situations the SBA share can be increased to $500,000.

The limits on a borrower's total indebtedness to SBA on all outstanding loans is (i) the aggregate of direct and the SBA share of immediate participation loans cannot exceed $350,000 and (ii) the aggregate of direct and the SBA share of immediate participation and guaranty participation loans cannot exceed $500,000 at any one time.

21. Economic Opportunity Loans.

a. Eligibility. Must be economically or socially disadvantaged.

Meet the eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 119 and 120).

b. Loan purposes. Can be used for the same purposes as Regular Business Loans.

c. Terms. Interest on direct and SBA share of immediate participation loans is subject to a legislative formula, and is subject to change quarterly.

The lender's interest on immediate and guaranty participation is the same as for regular business loans.

Maturities of these loans are generally restricted to 10 years for working capital other than annual operating expenses and farm machinery and equipment and to the legislative limit of 15 years for real estate purposes. However, no borrower will receive a longer maturity than is necessary for the loan to be repaid from the business income.

d. Loan limits. These loans cannot exceed $100,000 SBA share, whether direct, immediate participation or guaranty.

22. Water Pollution Control Loans.

a. Eligibility. Meet eligibility requirements set forth in SBA rules and regulations (13 CFR Parts 120 and 123).

Must have a statement from EPA of the necessity and adequacy.

Must show evidence of substantial economic injury.

b. Loan proposes. Only to make modifications and changes necessary to meet the Federal standards established under the Federal Water Pollution Control Act or State standards established in compliance with the Federal Water Pollution Control Act.

c. Terms. Interest rate same as for Regular Business Loans.

Maturity not to exceed 30 years.

d. Loan Limits. No dollar limit.

23. Other substantial Economic Injury Programs.

The SBA has loan authority to aid small businesses that suffer substantial economic injury as a result of a Federal action or Federally directed action, such as Occupational Health and Safety regulations, Air Pollution Control regulations or being displaced by a Federally financed construction project. These progams are more completely discribed in 13 CFR Part 123.

Administrative Guidelines

24. The services of FmHA and SBA to lenders and applicants are, by mutual agreement, those that each agency would provide any eligible applicant in the normal course of business and there will be no reimbursement by either agency to the other for such services.

25. The National Office of FmHA and the Central Office of SBA will cooperate with each other in counseling their field offices and in resolving problems in specific cases.

26. This Memorandum of Understanding in no way alters or supersedes the existing Memorandums between the two agencies covering their disaster (emergency) loan authority and FmHA's Business and Industrial Loan Program.

27. This Agreement may be amended at any time by written agreement of both parties.

28. This agreement shall take effect upon the date of execution thereof.

Dated: September 2, 1976.

Mitchell P. Kobelinski,

Administrator, SBA.

Dated: September 20, 1976.

Frank B. Elliott,

Administrator, FmHA.

PART 122—BUSINESS LOANS

Subpart A—General Provisions

Sec.

122.1 Statutory provisions.
122.3 Savings clause.
122.3–1 Prior rules.
122.3–2 Effect of invalidity.
122.4 Applicability of other parts.
122.5 Application.
122.5–1 Other financing.
122.5–2 Content of applications.
122.5–3 Direct assistance.
122.5–4 Approval or decline.
122.5–5 Loan authorization.
122.6 Loan terms.
122.6–1 Maturities.
122.6–2 Grace periods.
122.6–3 Moratorium.
122.7 Loan amounts.
122.7–1 Direct loan.
122.7–2 Immediate participation.
122.7–3 Guaranty loans.

Sec.
122.8 Interest rate.
122.8–1 Direct loans.
122.8–2 Immediate participation.
122.8–3 Guaranty loans.
122.8–4 Variable (fluctuating) rate.

Subpart B—Special Purpose Loans

122.50 Small general contractors.
122.50–1 Policy.
122.50–2 Demonstrated ability.
122.50–3 Maturity.
122.50–4 Purpose of loan.
122.50–5 Investment property prohibited.
122.50–6 Rental.
122.50–7 Sale of entire property.
122.50–8 SBA's lien.
122.50–9 Application.
122.51 Handicapped.
122.51–1 Policy.
122.51–2 Definitions.
122.51–3 Interest rate.
122.51–4 Repayment ability.
122.51–5 Application.
122.51–6 Use of proceeds.
122.52 Low-income areas.
122.53 Energy conservation.
122.53–1 Policy.
122.53–2 Energy measures defined.
122.53–3 Use of proceeds.
122.53–4 Repayment ability.
122.54 Loans for exporters.
122.54–1 Policy.
122.54–2 Applicant eligibility.
122.54–3 Use of proceeds.
122.54–4 Fees.
122.54–5 Collateral.
122.54–6 Additional loan conditions.
122.55 Qualified employee trust.
122.55–1 Policy.
122.55–2 Definitions.
122.55–3 Amount of loan.
122.55–4 Exceptions to other SBA regulations.
122.55–5 Eligibility.
122.56 Veterans Loan Program.
122.56–1 Policy.
122.56–2 Direct loans.
122.56–3 Eligibility.
122.56–4 Single Loan Benefit.
Table 1—Eligibility energy measures.

Subpart A—General Provisions

§ 122.1 Statutory provisions.

The authority for these loans is contained in Section 7(a) of the Small Business Act, as amended (15 U.S.C. 636(a)). See also 15 U.S.C. 636 (Note).

§ 122.3 Savings clause.

§ 122.3–1 Prior rules.

Financial assistance granted before (the effective date of this revision) shall be governed by the related contractual terms and the regulations then in effect. Nothing herein shall bar SBA enforcement action with respect to such financial assistance granted pursuant to contractual terms no longer in use and prior regulations no longer in effect.

§ 122.3–2 Effect of invalidity.

If any section or part of a section of these regulations should be adjudged invalid, only that part shall be invalid, and the other parts shall not be affected thereby.

§ 122.4 Applicability of other parts.

The Loan Policy and definitions of Part 120 of this Chapter apply to the loans authorized in this Part. Also applicable are Parts 112, 113, 116 and 117 when adopted). With respect to any financial assistance of SBA, Part 112 prohibits discrimination on the grounds of race, color, or national origin. Part 113 prohibits discrimination based on race, color, religion, sex, marital status, handicap or national origin with respect to all recipients of SBA financial assistance. Part 116 prescribes policies of general application set forth in several subparts. Subpart A sets forth SBA policies and criteria for giving special consideration to veterans and their survivors or dependents. Subpart B prescribes rules on the prohibition of SBA financial assistance for acquisition or construction in special flood hazard areas when persons eligible for flood insurance have not obtained it. Subpart C prohibits recipients of SBA financial assistance from using lead-based paint as described therein. Subpart D prescribes policies and procedures dealing with floodplain management and wetlands protection. When promulgated, Part 117 will cover the prohibition of discrimination based on age.

§ 122.5 Application.

§ 122.5–1 Other financing.

Except as otherwise specified, before applying for SBA financial assistance, an applicant shall endeavor to obtain financing from other non-Federal sources, including (but not limited to) other resources of its owners, and private lending sources. If an institution is unable or unwilling to make the loan, the applicant must then determine if the Lender would make the loan in participation with SBA as a guaranty or an immediate participation loan. (If a Lending Institution will make a loan in participation with SBA, the Lender, not the applicant, shall contact SBA.) SBA shall require [1] satisfactory evidence concerning the Lending Institution(s) refusing to make, or to participate in, the loan. See §§ 120.3–4 and 120.103–1 of this Chapter.

§ 122.5–2 Content of application.

An applicant for SBA financial assistance in any form shall furnish [1] a history of the business, the nature of the business, the amount and purpose(s) of the loan, the collateral offered for the loan, and current financial statements, together with financial statements (or tax returns if appropriate) for the past three years. Annual financial statements shall be required from borrower thereafter [2], but SBA may also require more frequent reports [2]. In addition, personal financial statements may be required, as applicable, from a proprietor, general partners, officers, directors, guarantors and holders of twenty percent or more of the equity of the applicant. Financial statements from non-stockholder directors or officers may be waived by SBA.

§ 122.5–3 Direct assistance.

Subject to availability of funds, an applicant unable to obtain a loan or loan participation from a private lender (See § 120.3 of this Chapter) may apply to SBA for a direct loan on a form provided by SBA [1]. Such application shall be made to the SBA office serving the location of the proposed or existing business, but counseling may be obtained from any SBA office. (See § 101.3–1 of this Chapter for the addresses of all SBA offices.)

§ 122.5–4 Approval or decline.

Applicants will be given notice of approval or decline by either the Lender (for a participation/guaranty loan) or by SBA (for a direct loan). The decline notification will include the reason(s) for the decline.

§ 122.5–5 Loan authorization.

If SBA approves a loan request, a loan authorization is issued. The authorization states the terms and conditions [6] on which SBA is willing to make, participate in or guarantee a loan but it is not a contract to loan money.

§ 122.6 Loan terms.

§ 122.6–1 Maturities.

(a) Except as otherwise specified, a loan, including extensions and renewals, may be made for a period not to exceed twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting or expanding facilities may have a maturity of twenty-five years plus such additional period as may be required to complete such construction, conversion or expansion.

(b) The maximum maturity shall not be available for every loan. The maturity of each loan will be the shortest feasible term commensurate with the repayment ability of the borrower and shall not exceed ten years, except when the loan finances real estate or the construction or the

[6] The reporting and recording requirements of which are subject to OMB approval)

acquisition of equipment with a useful life exceeding ten years. Amortization will generally require equal monthly payments of principal and interest but may be adjusted to accommodate the cash flow of the borrower. In addition, SBA may extend the maturity of a loan before October 1, 1985 pursuant to Section 1902 of Pub. L. 97–35, approved August 13, 1981, conditioned in the case of a participation upon the concurrence of the participant, the holder in due course (if any) and the borrower, or refinance such loan with an extension of its term. The aggregate term of such extended or refinance loan shall not exceed the maximum maturity permitted by this paragraph and shall be repaid in equal installments of principal and interest. SBA may also extend the maturity of or renew a loan pursuant to Section 7(c)(1) of the Act (including any loan transferred to SBA pursuant to Reorganization Plans No. 2 of 1954 and No. 1 of 1957) for additional periods not to exceed ten years beyond their original maturity, limited to such periods of time as appear necessary to avoid forced liquidation of loans. Extensions are granted under the preceding sentence only when it appears that no other course will result in a greater or earlier recovery of the indebtedness.

§ 122.6–2 Grace periods.

SBA may defer initial payments for a grace period, and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of the borrower.

§ 122.6–3 Moratorium.

SBA may suspend or undertake borrower's obligations to pay principal and interest in certain circumstances and on certain conditions. See Part 131 of this Chapter.

§ 122.7 Loan amounts.

Limits on loan amounts applying to the combined aggregate amount of all loans to a given borrower under this Part, including such borrower's affiliates, as defined in § 121.3–2(a) of this Chapter.

§ 122.7–1 Direct loans.

The statutory limit for direct loans is $350,000. SBA has established an administrative limit of $150,000. Regional Administrators may authorize, in writing, the acceptance of an application that exceeds the administrative but not the statutory limit.

§ 122.7–2 Immediate participation.

The statutory limit on SBA's portion of an immediate participation loan is the lesser of 90 percent of the loan, or $350,000. The administrative limit, however, is the lesser of 75% of the loan, or $150,000. Regional Administrators may allow exceptions to the administrative dollar limit, up to $350,000. District directors may make exceptions to the percentage limit if the participant's legal lending limit precludes a 25 percent exposure. In such cases the Lender will be required to participate up to its legal lending limit, but in no event less than 10 percent.

§ 122.7–3 Guaranty loans.

SBA's exposure on guaranty loans shall not exceed $500,000 in any circumstance. The percentage of the SBA guaranty shall not exceed the following:

(a) *Guaranty of loans not to exceed $100,000.* SBA shall guarantee at least 90 percent of a loan so long as the total amount outstanding (including the loan under consideration) does not exceed $100,000, except as permitted under paragraph (c) below.

(b) *Guaranty of loans in excess of $100,000.* SBA shall guarantee no more than 90 percent and no less than 70 percent of loans in excess of $100,000 so long as the total amount approved and outstanding does not increase SBA's exposure beyond $500,000, subject to paragraph (c) below. Decisions to guarantee such loans in amounts between 70 percent and 90 percent shall be made on a case-by-case basis. The percentage guaranteed shall not influence loan approvals. A Lender's request for less than a 70 percent participation by SBA shall not be approved unless a lesser percentage is necessary due to the statutory $500,000 ceiling on SBA exposure.

(c) *Refinancing.* SBA shall guarantee no more than 80 percent of that portion of a loan used to refinance a debt owed to a bank or other lending institution. Therefore the blended guaranty percentage of the total loan will reflect the respective percentages of guaranty for the refinancing and the remaining portion of the loan. Until October 1, 1985, SBA shall not refuse to guarantee a loan solely because such loan will be used to refinance all or any part of the outstanding indebtedness of a small concern unless:

(1) The creditor is likely to suffer a loss if the loan is not refinanced and SBA is likely to sustain part or all of any loss which would have otherwise been sustained by the creditor, or

(2) SBA determines that refinancing the debt will not benefit the small concern.

§ 122.8 Interest rate.

§ 122.8–1 Direct loans.

The rate of interest on direct loans and SBA's share of immediate participation loans is determined by a statutory formula based on the cost of money to the Federal government. No later than the 10th day of each calendar quarter (Jan. 10, April 10, July 10, and Oct. 10) SBA shall publish such rate in the **Federal Register** for such quarter. (The rate in effect at any time is available from the local SBA offices.)

§ 122.8–2 Immediate participation.

The maximum rate a Participating Lender shall charge on its share of an immediate participation loan shall be the lesser of: (a) The rate permitted under the applicable usury statute, or (b) one percent less than the maximum rate permitted by SBA policy for a guaranteed loan of the same maturity, published from time to time in the **Federal Register** and available from local SBA offices.

§ 122.8–3 Guaranty loans.

A Participating Lender may establish an interest rate that is legal and reasonable. SBA publishes from time to time in the **Federal Register** the maximum rate permitted. Such rate information is available from local SBA offices.

§ 122.8–4 Variable (fluctuating) rate.

Subject to the approval of SBA, a Participating Lender may utilize a fluctuating rate of interest. SBA's maximum allowable rates apply only to the initial rate. SBA's approval of the use of a variable interest rate shall be subject to the following conditions:

(a) *Frequency.* The fluctuation may occur no more frequently than monthly.

(b) *Commencement of fluctuation.* Fluctuation periods may commence on the first business day of the month following full disbursement.

(c) *Basis for fluctuation.* The note rate must rise and fall on the same basis. Where a participant establishes a floor and ceiling for the fluctuating rate, the difference between the initial rate and the ceiling rate may be no greater than the difference between the initial rate and the floor rate.

(d) *Base rate.* The base rate shall be the low New York prime rate in effect on the first business day of the month, as printed in a national financial newspaper published each business day.

(e) *Maturities under 7 years.* For loans with maturities under seven years, the maximum interest rate shall not exceed two and one-quarter (2¼) percentage points over the base rate.

(f) *Maturities of 7 years or more.* For loans with maturities of seven or more years, the maximum interest rate shall not exceed two and three-quarters (2¾) percentage points over the base rate.

(g) *Amortization.* Amortization shall require equal monthly payments combining principal and interest, and may be computed on the basis of an interest rate up to three percentage points above the interest rate prevailing at the date of the note to insure that future payments will be sufficient in the event of a rise in the base rate. With SBA prior approval, unequal payments of fixed payments of principal plus interest may be agreed upon on a case-by-case basis.

Subpart B—Special Purpose Loans

§ 122.50 Small general contractors.

§ 122.50-1 Policy.

The Act authorizes loans to contractors to finance residential or commercial construction or rehabilitation provided that loan funds are not used primarily for the acquisition of land. The terms "construction" and "rehabilitation" as used in this section apply only to work done on-site, construction and rehabilitation of the structure, above or underground utility connections and landscaping. Not more than five (5) percent of the loan proceeds can be used for community improvements that benefit more than the structure financed with the SBA loan. Examples include streets, curbs, open spaces and similar improvements. These loans can be used for individual structures only: *Provided, however,* That an SBA loan may be for more than one individual structure if each structure is separately identified, the loan proceeds for each structure are identified separately, and the amount that must be paid on the loan to effect transfer of clear title on each structure as sold is shown. Such loans are not prohibited by § 120.102-8 of this Chapter. These loans may be available under the following conditions:

§ 122.50-2 Demonstrated ability.

The applicant shall be a construction contractor or homebuilder with a demonstrated [2] managerial and technical ability in profitable construction or rehabilitation projects of a comparable type and size. Joint ventures or other organizations that have no history or are organized only for a specified project are not eligible. A portion of the work may be subcontracted, but on subcontracts in excess of $25,000 a one-hundred percent payment and performance bond may be required.

§ 122.50-3 Maturity.

The maturity of the loan shall not exceed thirty-six months plus the estimated time to complete the construction or rehabilitation.

§ 122.50-4 Purpose of loan.

Loan proceeds shall be used solely for the direct expense of acquisition, immediate construction and/or prompt significant rehabilitation of residential or commercial structures for sale. For this purpose "significant" rehabilitation means rehabilitation costing more than one-third (⅓) of the purchase price or fair market value at time of loan application. Not more than twenty (20) percent of the loan proceeds shall be used for the acquisition of land.[2]

§ 122.50-5 Investment property prohibited.

Loan funds shall not be used to purchase vacant land for possible future construction or to operate or hold rental property pending future rehabilitation. Loan funds shall not replace or free applicant's funds for these purposes.

§ 122.50-6 Rental.

The constructed or rehabilitated structures shall not be rented, in whole or in part, pending sale, without SBA's prior written approval.

§ 122.50-7 Sale of entire property.

Loan proceeds shall not be used as a construction loan to be repaid with permanent financing if the applicant or its affiliate retain title. The sale of the property must be both a beneficial and a legal change of ownership in the title to the property.

§ 122.50-8 SBA's lien.

SBA shall have not less than a second lien on the property as collateral. All prior liens shall permit the release of individual parcels upon payment of a predetermined amount (so the buyer of each parcel can get a clear title) and the sum of all liens, including SBA's, shall not exceed eighty (80) percent of the fair market value of the completed structure.

§ 122.50-9 Application.

The application shall include three letters in addition to the regular requirements of § 122.005-2. (A Participating Lender may provide the necessary written assurance instead of three such separate letters).[2] The three letters are: (a) From a mortgage lender doing business in the project area advising whether permanent mortgage money is normally available to qualified purchasers of comparable real estate at the project location; (b) from an independent, licensed real estate broker with at least three years experience in the project area advising whether a market exists for the proposed structure and whether the property's monetary and architectural values are compatible with other structures in the neighborhood; (c) from an independent licensed architect, appraiser or engineer who shall agree to make all construction inspections and certifications needed to support interim disbursements. (Insepction fees may be paid from loan proceeds.)

[2] Possible documentation requirement subject to OMB approval.

§ 122.51 Handicapped.

§ 122.51-1 Policy.

The Act authorizes loans to assist a public or private organization for the handicapped or to assist a handicapped individual in establishing, acquiring or operating a small concern.

§ 122.51-2 Definitions.

(a) *HAL-1* is the designation of a loan to a nonprofit public or private organization for the employment of the handicapped.

(b) *HAL-2* is the designation of a loan to a handicapped individual or a small business which is wholly owned by a handicapped individual(s). Such loans shall comply with the requirements of Parts 120 and 121 of this Chapter, and direct loans are subject to the availability of funds.

(c) *Organization for the Handicapped* means one which:

(1) Is organized under the laws of the United States or any State, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual, and which is operated in the interest of handicapped individuals;

(2) Complies with all occupational health and safety standards prescribed by the Secretary of Labor; and,

(3) Employs in the production of commodities and the provision of services during any fiscal year in which it received financial assistance under this subsection, handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(d) *Handicapped individual* means a person who has a physical, mental or emotional impairment, defect, ailment, disease or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable. For HAL-2 purposes a partnership or corporation

must be 100 percent owned by handicapped individuals.

(e) *Supportive services* refers to expenses incurred by HAL–1 organizations to subsidize wages of low producers, health and rehabilitation services, management, training, education and housing of handicapped workers and other such uses.

§ 122.51–3 Interest rate.

Direct loans and SBA's share of immediate participation loans are subject to an administrative limit of $150,000 and shall bear interest at a rate of three (3) percent. See subsection 122.008–3 for the interest rate on guaranty loans.

§ 122.51–4 Repayment ability.

(a) *Reasonable doubt.* In the application of section 120.103–3 of this Chapter to loans under this section 122.51, reasonable doubt shall be resolved in favor of the applicant.

(b) *Capability and experience.* HAL–1 applicants must submit evidence[1] that the organization has the capability and experience to perform successfully but evidence of repayment ability from the earnings of the organization is not necessary provided other sources of repayment are reasonably established.

(c) *Collateral.*—(1) *Assignment of proceeds.* Loans to finance Federal Government contracts may require an assignment of the proceeds of the contracts.

(2) *Personal guarantees.* Personal guarantees of the officers and directors of a HAL–1 organization shall not be required but may be accepted if offered.

§ 122.51–5 Application.

(a) *Contents of HAL–1 application.* A HAL–1 applicant shall submit [2] copies of by-laws, incorporation papers, Internal Revenue Service certification of tax-exempt status, recognition/approval by a State Vocational Rehabilitation Agency or other evidence that it meets the definition of a HAL–1 organization, including the percentage of man-hours performed by handicapped persons. The applicant shall also show that private credit is not available and that funds from other Government programs are not being duplicated by SBA and that contributions from foundations, State fund raising activities (including tax assessments) and other traditional funding will not be diminished as a result of an SBA loan. Notwithstanding § 120.102–10 of this Chapter, a HAL–1 organization shall not be considered to be an associate of the lender solely because one or more of the organization's officers or directors are also officers, directors or holders of 10 or more percent of the stock of the lender: *Provided, however,* That such person shall have no part in the lender's decision to participate in the loan.

(b) *Contents of HAL–2 application.* A HAL–2 applicant shall submit [2] written information from a physician, psychiatrist or other qualified professional as to the permanent nature of the handicap and the limitations it places on the applicant.

§ 122.51–6 Use of proceeds.

(a) *HAL–1.* HAL–1 loan proceeds are to be used, primarily, for direct labor and materials expenses. Loan funds cannot be used for supportive services. Further, the use of SBA funds to purchase or construct facilities is prohibited when construction grants and mortgage assistance are available from another Federal source.

(b) *HAL–2.* HAL–2 funds may be used to effect a change of ownership without regard to § 120.102–6 of this Chapter.

§ 122.52 Low-income areas.

The Act authorizes loans to small concerns with particular emphasis on the establishment, preservation and strengthening of small concerns (a) located in urban and rural areas with high proportions of unemployed (as designated by the Department of Labor) or low-income individuals or (b) owned by low-income individuals (income is not adequate to satisfy basic family needs). Partnerships and corporations must be over 50 percent owned by low-income individuals to qualify under the low-income criteria. Program requirements and credit standards outlined in other sections of this regulation will not be relaxed to accommodate loan applicants qualifying under this subpart.

§ 122.53 Energy conservation.

§ 122.53–1 Policy.

The Act authorizes loans to assist a small concern to design architecturally or to engineer, manufacture, distribute, market, install or service energy measures designed to conserve the Nation's energy resources. See Table 1 for eligible energy measures.

§ 122.53–2 Energy measures defined.

Energy measures include:

(a) Solar thermal energy equipment which is either of the active type based on mechanically forced energy transfer or of the passive type based on convective, conductive or radiant energy transfer or some combination of these types;

(b) Photovoltaic cells and related equipment;

(c) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy (see Table 1) or which the Administrator determines to be consistent with the intent of this subsection;

(d) Equipment the primary purpose of which is the production of energy from wood, biological waste, grain or other biomass source of energy;

(e) Equipment the primary purpose of which is industrial cogeneration of energy, district heating or production of energy from industrial waste;

(f) Hydroelectric power equipment;

(g) Wind energy conversion equipment; and

(h) Engineering, architectual, consulting or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraphs (a) through (g).

§ 122.53–3 Use of proceeds.

Loan proceeds may be used to acquire vacant land immediately necessary for the construction of a plant and for buildings, machinery, equipment, furniture, fixtures, facilities, supplies or materials for eligible energy measures. Working capital loans shall be made only to the extent it is demonstrated to SBA's satisfaction that the proceeds will be used for entry into or expansion in the area defined above as energy measures. The applicant may be a new business or an existing business that is expanding. Loan funds shall not be used primarily for research and development: *Provided, however,* That up to 30 percent of the loan proceeds may be used for further development of a product or service already on the market or where the remaining development of a product or service may be completed under a business plan that provides reasonable assurance of repayment.

§ 122.53–4 Repayment ability.

Recognizing that greater risk may be associated with these energy measures, the status of these loans need not be as sound as for other loans authorized under this Part. In order to determine "sound value", SBA will consider such factors as quality of the product or service, technical qualifications of the applicant's management and employees, sales projections and the applicant's financial status.

§ 122.54 Loans for exporters.

§ 122.54–1 Policy.

The Act authorizes a revolving line of credit for export purposes to enable small concerns to develop foreign markets and for pre-export financing. No such credit shall be extended for a period or periods exceeding eighteen months.

§ 122.54–2 Applicant eligibility.

Applicants for an Export Revolving Line of Credit (ERLC), in addition to meeting other eligibility criteria (see §§ 120.101 and 120.103–2(g) of this Chapter), shall have been in operation for twelve (12) full months before filing an application.

§ 122.54–3 Use of proceeds.

Proceeds of an ERLC loan can be used only to penetrate or develop a foreign market and to finance labor and materials for pre-export production. Professional export marketing advice or services, foreign business travel or participation in trade shows are examples of eligible expenses to develop or penetrate a foreign market. The cost of acquiring or renting office or commercial space in a foreign country, equipping such an office, or wages for a staff in such an office are examples of ineligible uses of proceeds.

§ 122.54–4 Fees.

In addition to other allowable fees (see § 120.104–2(a)(3)), the participant in an ERLC loan may charge the borrower a commitment fee equal to one-fourth (¼) of one (1) percent of the loan or $200, whichever is greater. This fee shall not be charged until the SBA has approved the lender's request for guaranty.

§ 122.54–5 Collateral.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for these loans.

§ 122.54–6 Additional loan conditions.

(a) *Cash flow projection.* All ERLC loan applications shall include a projected cash flow chart for the term of the loan that supports the need for the funds and that evidences repayment ability. The projection must cover the applicant's total operation and clearly identify the use(s) of the loan proceeds and source(s) of repayment.

(b) *Monthly progress reports.*[2] The ERLC borrowers must submit monthly progress reports to the Lender and explain discrepancies between the projected cash flow and the progress report.

§ 122.55 Qualified employee trust.

§ 122.55–1 Policy.

The Act authorizes guaranty loans to:

(a) *Finance growth.* A qualified or other employee trust which may be treated as a qualified employee trust (see § 122.55–5 below), that represents at least 51 percent of the employees and that is maintained by a continuing small concern which is seeking to finance its corporate growth through the use of a loan from the trust; or

(b) *Change of ownership.* A qualified or other employee trust representing at least 51 percent of the employees, to purchase at least 51 percent of the voting control of a business operated for profit which is (1) a small concern or (2) a business which is other than small and controlled by another person or entity if, after the purchase is accomplished, such business would be a small concern. Such purchase shall be deemed completed when at least 51 percent of the total voting stock of the employer concern is registered in the name of the qualifying employee trust. In these cases the trustee must agree, without limitation, that

(i) Subsequent to such purchase, the small business will be a corporation which

(A) Is a small concern pursuant to Part 121 of this Chapter, and

(B) Is not under the effective control (as defined in Part 121 of this Chapter), directly or indirectly, of the seller(s), and

(ii) Not later than the date the guaranteed loan is repaid (or as soon thereafter as is consistent with the requirements of the Internal Revenue Code) at least 51 percent of the total voting stock of the small concern shall be allocated to the accounts of at least 51 percent of the employees,

(iii) There will be annual reviews by the plan participants or by the trustee of the role of the employees in the management of such concern,

(iv) There will be adequate management to assure management expertise and continuity, and

(v) The trustee shall report annually to the lender with respect to the requirements of this section.

§ 122.55–2 Definitions.

The following definitions do not amend or modify the definitions of the Internal Revenue Code, or the Treasury or Labor Department definitions in their respective regulations. As used in this Subpart:

Employee means, in the case of a loan not involving a change of majority ownership of the employer concern's voting stock, every person who has been on the payroll of the employer concern as a permanent, full-time employee in any capacity for at least 30 days prior to the date SBA receives the application for a loan guarantee. In case of a loan guarantee to an employee trust to effect a change of the majority ownership (at least 51 percent) of the employer concern, employee means every person on the payroll of such concern as a permanent, full-time employee in any capacity at the time such majority ownership is acquired. (Any person who is employed for 1,000 or more hours over 12 consecutive months is considered a full-time, permanent employee.)

Employee organization means an entity representing at least 51 percent of the employees of the employer concern and which maintains a trust treated as an employee trust.

Employee trust means a qualified employee trust or a trust (described in Section 122.55–5(b)) maintained by an employee organization.

Employer concern means the present, or prospective, corporate business concern with respect to which an employee trust is receiving an SBA loan guarantee and which qualifies (or will qualify) as small under Part 121 of this Chapter.

ESOP means an employee stock ownership plan as defined in the Internal Revenue Code.

Qualified employee trust means, with respect to a small business concern, a trust which forms a part of an ESOP (or a part of an employee benefit plan that is treated as an ESOP for SBA loan guarantee purposes):

(a) Which is maintained by such concern,

(b) Which represents at least 51 percent of the employees;

(c) Which provides that each plan participant is entitled to direct the plan how to vote the qualifying employer securities which are or will be (as the SBA guarantee loan is repaid and encumbrances are removed) allocated to the account of such participant with respect to corporate matters which by law, charter or by-laws must be decided by a majority vote of outstanding qualifying employer securities voted; and

(d) Which the Internal Revenue Service has qualified in writing or which has been exempted in writing from appropriate Labor Department regulations governing Employee Benefit Plans under ERISA.

Qualifying employer securities means, for SBA purposes, an employer security which is (a) stock or otherwise an equity security or (b) a bond, debenture, note, certificate or other

evidence of indebtedness which is described in the ESOP provisions of the Internal Revenue Code. Warrants and options are excluded.

§ 122.55-3 Amount of loan.

The $500,000 statutory limit which SBA may guarantee applies to the combined total of all obligations of the qualified employee trust, the employer concern and all its other affiliates in the aggregate.

§ 122.55-4 Exceptions to other SBA regulations.

(a) *Guaranty loan only.* SBA's assistance is available only as a loan guaranty.

(b) *Repayment ability.* In determining whether a reasonable assurance of repayment exists,

(1) SBA shall consider the earnings history and projected future earnings of the employer concern together with its ability to make the necessary payments to the trust. The trustee must document in the application that funds generated from the employee trust will enable the small business concern to overcome present competitive difficulties, if any, which may have an adverse impact on the small concern's prospects of success, including (without limitation) plant obsolescence or the need for regulatory compliance.

(2) SBA shall not consider the personal assets of the employee-owners who are members of the employee organization. However, SBA must have evidence that financial assistance is not otherwise available by utilizing the personal resources and credit of the principals of the employer concern who are not participating in the employee organization, the resources and credit of the employer concern or the sale of those employer assets that are not essential to the operation of the business or its healthy growth.

(c) *Experience or assets of employees.* The individual personal assets of the employee-owners shall not be used as criteria in determining whether to guarantee a loan: *Provided, however,* That SBA may consider business experience, where certain employee-owners assume managerial responsibilities. The small concern must maintain an adequate managerial capacity which may be derived from contracts with employee-owners, or with others. An employee trust relying on the expertise of other than employee-owners shall endeavor to train employee-owners for managerial responsibilities in order to accelerate the assumption of such responsibilities by employee-owners no later than the date the guaranteed loan is repaid.

§ 122.55-5 Eligibility.

(a) *Qualified employee trust.* A qualified employee trust shall be eligible for an SBA loan guarantee to assist an employer concern if the trustee of the trust enters into an agreement with SBA which is binding on both the trust and the small concern and which provides that:

(1) The SBA guaranteed loan shall be used solely for the purchase of qualifying employer securities;

(2) The employer concern agrees to use funds received from the employee trust solely for the business purposes for which the loan was guaranteed;

(3) The employer concern agrees to provide the funds necessary for the trust to repay the loan principal plus interest;

(4) The property of the employer concern shall be available as security for repayment of the loan;

(5) All unencumbered qualifying employer securities acquired by the trust using SBA guarantee loan funds shall be allocated to the accounts of the plan participants who are entitled to share in the allocation;

(6) Each plan participant has a nonforfeitable (vested) right, not later than the date such loan is repaid, to all such allocated qualifying employer securities which are acquired with SBA guaranty loan funds;

(7) The employer concern agrees that an employee organization owning less than 51 percent of the voting control will have a 90 day "right of first refusal" to acquire the business before the business is relocated, sold, liquidated or loses its identity as an independently owned and operated small concern by any means other than court action; and

(8) The employer concern has placed no maximum or minimum limits on the percentage of voting stock that the employee organization is allowed to purchase and control.

(b) *Trust equivalent to a qualified employee trust.* A trust may be treated as a qualified employee trust for the purposes of an SBA loan guaranty if:

(1) Such trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern;

(2) The trust is part of a plan which constitutes an employee benefit plan under the Labor Department regulations implementing ERISA and has a written Labor Department exemption from certain prohibited loan transactions. The plan must provide for the following:

(i) Be designed to invest primarily in qualifying employer securities;

(ii) Stipulate that each plan participant is entitled to direct the trustee in the manner of voting all qualifying employer securities acquired with SBA loan guarantee funds that have been allocated or, as the SBA loan is repaid, will be allocated to the participants' accounts, on all corporate matters which, by law, charter or by-laws, must be decided by a majority vote of the qualifying employer securities voted;

(iii) Provides that each participant who is entitled to distribution from the plan has a right, with respect to qualifying employer securities not readily tradable on an established market, to require that the employer concern repurchase such securities under either a fair valuation formula, appraisal requirement or other method, any of which the Internal Revenue Service or the Labor Department have accepted in writing;

(iv) Provides procedures for including future employees in the plan; and

(3) The trust, with respect to an SBA loan guaranty, enters into an agreement with SBA setting forth the provisions outlined in paragraph (a) of this § 12.55-5.

§ 122.56 Veterans Loan Program.

§ 122.56-1 Policy.

The statutory authorities for these loans appear in Pub. L. 97-377 (95 Stat. 1055), Pub. L. 97-72 (96 Stat. 1871), and Sec. 7(a) of the Act.

§ 122.56-2 Direct loans.

Only SBA direct financial assistance is available to eligible veterans under this program. Private sector financing and SBA guaranteed loans must be unavailable before a direct loan can be considered.

§ 122.56-3 Eligibility.

(a) *Eligible veterans.* Veterans eligible for this program include the following:

(1) Vietnam-era veterans who served for a period of more than 180 days, any part of which was between August 5, 1964, and May 7, 1975, and were discharged other than dishonorably.

(2) Disabled veterans of any era with a minimum compensable disability of 30%, or a veteran of any era who was discharged for disability.

(b) *Ownership percentage.* The small business concern must be owned (a minimum of 51%) by one or more eligible veterans.

(c) *Management requirements.* Management and daily operation of the business must be directed by one or more of the veteran owners of the applicant whose veteran status was used to qualify for the loan.

§ 122.56–4 Single loan benefit.

The veteran status of an individual may only be used once to qualify for an SBA loan. After having received an SBA loan with eligibility based on veteran status, second or refunding loans can be considered only under the regular business loan program or based on the ownership by other eligible veterans (51% minimum ownership by persons of unused eligibility). Individuals who formerly received SBA loans with eligibility based on veteran status have used their loan benefit and may not be considered for the veterans loan program.

Table 1—Eligible Energy Measures

Subject to the requirements and limitations set forth in Title 10, Code of Federal Regulations, Chapter II, § 450.32 (1982), an energy conservation measure shall be—

(a) Ceiling insulation in a residential or commercial building which is a material which is installed on the surface of the ceiling facing the building interior or between the heated top level living area and the unheated attic space and which resists heat flow through the ceiling;

(b) Wall insulation in a residential or commercial building or industrial plant, which is a material which is installed on the surface facing the building interior or in the cavity of an exterior wall and which functions to resist heat flow through the wall;

(c) Floor insulation in a residential or commercial building, which is a material which resists heat flow through the floor between the first level heated space and the unheated space beneath it, including a basement or crawl space;

(d) Insulation for hot bare pipes in a residential or commercial building or industrial plant, which is a material which resists heat flow from the pipes to the surrounding space;

(e)(1) Caulks and sealants in a residential or commercial building or industrial plant, which are nonrigid materials placed in joints of buildings to prevent the passage of heat, air and moisture;

(2) Weatherstripping in a residential or commercial building or industrial plant, which consists of narrow strips of flexible material placed over or in movable joints of windows and doors to reduce the passage of air and moisture;

(f) Roof insulation in a commercial building or industrial plant which is insulation placed on the surface of the roof facing the building interior or between a roof deck and its water repellent roof surface;

(g) Clock thermostat in a residential building, which is a temperature control device for interior spaces incorporating more than one temperature control point and a clock for switching from one control point to another;

(h) Exterior insulation for a hot water heater in a residential or commercial building or industrial plant, which is a material placed around the tank which resists the heat flow from the hot water heater to its surrounding space;

(i) Insulation for forced air ducts in a residential or commercial building or industrial plant, which is a material which resists heat flow from the duct to its surrounding space;

(j) Storm window in a residential or commercial building which is an extra window, normally installed to the exterior, but which may be installed to the interior, of the primary or ordinary window, to increase resistance to heat flow and to decrease air infiltration;

(k) Efficient lighting fixture or lamp in a residential or commercial building or industrial plant, which is one which—

(1) Replaces an incandescent fixture or lamp with a type of lighting system including fluorescent, mercury vapor, metal halide, and high pressure sodium or ellipsoidal reflector lamps; or

(2) Replaces a mercury vapor fixture or lamp with a high pressure sodium lighting system.

(l) Mixing valve for a hot water supply line in a residential or commercial building or industrial plant, which is a type of valve mounted in the hot water supply line, close to the water which mixes cold water with hot, reducing the temperature of the water in the hot water distribution system;

(m) Flow restrictor for hot water lines in a residential or commercial building or industrial plant, which is a device that limits the rate of flow of hot water from shower heads and faucets;

(n) Burner for oil fired heating equipment in a residential building, which is a device which atomizes the fuel oil, mixes it with air and ignites the fuel-air mixture, and is an integral part of an oil fired furnace or boiler, including the combustion chamber;

(o) Individual meters to replace a master meter for gas, electricity and hot water in a commercial building, which are meters that measure the consumption of gas, electricity or centrally distributed hot water for individual users, instead of the total consumption which is measured by a master meter;

(p)(1) New oil burner in a commercial building or industrial plant, which is a device that meters, atomizes, ignites and mixes the oil with air for the combustion process of boiler; or

(2) New boiler controls in a commercial building or industrial plant, which are devices that sense the need for reducing or increasing the firing rate and change the combustion air and oil flow rate accordingly;

(q) Controls for lighting in a residential or commercial building or industrial plant which are manual or automatic cut off switches for lighting systems that allow cut off of all lighting or a portion of the lighting systems when lighting is not required;

(r) Automatic HVAC control system in a commercial building or industrial plant, which is a device which adjusts the supply of heating or cooling to meet space conditioning requirements;

(s) High efficiency electric motor or motor controls in a commercial building or industrial plant, which replace an existing motor or motor controls, resulting in not less than a specified increase in efficiency at a specified level of use, as determined by DOE; and

(t) Whole house ventilation fan in a residential building, which is a fan which removes air from the inside of a residential building to the outside.

(u) Air source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of air and transferring this heat to a body of liquid or to another body of air for space conditioning purpose;

(v) Water source heat pump, which is a system which is part of the central heating system and which has the capability of extracting heat from a body of water and transferring this heat to another body of liquid or to a body of air for space conditioning purposes.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 24, 1984.

James C. Sanders,

Administrator.

[FR Doc. 84–24079 Filed 9–24–84; 8:45 am]

BILLING CODE 8025–01–M

CIVIL AERONAUTICS BOARD

14 CFR Part 399

[Policy Statement Docket No. 39635]

Statements of General Policy

Dated: September 18, 1984.

AGENCY: Civil Aeronautics Board.

ACTION: Termination of Rulemaking.

SUMMARY: The CAB is terminating its rulemaking that sought to refine its Standard Foreign Fare Level (SFFL) methodology. The SFFL provides a cost pass-through mechanism that keeps Board fare policy in line with current

cost trends. The Board has found that its current methodology is adequate and workable and effectively realizes its intended purpose.

FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk, Chief, Regulatory Analysis Division, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C.; (202) 673–5298.

SUPPLEMENTARY INFORMATION:

Background

On May 14, 1981, the Board issued an advance notice of proposed rulemaking, PSDR–72 (46 FR 29285, June 1, 1981) seeking comments on its Standard Foreign Fare Level (SFFL) methodology. The SFFL provides a cost pass-through mechanism that keeps Board fare policy in line with current cost trends. Although the Board believed its methodology to be reasonable at that time, it sought to refine it where possible and ensure that it stood on sound economic footing. It questioned whether greater accuracy could be reached if more refined cost factors were included. The Board expected carriers to comment upon the entire SFFL methodology and to offer concrete and practical suggestions, but specifically identified a number a areas where comments were requested. These special target areas included: (1) Method of fuel cost projection; (2) nonfuel costs; (3) capital costs; (4) property and mail offset; (5) transborder operation; and (6) foreign air carriers (the Board was open to a demonstration that foreign flag costs could be reflected within the SFFL system).

The Board received comments from Delta, Eastern, Pan American, TWA, United, American, and the Air Transport Association of America on behalf of Continental, Flying Tiger, Northwest, Texas International, USAir, and Western. A reply comment was received from TWA. The comments unanimously favored largely retaining the present procedures in arriving at the Standard Foreign Fare Level. Although changes were suggested on one or two elements listed in the advance notice of proposed rulemaking, these changes were minor and would probably not significantly change the outcome of the Board's SFFL methodology. Because of the general support for the current methodology, the Board has decided to keep the present procedures for adjusting the SFFL.

The main modifications, suggested were including interest expense and more rapid depreciation in operating expenses, basing escalation on year-over-year comparisons, changing the flexibility zones to reflect different markets, building in an upward flexibility of over 5% and creating a new ratemaking entity for transborder operations.

However, improvement in productivity, unit costs, and operating results have relieved the pressure for upward SFFL index adjustments. A review of the history of the SFFL index as related to actual experience shows that the SFFL methodology has consistently been close in predicing actual costs. In short, the Board's SFFL methodology has been doing what the Board intended it to do, and it no longer feels that the changes suggested in PSDR–72 are necessary. For transborder operations, the Board will continue to use the current methodology that has been applicable to those areas.

Accordingly, the Board terminates the rulemaking instituted by PSDR–72 and closes Docket 39635.

(Sec. 101, 102, 105, 204, 401, 402, 403, 404, 405, 407, 408, 409, 411, 412, 414, 416, 801, 1001, 1002, 1102, 1104, Pub. L. 85–725, as amended, 72 Stat. 737, 740, 743, 754, 757, 758, 760, 766, 767, 768, 769, 770, 771, 782, 788, 797, 92 Stat. 1708; 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1372, 1374, 1375, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1481, 1482, 1502, 1504)

By the Civil Aeronautics Board:

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84–25369 Filed 9–24–84; 8:45 am]

BILLING CODE 6320–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 299

[Docket No. 77N–0115]

Drugs; Offical Names; Withdrawal of Proposal

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing a proposal to update the list of official names of drugs. This action is being taken because FDA is revoking the existing list of official names of drugs in a final rule appearing elsewhere in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN–360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD, 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 13, 1977 (42 FR 45938), FDA published a notice of proposed rulemaking to update the list of official names of drugs to reflect changes in chemical structure and the addition of new official names of drugs. The agency received three comments in response to the proposed rulemaking. Two of the comments recommended additions to the list of official names of drugs, and one comment requested clarification of a particular drug name. Shortly after the proposal was published, the agency began initial deliberations on a plan which would eliminate its routine publication of official names of drugs without affecting the availability to the public of current information on acceptable "established names" of drugs. As a result of these deliberations, the agency published in the Federal Register of July 16, 1982 (47 FR 31008) a proposed rule to revoke the existing list of official names of drugs in § 299.20. Further action on the September 13, 1977 proposal, therefore, was deferred pending final determination of the later rulemaking action. Because FDA is now revoking the list of official names of drugs in a final rule published elsewhere in this issue of the Federal Register, finalization of the September 13, 1977 proposal is not necessary.

Therefore, the proposal published in the Federal Register of September 13, 1977 (42 FR 45938) is hereby withdrawn.

This withdrawal is issued under authority of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 701(a), 52 Stat. 1050–1053 as amended, 1055–1056 as amended (21 U.S.C. 352, 355, 371(a))) and under 21 CFR 5.11.

Dated: August 27, 1984.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 84–24525 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 55, 56, and 57

Safety Standards for Explosives; Extension of Comment Period

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice to extend period for public comment.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's preproposal draft standards

for explosives for metal and nonmetal mines in 30 CFR Parts 55, 56, and 57.

DATE: Written comments on the explosive standards must be received on or before November 16, 1984.

ADDRESS: All comments should be sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION: On August 20, 1984, MSHA published a notice (49 FR 33087) announcing the availability of a preproposal draft of revisions to current explosives standards for the metal and nonmetal mining industry. The comment period was scheduled to end on October 19, 1984.

Due to requests from the public, MSHA is extending the time for commenting on this preproposal draft. The comment period is extended to November 16, 1984. All interested members of the mining community are encouraged to submit comments prior to that date.

Dated: September 18, 1984.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 84-25376 Filed 9-24-84; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817, and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document corrects errors in the public hearing and public comment period dates in a proposed rule on blaster certification in the Federal Register of Tuesday, September 11, 1984 (49 FR 35714)

DATES: Comments on the proposed rule must be submitted on or before November 19, 1984.

ADDRESSES: Written Comments: Hand deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1000 L Street, NW., Washington, D.C.; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Ave., NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: James Kress, Telephone: (202) 343–5866.

The following corrections are made in FR Doc. 84–23913 appearing on 35714 in the issue of September 11, 1984.

1. The close of the comment period, shown on page 35714 at the bottom of column one as "October 11, 1984," is corrected to read "November 19, 1984."

2. The date and time of the public hearings, shown on page 35714 at the bottom of column one as "9:30 a.m. eastern standard time on October 9, 1984," is corrected to read "9:30 a.m. local time on November 13, 1984."

3. The deadline for requesting a public hearing, shown on page 35714 at the top of column two, "October 23, 1984," is corrected to read "November 6, 1984."

William B. Schmidt,

Assistant Director, Program and Inspection.

[FR Doc. 84-25378 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 943

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Texas Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Texas to amend its permanent regulatory program which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of proposed revisions to the Texas regulatory program concerning effluent limitations and prime farmland.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Comments not received on or before 4:00 p.m. October 25, 1984, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 24,1984 beginning at 10:00 a.m. at the location shown below under **ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103.

If a public hearing is held, its location will be at: The Federal Building, Room 577, 300 East 8th Street, Austin, Texas 78746.

See **SUPPLEMENTARY INFORMATION:** For addresses where copies of the Texas program amendment and administrative record on the Texas program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Markey, Director, Tulsa Field Office, Office of Surface Mining, Room 3432, 333 West 4th Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the Texas program amendment, the Texas program and the administrative record on the Texas program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581–7927.

Office of Surface Mining, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–7896.

Surface Mining Reclamation Division, Railroad Commission of Texas, Capitol Station, P.O. Drawer 12967, Austin, Texas 78711, Telephone: (512) 475–8715.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Tulsa, Oklahoma, will not necessarily be considered and included in the Administrative Record for this final rulemaking.

Public Hearing

Persons wishing to comment at a public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business October 19, 1984. If no one requests to comment at a public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

Background

On July 20, 1979, the Secretary of the Interior received a proposed regulatory program from the State of Texas. On February 16, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary conditionally approved the Texas program (45 FR 12998, February 27, 1980).

Information pertinent to the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and explanation of the condition of approval of the Texas program, can be found in the February 27, 1980 **Federal Register.**

Proposed Amendment

On August 31, 1984, the State of Texas submitted to OSM an amendment to its approved permanent regulatory program. The amendment consists of proposed modifications to Texas regulations concerning effluent limitations and prime farmland.

The proposed amendment would modify requirements for effluent limitations for discharges from areas disturbed by surface mining and underground mining activities, and would modify requirements for prime farmland concerning: Definitions; pre-application investigation; application contents; applicability and special requirements; soil removal, stockpiling and replacement; and revegetation and restoration of soil productivity.

The full text of the program modification submitted by Texas for OSM's consideration is available for public review at the addresses listed under "ADDRESSES."

Additional Determinations

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 would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would 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 943

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

Authority: 30 U.S.C. 1253.

Dated: September 20, 1984.

William B. Schmidt,

Acting Director, Office of Surface Mining.

[FR Doc. 84-25379 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2679-3]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking and response to petitions for reconsideration.

SUMMARY: EPA is proposing to approve a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the PPG Barberton plant in Summit County, Ohio. EPA's proposed approval is based on an urban/rural land use analysis, ambient SO_2 monitoring data, and rural modeling analyses performed by EPA and PPG. Final action on this proposal will constitute the Agency's response to petitions for reconsideration filed by PPG and the State of Ohio.

DATE: Comments on this revision and on the proposed EPA action must be received by October 25, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review (It is recommended that you telephone the contact person given below before visiting the Region V office.):

Environmental Protection Agency, Region V, Air and Radiation Branch (AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

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

Comments on this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On August 27, 1976, EPA promulgated regulations establishing a State Implementation Plan (SIP) for the control of SO_2 in the State of Ohio (42 FR 36342). Enforcement of the regulations for Summit County, Ohio was stayed pending data corrections in EPA's modeling. Revisions to the Summit County regulations for most sources, but not PPG's Barberton, Ohio plant, were published December 5, 1979 (44 FR 69928). EPA promulgated new regulations for the PPG facility on July 25, 1980 (45 FR 49550). On January 27, 1981, EPA disapproved proposed SIP limitations Ohio had submitted for, among other sources, the PPG facility (46 FR 8481).

The State of Ohio submitted a petition for reconsideration of EPA's disapproval as it applied to, among other sources, the PPG plant. Also, PPG submitted a petition for reconsideration of the federally promulgated Ohio SIP limit for its Barberton plant.

On April 13, 1982, EPA announced that it was granting Ohio's petition for reconsideration (47 FR 15814). The Agency stated that it would respond to the State's petition by taking action on the revised Summit County SIP that Ohio intended to submit for EPA review. Also, on July 7, 1982, EPA announced that it was granting PPG's petition for reconsideration (47 FR 29573). The Agency stated in that notice that it would respond to PPG's petition in the same way—by taking action on the State's revised Summit County submittal.

On August 27, 1982 and November 17, 1982, Ohio submitted a request to revise the SO_2 SIP for the PPG Barberton Plant in Summit County. The State requested EPA to revise the federally promulgated emission limit of 3.8 pounds of SO_2 per million British Thermal Units (lbs/MMBTU) and approve a limit of 7.8 lbs/MMBTU for Boilers 3 and 6 through 10 (the stokers), 11 and 12 at the PPG Plant, with operation of the boilers permitted in only one of the following four configurations at any one given time:

(a) Boiler numbers 11, 12; and six stokers off;

(b) Boiler number 12 and not more than two stokers on; Boiler number 11 and the remaining four stokers off;

(c) Boiler number 11 and not more than three stokers on, with said three stokers being limited to not more than a combined total heat input of 725×10^6 Btu/hr.; Boiler number 12 and the remaining three stokers off; or

(d) Not more than three stokers on; Boiler number 11 and 12 off.

Additionally, the State requested a compliance date of April 30, 1983 for the revised emission limit.

EPA developed the federally promulgated emission limits for PPG using the RAM urban modeling analysis. Since that time, however, PPG performed an analysis of land use types within 3 km of the Barberton Plant to assess the correct urban/rural classification of the area. This analysis is consistent with EPA modeling guidelines (See Regional Workshops on Air Quality Modeling: "A Summary Report," April 1981). The analysis demonstrates that the area around PPG is rural and, thus, any modeling of the plant should use a reference rural model (e.g. CRSTER or MPTER).

As a result of this finding, EPA reanalyzed PPG's emission limitation using the CRSTER model. Additionally, PPG reanalyzed the limits using the MPTER mode. Both analyses are discussed below.

EPA performed a modeling analysis using CRSTER (which is equivalent to MPTER except that it includes the assumption of co-located stacks). Five years of the most recent available Akron/Pittsburgh National Weather Service (NWS) meteorological data were utilized. This analysis included a background of 20 $\mu g/mg^3$ for the 24-hour standard and 65 $\mu g/m^3$ for the 3-hour standard. The modeling predicts that an emission limit of 7.8 along with the revised operating conditions are adequate to protect the National Ambient Air Quality Standards (NAAQS).

PPG performed a modeling analysis using MPTER. One year of (1981) on-site/NWS meteorological data were utilized. The background data were derived from concurrent 1981 hourly monitoring data. The modeling conducted by PPG also predicts that an emission limit of 7.8 along with the revised operating conditions are adequate to protect the NAAQS.

Although there are three fundamental differences between the EPA and PPG modeling analysis (model, background, and meteorological data base) both analysis collectively demonstrate that the revised regulation will protect the NAAQS. Further discussion of these analyses is contained in the technical support document for this revision.

Additionally, the State of Ohio submitted ambient SO_2 monitoring data collected during 1981 at eight monitoring sites near the PPG Barberton Plant. Two of these monitors have been in operation since October 1978 and a third since 1973. EPA has also reviewed this data. Based on midnight-to-midnight block averages, no violations of the ambient standards have ever been measured at any of these eight monitors. Based on these monitoring data, the above noted modeling analyses, and emissions data, EPA proposed to redesignate the area surrounding the PPG Plant in the **Federal Register** on November 23, 1982 (47 FR 52733). Therefore, the monitoring data indicate that the proposed regulations are adequate to attain and maintain the NAAQS. The monitoring data has been included in the docket as additional technical support for this revision. Any additional information regarding the attainment status of this area will be considered in final rulemaking action of this SIP revision.

It should be noted that the majority of the operations at the PPG Barberton plant have been shut down within the last 12 months. This shutdown has resulted in further reductions in emissions in the Barberton area. Despite this shutdown, PPG has chosen to retain its operating permit for the plant.

The SIP revision request also contained a compliance date for PPG of April 30, 1983. The Federally approved compliance date for PPG is December 27, 1982. If EPA approves this revision, as it is proposing to do today, the revised limit will be deemed to have been federally enforceable beginning April 30, 1983. Since this revision request did not contain an attainment date specific to the area around the PPG facility, the Federally promulgated attainment date of August 25, 1983 contained in 40 CFR 52.1875 footnote f remains in effect.

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

EPA also reviewed the proposed revision for consistency with section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling was limited to a 50 km radius around the PPG plant.

As explained more thoroughly in the technical support document, the applicable EPA reference models demonstrated that 3-hour and 24-hour ambient SO_2 concentrations would decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in EPA's judgment, the revision would not contribute significantly to SO_2 nonattainment in other States.

According to emissions data supplied by Ohio EPA, the revision will not result in an increase in actual emissions above

the actual emissions levels of the last several years. Consequently, the revision will not consume PSD increment in any areas in which the PSD baseline has already been triggered. In areas in which the PSD baseline has not yet been triggered, emissions under this revision will be reflected in the baseline concentrations established in the future. Under Part C of the Act, emissions from the PPG plant under this revision would not consume PSD increment above those eventual baselines. For these reasons, EPA has concluded that this revision will not interfere with PSD measures in other States.

Conclusion

Based on an urban/rural land use analysis, ambient SO_2 monitoring data, and rural modeling analyses performed by EPA and PPG, EPA proposes to approve the emission limitation of 7.8 lbs/MMBTU along with the operating conditions contained in the Ohio Revised Code (ORC) Rule 3745–18–83(S). Additionally, EPA proposes to approve the compliance date of April 30, 1983 contained in ORC 3745–18–83(c)(4). These actions constitute the Agency's response to PPG's petition for reconsideration and Ohio's petition for reconsideration (as it applies to the PPG facility).

If EPA ultimately approves this revision as it is proposing to do today, the existing Federally approved SIP regulation for this source will apply, and will be fully enforceable if there is any delay or lapse in the applicability of the new regulation.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: July 30, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–25358 Filed 9–24–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–5–FRL–2679–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing action on a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Ohio Power Muskingum River Power Plant located in Morgan and Washington Counties. EPA's action is based on the Agency's modeling analysis and monitoring data submitted by the State of Ohio.

DATE: Comments on this revision and on the proposed EPA action must be received by October 25, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review (It is recommended that you telephone Debra Marcantonio, at (312) 886–6088 before visiting the Region V office.):

Environmental Protection Agency, Region V, Air and Radiation Branch 5AR–26, 230 South Dearborn Street, Chicago, Illinois 60604.

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

Comments on this proposed rule should be addressed to (please submit an original and five copies if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch 5AR–26, USEPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6088.

SUPPLEMENTARY INFORMATION: On April 8, 1982 and November 8, 1982, Ohio EPA requested revisions to the SO_2 SIP for the Ohio Power Muskingum River plant. The State requested that EPA revise the federally promulgated emission limitation of 6.48 pounds of SO_2 per million British Thermal Units (MMBTU) and approve two separate emission limitations for the plant.

The State requested an emission limit of 8.6 lbs/MMBTU to protect the primary National Ambient Air Quality Standards (NAAQS), with a compliance date of June 17, 1980. The compliance date for the federal emission limitation was October 14, 1982. Since the State's compliance date for the revised primary limit is earlier than the date EPA has already established as consistent with the minimum requirements of Section 110(a)(2), the Agency is proposing to approve the State's date.

In addition, the State requested an emission limitation of 7.6 lbs/MMBTU to protect the secondary NAAQS, with a compliance date of July 1, 1989. Section 110(a)(2)(A) of the Clean Air Act requires attainment of a secondary NAAQS within a reasonable period of time. A "reasonable time" for secondary NAAQS attainment is defined in 40 CFR 51.13(b)(1) as generally three years from SIP approval unless the State shows good cause for providing a longer period. Section 51.13(b)(2) specifies that in such a case "reasonable time" depends on a number of factors. The State's submittal shows, based on specific environmental and economic justification, that good cause exists for postponing compliance beyond three years from the date EPA approves this SIP revision. EPA has reviewed this justification and finds that it provides consideration of the factors listed in § 51.13(b)(2) adequate to justify selecting the July 1, 1989 attainment date as constituting a "reasonable time". Further discussion of the State's justification is contained in the docket. (The federally established attainment date contained in 40 CFR 52.1875 remains in effect as to the primary NAAQS.)

Ohio also submitted a compliance schedule for the secondary emission limit as required by Title 40 Part 51 of the Code of Federal Regulations. Parts 51.13 and 51.15 require that attainment plans contain compliance schedules which provide for legally enforceable increments of progress toward compliance. EPA has reviewed this schedule and feels it contains appropriate increments of progress leading to attainment of the secondary SO_2 NAAQS within a reasonable period of time.

As a result of approving these two separate emission limitations and compliance dates, the primary limit of 8.6 lbs/MMBTU will be in effect from the date of EPA's final rulemaking until July 1, 1989 when the secondary limit of 7.6 lbs/MMBTU becomes effective.

The modeling analysis which supports this revision was conducted by EPA using the MPTER (the reference multiple source, rural model for rolling terrain). Five years of the most recent available meteorological data from Huntington, West Virginia, were utilized. This analysis included 540 receptors and a background of 28 $\mu g/m^3$ for both 3-hour

and 24-hour NAAQS. (The background value is discussed further in the "Technical Support Document; Sulfur Dioxide Control for the State of Ohio, Vol I" (EPA–905/2–76–002, August 1976)). The highest concentrations were predicted to occur under 100% load conditions.

Since the 24-hour primary standard (365 $\mu g/m^3$) and the 3-hour secondary standard (1300 $\mu g/m^3$) may not be exceeded more than once a year, emission limitations established by modeling are based on the highest second high value. Based on an emissions level of 9.23 lbs/MMBTU, the modeling predicts that the highest second high 24-hour concentration would be 235 $\mu g/m^3$ at 1.4 km from the plant. Therefore, an emission limit of 8.6 lbs/MMBTU will protect the 24-hour primary standard. Additionally, the modeling (at 9.23 lbs/MMBTU) predicts the highest second high 3-hour concentration would be 1549 $\mu g/m^3$ at the same receptor. Therefore, based on a rollback modeling calculation an emission limit of 7.6 lbs/MMBTU will protect the 3-hour secondary standard. Further discussion of this analysis is contained in the technical support document for this revision.

Additionally, Ohio EPA submitted as part of their SIP revision request, an analysis of the ambient SO_2 data collected at six continuous monitors in the vicinity of the Muskingum River plant during 1975–80. The State analyzed these data and concluded that the data support the proposed emission limitations. This analysis is discussed in the State's report entitled "Muskingum River Plant Supplementary Technical Support Document."

Impact on Attainment and Prevention of Significant Deterioration (PSD) in Other States

EPA also reviewed the proposed revision for consistency with section 110(a)(2)(E) of the Clean Air Act. Due to present limitations on modeling, the modeling was limited to a 50 km radius around the Muskingum River plant.

As explained more thoroughly in the technical support document, the applicable EPA reference models demonstrated that 3-hour and 24-hour ambient SO_2 concentrations would decrease markedly within a short distance from the plant and fall well below the corresponding ambient standards. Therefore, in EPA's judgment, the revision would not contribute substantially to SO_2 nonattainment in either nearby West Virginia or more distant States.

According to emissions data supplied by Ohio EPA, the revision will not result in an increase in actual emissions above the actual emissions levels of the last several years. Consequently, the revision will not consume PSD increment in any areas—either in the counties in West Virginia within 50 km of Muskingum River, which are currently designated attainment for SO_2 or in more distant States—in which the PSD baseline has already been triggered. In areas in which the PSD baseline has not yet been triggered, emissions under this revision will be reflected in the baseline concentrations established in the future. Under Part C of the Act, emissions from the Muskingum River plant under this revision would not consume PSD increment above those eventual baselines. For these reasons, EPA has concluded that this revision will not interfere with PSD measures in other States.

Conclusion

Based on EPA's new reference modeling analysis and Ohio EPA's review of ambient monitored data, EPA proposes to approve the 8.6 lbs./MMBTU SO_2 emission limit to protect the primary NAAQS and the compliance date of June 17, 1980.

EPA also proposes to approve the 7.6 lbs/MMBTU SO_2 emission limit to protect the secondary NAAQS, along with the compliance schedule and July 1, 1989 compliance and attainment date. EPA has determined that these limits will provide for the attainment and maintenance of the SO_2 NAAQS.

If EPA ultimately approves this revision as it is proposing to do today, the existing federally-approved SIP regulations for this source will apply, and be fully enforceable, if there is any delay or lapse in the applicability of the new regulations.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Sec. 110 of the Clean Air Act, as amended (42 U.S.C. 7410))

Dated: July 30, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84–25359 Filed 9–24–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–10–FRL–2678–3]

Approval and Promulgation of State Implementation Plans; Idaho; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment deadline.

SUMMARY: By this notice, EPA is extending from September 7, 1984 to October 1, 1984 the deadline for receiving written comments on the Agency's proposed promulgation of a Federal Implementation Plan for attainment of National Ambient Air Quality Standards for lead for the portion of Shoshone County surrounding and including the Bunker Limited Partnership primary lead smelter.

DATE: Comments must be received or postmarked on or before October 1, 1984.

ADDRESS: Comments should be addressed to: Laurie M. Kral, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Richard F. White, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442–4016, FTS: 399–4016.

SUPPLEMENTARY INFORMATION: On July 6, 1984 (49 FR 27787) EPA proposed to promulgate a Federal Implementation Plan to provide for reduction of lead from the Bunker Limited lead smelter near Kellogg, Idaho. Comments on the proposal from all interested parties were due on or before September 7, 1984.

As a result technical clarifications requested by Bunker Limited, EPA developed additional explanatory material, which was sent to the Company and added to the official docket files on September 7, 1984. In order to respond to the new information, Bunker Limited requested the comment period be extended. Therefore, EPA is extending the official comment period from September 7 to October 1, 1984 so that the Company, and all other parties interested in this action, may review and comment on the new material.

EPA is seeking comment on all aspects of its proposal. Copies of the proposal and supporting documents are available to anyone who wants to become familiar with them. They may be inspected at the following locations:

Kellogg Library, 16 West Market Avenue, Kellogg, Idaho.

EPA Idaho Operations Office, 422 West Washington Street, Boise, Idaho.

The official rulemaking dockets are available at:

EPA Region 10, Air Programs Branch, 1200 Sixth Avenue, Seattle, Washington.

EPA Headquarters—Public Information Reference Unit, 401 M Street, SW., Washington, D.C.

Interested parties are invited to comment on all aspects of this proposal. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: September 14, 1984.

Randall F. Smith,

Acting Regional Administrator.

[FR Doc. 84-25349 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 65

[A-5-FRL-2679-1]

Delayed Compliance Orders; Proposed Approval of a Delayed Compliance Order Issued by the Michigan Department of Natural Resources to Baker and Sons Finishing Co., Inc.

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: The USEPA proposes to approve a Delayed Compliance Order (DCO) issued by the Michigan Department of Natural Resources to Baker and Sons Finishing Company, Inc., in Otsego, Michigan. The Order requires the company to bring volatile organic compound (VOC) emissions from its paint spraying operations into final compliance with the limits established by Michigan Administrative Code 1980 AACS, R336.1621, part of the Federally approved Michigan State Implementation Plan (SIP).

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Copies of the State order, supporting material, and public comments received in response to this rulemaking are available for inspection at the following address: U.S. Environmental Protection Agency, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed action should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

SUPPLEMENTARY INFORMATION: On June 25, 1984, the Michigan Department of Natural Resources submitted a DCO for Baker and Sons Finishing Company, Inc., in Otsego, Michigan. The Order requires the company to bring VOC emissions from its spray painting operations into final compliance with Michigan Administrative Code 1980 AACS, R336.1621, part of the Federally approved SIP, by June 30, 1985. R336.1621 requires final compliance with emission limits of 3.5 pounds of VOC per gallon of coating, as applied, for air-dried coatings, and 3.0 pounds of VOC per gallon of coating, as applied, for any coatings for which a more stringent limit is not specified.

USEPA's criteria of approval of DCO's are set forth in section 113(d) of the Clean Air Act (the Act), as amended August 1977, and in an April 26, 1983, memorandum from Kathleen M. Bennett, who at the time, was the Assistant Administrator for Air, Noise and Radiation. USEPA evaluated the Order using these criteria and determined that its meets all the criteria as set forth below.

1. The Order must require final compliance as expeditiously as practical but no later than July 1, 1979, or 3 years after the date for final compliance specified in the SIP, whichever is later. The DCO requires compliance by June 30, 1985. This is within 3 years of the final compliance date of December 31, 1983, specified in the Michigan SIP.

2. The Order must include reasonable requirements for monitoring and reporting. The DCO requires monthly reports documenting the quantity and VOC content of coatings used at the facility.

3. The Order must include reasonable and practicable interim controls. The DCO stipulates that after the effective date of the order and until June 30, 1985, the VOC emissions from the spray painting operations shall not exceed 5.8 pounds of VOC per gallon of coating, minus water as applied for extreme performance and air-dried coatings, and 5.2 pounds of VOC per gallon of coating, minus water, as applied for all other coatings.

4. The Order must include a finding that the source is currently unable to comply with the SIP requirements. The DCO contains such a finding.

5. Notice and opportunity for a public hearing must be provided. A public hearing was held on March 20, 1984.

6. The Order must include a schedule for compliance. The DCO includes a schedule which contains increments of progress as specified in 40 CFR 51.1(q).

7. If the Order is for a major source, it must notify the source of its possible liability for noncompliance penalties under Section 120 of the Act. This is provided for in the DCO.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with provisions of the SIP, it must be approved by USEPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Act. If approved by USEPA, source compliance with its terms would preclude Federal enforcement action under section 113(b) of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Michigan SIP. However, source compliance with the Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under the Section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether USEPA may approve the Order. After the Public comment period, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601

Dated: September 14, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25355 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2678-6]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Anchor Hocking Corporation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resource to Anchor Hocking Corporation. The Order requires the company to bring air emissions from its glass container closure manufacturing facility in Connellsville, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by either April 21, 1986 or April 21, 1987. Because the Order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be appoved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Environmental Scientist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597-6553.

SUPPLEMENTARY INFORMATION: Anchor Hocking Corporation operates a glass container closure manufacturing facility at Connellsville, Pennsylvania. The Order under consideration addresses emissions from various surface coating processes, which are subject to section 129.52 of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and is part of the federally approved Pennsylvania State Implementation Plan. The Order requires final compliance with the regulation by April 21, 1986 through the use of low solvent coatings, or by April 21, 1987 through the use of control equipment.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection.

EPA's review indicates that the Anchor Hocking facility is a major source of VOC emissions. The facility is unable to comply with regulations limiting emissions of VOCs codified at Section 129.52 the Title 25 of the Pennsylvania Code, part of the federally approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance with the regulation no later than April 21, 1987 three years after April 21, 1984, the date by which compliance is otherwise required. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. The Order contains expeditious increments of progress towards compliance and emission monitoring and reporting requirements, and provides for interim emission reduction requirements to aviod an imminent and substantial endangerment to health. Pennsylvania has determined that the Order requires the facility to comply with the State Implementation Plan whenever it is tempoarily able to do so. The Order notifies Anchor Hocking of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment to any noncompliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) of (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: September 10, 1984.

Thomas P. Eichler,

Regional Administrator, Region III.

[FR Doc. 84-25352 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 65

[A-3-FRL-2678-5]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Amended Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Philadelphia Textile Finishers, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an amended Administrative Order issued by the Pennsylvania Department of Environmental Resources to Philadelphia Textile Finishers, Inc. The amended Order requires the company to bring air emissions from its fabric coating facility in Norristown, Pennsylvania into compliance with certain regulations contained in the federally approved Pennsylvania State Implementation Plan (SIP) by April 9, 1985. Because the amended Order has been issued to a major source and permits a delay in compliance with

provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the amended Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the amended Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate changes) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph S. Arena, Environmental Scientist, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Telephone: (215) 597–6553.

SUPPLEMENTARY INFORMATION: Philadelphia Textile Finishers, Inc., operates a fabric coating facility at Norristown, Pennsylvania. The amended Order under consideration addresses emissions from the surface coating processes, which are subject to § 129.52 of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and is part of the federally approved Pennsylvania State Implementation Plan. The original Order, which was proposed in the March 16, 1983, **Federal Register**, required final compliance with the regulation by October 31, 1983, through the use of low solvent coatings. The amended Order requires final compliance with the regulation by April 9, 1985 through the use of low solvent coatings.

Because this amended Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the amended Order and has found that the amended Order does satisfy the requirements of this subsection.

EPA's review indicates that the Philadelphia Textile facility is a major source of VOC emissions. The facility is unable to comply with regulations limiting emissions of VOCs codified at Section 129.52 of Title 25 of the Pennsylvania Code, part of the federally approved State Implementation Plan, because low solvent coatings are still being developed. The amended Order requires compliance with the regulation by April 9, 1985, three years after April 9, 1982, the date by which compliance is otherwise required. Prior to issuance of the amended Order, Pennsylvania provided an opportunity for public comment and hearing on the amended Order. The amended order contains expeditious increments of progress towards compliance and emission monitoring and reporting requirements, and provides for interim emission reduction requirements to avoid an imminent and substantial endangerment to health. Pennsylvania has determined that the amended Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so. The amended Order notifies Philadelphia Textile of its liability for noncompliance penalties under Section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the amended Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the amended Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the amended Order will not preclude assessment of any noncompliance penalties under Section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed amended Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the amended Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the amended Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7313, 7601.

Dated: September 4, 1984.

Thomas P. Eichler,

Regional Administrator, Region III.

[FR Doc. 84–25351 Filed 9–24–84; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 65

[A–5–FRL–2678–7]

Delayed Compliance Orders; Proposed Approval of a Delayed Compliance Order Issued by the Michigan Department of Natural Resources to Chrysler Corp., Warren Truck Plant

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: The USEPA proposes to approve a Delayed Consent Order (DCO) issued by the Michigan Department of Natural Resources to Chrysler Corporation in Warren, Michigan. The Order requires the company to bring particulate matter emissions from Boilers, 1, 2, 3, 4, and 5 into final compliance with the limits established by Michigan Administrative Code 1980 AACS, R336.1331, part of the Federally approved Michigan State Implementation Plan (SIP).

DATE: Written comments must be received on or before October 25, 1984.

ADDRESSES: Copies of the State order, supporting material, and public comments received in response to this rulemaking are available for inspection at the following address: U.S. Environmental Protection Agency, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this proposed action should be addressed to: Gary Gulezian, Chief, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Maggie Greene, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6029.

SUPPLEMENTARY INFORMATION: On July 6, 1984, the Michigan Department of Natural Resources submitted to USEPA for review and approval a Delayed Compliance Order (DCO) which it had issued to Chrysler Corporation, in Warren, Michigan. The Order under consideration addresses particulate matter emissions from Boilers 1, 2, 3, 4, and 5 at the company's Warren Truck Plant, which are subject to Michigan Administrative Code 1980 ASCS,

R336.1331. This regulation is part of the Federally approved Michigan SIP. The Order requires the shutdown of Boilers 1 and 2 on July 6, 1984; and final compliance with emission limits of 0.30 pounds per 1,000 pounds of exhaust gases by September 1, 1984, January 31, 1985, and November 30, 1984, for Boilers 3, 4, and 5, respectively. USEPA evaluated the Order using criteria set forth in section 113(d) of the Clean Air Act (the Act), as amended August 1977, and determined that it meets all the requirements as shown below:

1. The Order must include a finding that the source is currently unable to comply with the SIP requirements. The DCO contains such a finding.
2. Notice and opportunity for a public hearing must be provided. A public hearing was held on April 5, 1984.
3. The Order must include a schedule for compliance. The DCO contains a schedule of milestones for compliance for all five boilers. The schedules included plan submittal, contract initiation, start of construction, completion of construction, and final testing.
4. The Order must include reasonable and practicable interim controls. Interim emission reduction measures are included in the order, consisting of the requirement that only the best controlled boiler be used until compliance is demonstrated for all boilers. The schedule is such that summer steam demand levels will be low until after installation of the collector is complete for Boiler 3.
5. The Order must include reasonable requirements for monitoring and reporting. The DCO requires continuous opacity monitoring equipment on Boilers 3, 4, and 5. Monitoring data are to be maintained for 2 years. Each year, Method 5, stack testing is to be performed on each boiler and submitted to the MDNR. The company has already installed equipment to monitor opacity in the stacks.
6. The DCO must require final compliance as expeditiously as practicable but no later than July 1, 1979, or 3 years after the date for final compliance specified in the SIP, whichever is later. The compliance dates are less than three years after the original compliance date of December 31, 1982.
7. If the Order is to a major source, it must notify the source of its possible liability for noncompliance penalties under section 120 of the Act. The company was notified and acknowledged in the order their exposure to penalties under section 120 of the Clean Air Act.

Because this Order has been issued to a major source of particulate matter emissions and permits a delay in compliance with provisions of the SIP, it must be approved by USEPA before it become effective as a Delayed Compliance Order under section 113(d) of the Act. If approved by USEPA, source compliance with its terms would preclude Federal enforcement action under section 113(b) of the Act against the source for violations of the regulations covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Michigan SIP. However, source compliance with the Order will not preclude assessment of any noncompliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether USEPA may approve the Order. After the public comment period, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air pollution control.

Authority: 42 U.S.C. 7413, 7601.

Dated: September 14, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-25353 Filed 9-24-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of the Comment Period on Proposed Endangered With Critical Habitat Status for the June Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of public hearing, and reopening of the comment period.

SUMMARY: The Service gives notice that a public hearing will be held on the proposed determination of endangered with critical habitat status for the June sucker, and that the comment period on the proposal will be reopened.

DATES: The public hearing will be held on October 11, 1984, from 6 p.m. to 9 p.m. Comments on the proposal must be received by October 21, 1984.

ADDRESS: The public hearing will be held at the Provo City Building in the City Council Chambers, 359 W. Center Street, Provo, Utah. Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours, by appointment at the Regional Endangered Species Division, 134 Union Boulevard, fourth floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Staff Biologist, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, (303/234-2496).

SUPPLEMENTARY INFORMATION:

Background

The June sucker (*Chasmistes liorus*) is a fish found only in Utah Lake, Utah County, Utah. It uses the lower portions of the Provo and Spanish Fork Rivers, the two largest tributaries of Utah Lake, for spawning and larval rearing. The species is jeopardized by alteration of habitat due to water impoundments and irrigation, illegal killing of spawning adults, predation and competition from exotic fish, and water pollution. In the **Federal Register** of July 2, 1984 (49 FR 27183-27188), the Service proposed determination of endangered with critical habitat status for the June sucker. The period for submission of public comments on the proposal was originally scheduled to last until August 31, 1984.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On August 14, 1984, the Service received requests for a hearing on the June sucker from Attorney Dave McMullin, Payson, Utah, on behalf of the East Bench, Lake Shore, Lake Side, Salem, South Field, and West Field Irrigation Companies. Additional requests for a hearing were received from Mayor James E. Ferguson, Provo, Utah; and the Central Utah Water Conservancy District, Orem, Utah. The Service has scheduled this hearing for October 11, 1984, from 6 p.m. to 9 p.m., at the Provo City Building, in the City Council Chambers, 359 W. Center Street, Provo, Utah. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing.

In order to accommodate the hearing, the Service also reopens the public comments period on the proposal. Written comments may now be submitted until October 21, 1984, to the Service's Office in the **ADDRESS** section.

Author

The primary author of this notice is Julie Bridenbaugh, U.S. Fish and Wildlife Service, P.O. Box 35486, Denver, Colorado 80225.

Authority: The authority for this action is Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 19, 1984.

Robert H. Shields,

Acting Regional Director.

[FR Doc. 84–25320 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 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.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1984 Crop Soybean Final Loan and Purchase Rate

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Determination of 1984 Crop Soybean Final Level of Price Support.

SUMMARY: The purpose of this notice is to announce that the final level of price support for the 1984 soybean crop is $5.02 per bushel. This determination is required to be made by section 201(g)(1) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: Orville I. Overboe, Agricultural Economist, Analysis Division, ASCS-USDA, P.O. Box 2415, Washington, D.C. 20013, Telephone (202) 447-4417. Since this determination is calculated in accordance with the statutory formula, the requirement of an Impact Analysis has been waived.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been designated "not major." It was designated "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions; or (3) significant adverse impacts on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign based enterprises in domestic or export markets.

The title and number of the federal assistance program to which this notice applies to are: Title—Commodity Loans and Purchases; Number—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 notice since the Commodity Credit Corporation (CCC) 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 notice.

Section 201(g)(1) of the Agricultural Act of 1949, as amended, provides that the price of soybeans for each of the 1982 through 1985 marketing years shall be supported through loans and purchases at a level equal to 75 percent of the simple average price received by farmers for soybeans for each of the preceding five marketing years, excluding the high and low valued years, except that the support price may not be less than $5.02 per bushel. However, if the Secretary of Agriculture determines that the average price received by producers for soybeans in any marketing year is not more than 105 percent of the level of loans and purchases for such marketing year, the support level may be reduced for the next marketing year by the amount which is determined to be necessary to maintain domestic and export markets for soybeans, except that the price support level cannot be reduced by more than 10 percent in any year nor below $4.50 per bushel.

Section 201(g)(1) also provides that the Secretary must make a preliminary announcement of the level of price support not earlier than 30 days prior to September 1, the beginning of the marketing year, based upon the latest information and statistics then available. The Secretary must make a final announcement of such level as soon as full information and statistics are available on prices for the five years preceding the beginning of the marketing year for which the level of support is determined. The final level of price support must be announced no later than October 1 of the marketing year to which the announcement applies. The final level of support cannot be less than that of the preliminary announcement.

A preliminary level of price support of $5.02 per bushel for the 1984 crop of soybeans was determined and announced on August 2, 1984 (49 FR 31121). As set forth below, it has been determined that the final level of price support for the 1984 crop of soybeans is $5.02 per bushel.

Determination

The simple average price received by farmers for soybeans for each of the preceding five years, excluding the high and low valued years, is $6.61 per bushel. This determination is based on the following data:

(1)

	Prices[1] (dollars per bushel)
1979	$6.29
1980	7.50
1981	6.05
1982	5.83
1983 (projected)	7.80

[1] Simple-average soybean prices.

(2) Average of the five years, excluding the low valued year (1982) and the high valued year (1983): ($6.29 + $7.50 + $6.05)/3 = $6.61 per bushel.

(3) The final price support level calculation is $6.61 × .75 = $4.96. The calculated final price support level of $4.96 per bushel is less than the statutory minimum level of $5.02 per bushel. The projected average price of soybeans received by producers douring the marketing year 1983 ($7.80) exceeded 105 percent of the 1983 price support level for soybeans ($5.02 × 1.05 = $5.27). There is, therefore, no basis for reducing the final price support level for soybeans below the statutory minimum level of $5.02 per bushel. Accordingly, the final 1984-crop soybean price support level is $5.02 per bushel.

(Sec. 201(g)(1) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446(g)(1))

Signed at Washington, D.C., on September 14, 1984.

John R. Block,

Secretary.

[FR Doc. 84-25318 Filed 9-24-84; 8:45 am]
BILLING CODE 3410-05-M

Soil Conservation Service

Upper Chester River Watershed, Maryland and Delaware; Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Intent To Prepare a Supplemental Environmental Impact Statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that a supplemental envionmental impact statement is being prepared for the Upper Chester River Watershed, Kent and Queen Anne's Counties, Maryland and Kent and New Castle Counties, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald R. Calhoun, State Conservationist, Soil conservation Service, 4321 Hartwick Road, College Park, Maryland 20740, telephone 301–344–4180.

SUPPLEMENTARY INFORMATION: The existing environmental impact statement was completed July, 1982. Considerable controversy and additional information indicates that the project may cause significant local impacts on the environment. As a result of these impacts, Mr. Gerald R. Calhoun State Conservationist, has determined that the preparation and review of a supplemental environmental impact statement are needed for this project.

The project concerns a plan for watershed protection, flood prevention, and drainage. Alternatives considered during planning include no action, land use changes, land treatment, channel work, and various systems of dams.

A draft supplemental environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. A meeting will be held at 8:00 p.m., Wednesday, November 7, 1984, at the Fire Hall in Hartly, Delaware to determine the scope of the evaluation of the proposed action.

Further information on the proposed action, or the scoping meeting may be obtained from Mr. Gerald R. Calhoun, State Conservationist, at the above address or telephone (301) 344–4180.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and federally assisted programs and projects are applicable.)

Dated: September 19, 1984.

Gerald R. Calhoun,

State Conservationist.

[FR Doc. 84-25381 Filed 9-24-84; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Premiere Airlines, Inc., Continuing Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter will commence on October 18, 1984, at 10:00 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned administrative law judge.

Dated at Washington D.C., September 19, 1984.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 84-25367 Filed 9-24-84; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness; Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of meeting.

SUMMARY: This notice announces the forthcoming meeting of the Cochairmen of the President's Commission on Industrial Competitiveness (Commission). The Commission was established by Executive Order 12428 on June 28, 1983 and its charter was approved on August 23, 1983. The Commission shall review means of increasing the long-term competitiveness of United States industries at home and abroad, with particular emphasis on high technology, and provide appropriate advice to the President through the Cabinet Council on Commerce and Trade and the Department of Commerce.

Time and place: October 11, 1984 from 8:30 a.m.–1:00 a.m. at the Capital Hilton, California Room, 16th and K Street, NW, Washington, DC 20036. This cochairmen meeting is being held to discuss the final report of the Commission.

Public participation: The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone 202–395–4527.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84-25326 Filed 9-24-84; 8:45 am]

BILLING CODE 3510-18-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

September 18, 1984.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-429, 913 (4,464,862) Chemical Applicator

SN 6-573,748 Method and Apparatus for Transporting Implements

SN 6-625,272 Hide Transfer Apparatus and Method

Department of Health and Human Services

SN 6-329,870 (4,465,769) Non-Transformed Thymidine Kinaseless Cell Line And Its Use For Testing Tumorigenic Potential of Genes

SN 6-585,111 Synthesis of Platinum (IV) Antineoplastic Agent

SN 6-601,314 Carbamates of Colchicine and Thiocolchicine Suitable for Treatment of Gout and Murine Malignancies

SN 6-604,136 Substituted N-Methyl Derivatives of Mitindomide

SN 6-607,160 Therapy for Retinoid Pathogenesis
SN 6-618,949 Rapid Visualization System for Gel Electrophoresis
SN 6-619,325 Method and Device for Quantitative Endpoint Determination in Microfluorophotometry

Department of the Air Force

SN 6-370,234 Range-Only Multistatic Radar System
SN 6-601,515 Retro Directive Radar Target Simulator Beacon Apparatus and Method
SN 6-603,528 Portable, Sequential Air Sampler
SN 6-610,142 Atmospheric Contrast Transmittance Monitor
SN 6-614,190 X33 Cut Quartz For Temperature Compensated Saw Devices
SN 6-615,506 Harness Formation End-Effector with Interchangeable Tool Capability
SN 6-615,612 Optical Flip-Flop System
SN 6-617,666 Multilayer Ceramic Capacitor

Department of the Army

SN 6-628,091 Optical Fiber Splice Sled
SN 6-628,553 Precision Cutting of Millimeter Wave Ferrite Materials

[FR Doc. 84-25382 Filed 9-24-84; 8:45 am]
BILLING CODE 3510-04-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 9:30 a.m. until 5:00 p.m. on October 24, 1984, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Finances of the Trademark Operation
(2) Trademark Automation Developments
(3) Activities of the Trademark Examining Operation
(4) Trademark Trial and Appeal Board Operations
(5) Customer Services

and any other Patent and Trademark Office activities, including legislation and international conventions, affecting trademarks.

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3-11C17, Patent and Trademark Office, Washington, D.C. 20231. Telephone: 703-557-7464.

Dated: September 18, 1984.

Approved:

Gerald J. Mossinghoff,

Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 84-25322 Filed 9-24-84; 8:45 am]
BILLING CODE 3510-16

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. CRT 83-1]

1982 Cable Royalty Distribution Determination

AGENCY: Copyright Royalty Tribunal (Tribunal) announces the adoption of its final determination in the proceeding concerning the distribution to certain copyright owners of royalty fees paid by cable systems for secondary transmissions during 1982.

FOR FURTHER INFORMATION CONTACT: Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, (202) 653 5175.

SUPPLEMENTARY INFORMATION:

Introduction

17 U.S.C 111(d)(5)(B) requires the Tribunal after the first day of August to determine whether a controversy exists concerning the distribution of cable royalty fees deposited by cable systems with the Copyright Office. Upon determination that a controversy exists, 17 U.S.C. 804(d) requires the Chairman of the Tribunal to publish in the **Federal Register** a notice announcing the commencement of distribution proceedings.

In a notice published in the **Federal Register** of August 8, 1983 (48 FR 35989), the Tribunal directed that claimants to royalty fees paid by cable operators for secondary transmissions during 1982 submit not later than September 20, 1983 any comments concerning whether a controversy exists concerning the distribution of the 1982 royalty fees.

The Tribunal on October 12, 1983 published in the **Federal Register** (48 FR 46412) its determination that a controversy did exist concerning the distribution of cable royalty fees for the period January 1 through December 31, 1982.

Background and Chronology

On May 6, 1983, the Motion Picture Association of America, the Joint Sports Claimants, the Public Broadcasting Service, the Music Claimants and National Public Radio (the "Settling Parties") filed with the Tribunal an agreement in which they agreed to seek in the 1982 distribution proceeding a single aggregate award which would be divided among them "in the proportions determined by their individual Phase I awards in the 1979 and 1980 distribution proceedings (with the proviso that NPR's share shall not be reduced below 0.25 percent of the total funds)." Subsequently the National Association of Broadcasters and the Canadian Claimants agreed to resolve the Phase I proceeding on the basis of the Tribunal's 1979 and 1980 awards. These agreements contemplated that any award to the Devotional Claimants in this proceeding should be accomplished by a pro rata reduction of the shares of other parties.

As in prior distribution cases, the Tribunal conducted the proceeding in two phases. In Phase I the Tribunal receives evidence concerning the awards to general categories of claimants, while in Phase II it receives evidence concerning disputes within categories. The Tribunal held evidentiary hearings on Phase I and Phase II issues, including rebuttal cases, on July 17, 18, 24, 25, 26 and August 2, 3, 6, 7.

The Tribunal directed parties to submit proposed findings of fact and conclusions of law on August 22, 1984. Reply findings were received on August 31, 1984.

The Tribunal incorporated the Phase I and Phase II records of the 1978, 1979, 1980, and 1981 cable distribution proceedings into the record of the 1982 proceeding.

On September 6, 1984, the Tribunal granted the motion of the Turner Broadcasting System, Inc. to intervene in the Phase II proceeding.

Phase I

Structure of Phase I Cases

We begin with the argument advanced by the Devotional Claimants [1]

[1] Devotional Claimant's Proposed Findings of Fact and Conclusions of Law, pp 37-39

that the record of the 1982 proceeding "is devoid of any evidence upon which to base an award to any claimant group other than PBS and the Devotional Claimants." The Devotional Claimants assert that other parties "have only put in rebuttal and surrebuttal evidence against the Devotional Claimants." Devotional Claimants conclude therefore that no award can legally be made to these parties.

We find no merit in the argument of the Devotional Claimants, which in our view reflects a myopic view of the matters to be determined by the Tribunal in this Phase I proceeding. All Phase I parties, other than Devotional, in a series of voluntary agreements determined the Phase I awards. Since these argeements did not include the Devotional Claimants, the only controversy to be determined by the Tribunal was what award, if any, to make to the Devotional Claimants.

We also reject the argument that the 1982 Phase I record provides no basis for an award to most other categories of claimants. The Tribunal incorporated into the 1982 record 20,194 transcript pages of prior distribution proceedings. Devotional Claimants made no showing that the collective situation of the other Phase I parties changes in 1982.

"Special Factors" and "Fundamental Distinction"

In our 1979 determination [2] the Tribunal gave weight to certain "special factors" deemed relevant to the devotional claims, namely the purchase of broadcast time by devotionals and perceived benefits to such claimants from cable retransmission. We viewed these factors as establishing a "fundamental distinction" of the devotional claims from other claims. In reviewing our 1979 determination, the Court of Appeals for the District of Columbia Circuit wrote: "We begin by reiterating that there is nothing necessarily irrational about the Tribunal's 'fundamental distinction'." [3] In our 1979 and 1980 remand determinations [4] we gave less weight to these "special factors," in part because of the state of the record. We indicated that in subsequent proceedings we expected the parties to develop a fuller record on these matters. This would then permit the Tribunal to discuss these matters in greater detail than was previously possible because of the record and the time restraints of 17 U.S.C. 804(e).

Other than for the evidence and testimony of PBS presented for the purpose of seeking to rebut Devotional Claimants' argument that they were comparable claimants, we find a failure of the Settling Parties and NAB to make any showing that would be useful to the Tribunal on the "special factors" issues, which we had designated for particular review in this proceeding.

The Settling Parties argue in their reply findings [5] that the "record as a whole demonstrates that devotional programming does not satisfy the Tribunal's distribution criteria." This is the issue for the Tribunal to resolve. The Settling Parties provide assertions, but have not supplied supporting evidence. We have given in this determination no weight to the "special factors," and we reject the conclusion of the Settling Parties that they have established that the devotional claimants do not qualify for an award under the Tribunal's distribution criteria.

Evidentiary Record

The Tribunal in the 1978 cable royalty distribution proceeding adopted the criteria to be applied in that and subsequent cable royalty distribution proceedings. The criteria, an analysis of the criteria, and the relative weight accorded each factor are set forth in the 1978 distribution opinion.[6] We have applied the distribution criteria to the record evidence in this proceeding, including the incorporated records of previous proceedings. In practice we have found that our distribution allocations are rooted in a search for the marketplace value of the transmitted programs, and the benefit of particular types of distant signal programming to cable operators.

We wish to emphasize that we are deciding the 1982 case on the basis of the total record in this proceeding, and that we do not propose to review here conclusions reached in other proceedings on the basis of the evidentiary record before us in those proceedings. We also affirm that cumulative experience based on cumulative evidence cannot be excluded from the decision process.[7]

With reference to the new evidence of the 1982 record, we believe that the Devotional Claimants have made an effort to respond to our findings of deficiencies in their previous presentations. We have been particularly troubled in prior proceedings by their showings as to the marketplace value of their programs, and the benefit of their programs to cable operators.

In deciding to make a larger award to the devotional claimants than previously, we have given weight to the Devotional Claimants Exhibit 3, a survey of the attitudes of cable system managers toward programming. The Tribunal reads this survey as supporting a finding of some cable operator interest in devotional programming. While finding the survey helpful to our determination, we also acknowledge the assertions of the Settling Parties that there are deficiencies in this survey.[8] These limitations, such as the size and timing of the survey, precludes the Tribunal from utilizing the survey, even with other evidence, to produce the award requested by the Devotional Claimants.

Devotional Claimants have introduced the report entitled, "Religion and Television," a Research Report by the Annenberg School of Communications of the University of Pennsylvania and the Gallup Organization. While the report contains much interesting data, we have found it to have only limited relevance to our task in this proceeding. It is not related to the retransmission of distant signals, which while not destroying all relevance, requires the Tribunal to make adjustments to glean what is of value to our determination. We read this report as establishing that there is a core constituency for religious programming, but that such programming has little appeal beyond the core constituency. As with other reports and surveys presented over the years to the Tribunal, it in no way by itself provides support for any particular level of award to the devotional claimants.

We have also considered the Cable Television Viewer Survey (Devotional Claimants Exhibit 2) which indicates that obtaining access to devotional programming is a factor in the determination of some people to subscribe to cable television.

The Settling Parties have sought to rebut the Devotional Claimants case by presenting the A. C. Nielsen Company's Report on Syndicated Programs (ROSP)

[2] 47 FR 9896–97.

[3] The Christian Broadcasting Network, Inc. v The Copyright Royalty Tribunal, 720 F. 2d 1295–1309 (1983).

[4] 47 FR 9879–9900 and 48 Fr 9552–9570.

[5] Setting Parties' Reply Findings of Fact and Conclusions of Law p. 13.

[6] 45 FR 63035–37

[7] See also 49 FR 20049, in which we stated with regard to our 1979 determination that it was reasonable to alter awards "given a greater refinement in our ability to assess a claimant's overall case and weight even unchanged evidence more accurately."

[8] Settling Parties Proposed Findings of Fact and Conclusions of Law, pp 20–21.

data on local market viewing of selected Devotional Claimants' programming, which shows low ratings for this programming and the 1982 Special Nielsen Study which relates to the time and viewing of programs as distant signals in cable households. But, again, we must balance these data with our conclusions in earlier proceedings, as to the measure of value to cable operators of viewing figures.

Other Distribution Criteria

We again found in this proceeding that the "harm" test is of limited utility in allocating royalty fees among categories of claimants.[9]

We affirm our previous conclusions that the total number of hours of categories of programming on distant signals provides limited guidance to a reasonable allocation of cable royalties.

The "new" 1982 evidence did not require analysis under the quality criterion.

Public Broadcasting Factor

The Public Broadcasting Service and Devotional Claimants in their proposed findings have discussed a number of issues relating to the status and relationship of these two categories of claimants. Our determination in this proceeding has not required us to make findings on all the issues presented. We adhere to our view that the situation of the public broadcasting claimants, and the devotional claimants is not similar, and that these differences support a substantially larger award to the public broadcasting claimants. When a cable operator determines to import a distant public broadcasting signal all the programs on that signal are public television programs. We find in these programs a diversity of content, and appeal to a broad range of the public, that we have not been able to discover on the basis of the evidence before us in the programs of the devotional claimants. We continue to believe that public television programs occupy a unique position in the cable television marketplace by presenting diverse programming that is not available on commercial signals.

Phase I Allocations

On the basis of the above, and the entire incorporated record, we make an award of 1% to the Devotional Claimants. Subject to the disposition of the Devotional Claimants, all other Phase I parties have resolved by voluntary agreements that the Phase I awards to claimants shall be in the percentages determined by the Tribunal in the 1979 and 1980 cable royalty proceedings. It was also provided that any award by the Tribunal to the Devotional Claimants in this proceeding should be accomplished by a pro rata reduction of the shares of other parties. The Settling Parties further agreed that the share of National Public Radio should not be reduced below 0.25 percent of the total funds. The Tribunal finds that the exclusion of National Public Radio from the pro rata reduction is reasonable.

It is therefore ordered the Devotional Claimants be awarded 1%, and that, other than for the National Public Radio, the 1979 and 1980 awards to other phase I parties be reduced on a pro rata basis to provide for the award to the Devotional Claimants. It is further ordered that in accordance with the voluntary agreement of the Settling Parties a single aggregate award be made to them to be divided among them "in the proportions determined by their individual Phase I awards in the 1979 and 1980 distribution proceedings." It is further ordered that the 1982 cable royalties be distributed in accordance with the above.

Phase II

The only claimant categories requiring Phase II proceedings are Program Syndicators, and Sports.

Program Syndicators—Multimedia Claim

The only Program Syndicator evidentiary hearing resulted from the failure to reach a voluntary agreement as to the claim of Multimedia Entertainment, Inc. (Multimedia).

Our review of the record as it relates to 1982 permits only one conclusion—a significant reduction is required from the level of our previous awards to Multimedia. We address first the argument of Multimedia that because of the Tribunal's disposition of the Multimedia claim in some previous proceedings, the Tribunal should refrain from making the downward adjustment which to us is otherwise compelled by the 1982 record. The record establishes that the Tribunal was divided on whether an upward adjustment was required in the 1980 proceeding by the addition of Show Biz programs to the Multimedia claim and the significant growth in the carriage of WGN–TV, particularly in relation to the award standard applied by the Tribunal to the record evidence of parties in that proceeding. Whatever validity there may have been to Multimedia's arguments to the Tribunal, if Multimedia was aggrieved by the Tribunal's determination, the Copyright Act provides a remedy for such grievances. We reject any contention that we should refrain from a downward adjustment of the 1982 Multimedia award because of our prior determinations.

We find that the removal of the "Donahue" program from WGN significantly reduces the value of the Multimedia claim, and that this loss is not offset by the evidence as to other 1982 programs in the Multimedia claim.

According to MPAA Exhibit 3, "Donahue" achieved only 4.3 million household viewing hours in 1982 versus 10.6 million in 1981. The substantially reduced availability decreases its marketplace value and benefit to cable operators. Our conclusion is fortified by reviewing earlier proceedings in which Multimedia stressed the distant carriage of the live Donahue show in WGN, and the particular value and appeal of the live show.

At best, we find that shifts in other programs in the Multimedia claim does not offset the "loss" to the claim resulting from the change in the "Donahue" carriage. Country music specials have increased in numbers, but such specials had reduced ratings in 1982 compared to 1981. Fewer programs were syndicated in 1982 and several programs, such as "Tony Brown's Journal, were dropped from syndication. The amount of programming fell by 10%.

We reaffirm our earlier findings as to the special appeal and marketplace value of programs in the Multimedia claim. This evidence continues to support an award in accordance with our distribution criteria.

Challenge to MPAA Claim

Multimedia has conducted a reviw of the copyright status of certain older movies broadcast in 1982 over WTBS. It is stated that "Copyright Office research determined that several of the movies shown on WTBS do not have valid copyright registrations." [10] Multimedia further argues that "no royalties should be awarded MPAA for any program whose copyright authenticity is not firmly established. It is argued that because of the importance of WTBS signal carriage, it cannot be argued that the impact is de minimus. We do not agree. The Tribunal will consider and reflect in our awards significant copyright matters. But we do not intend

[9] See 47 FR 9892.

[10] Multimedia on September 7, 1984 filed a motion to Strike certain data in the Program Suppliers' Reply Findings, namely a letter of December 27, 1983 from Turner Broadcasting Inc., and certain viewing data respecting public domain movies. It is argued that these matters are "evidence outside the record." Program Suppliers on September 14, 1984 filed an Opposition to Motion to Strike. The motion is granted.

to burden claimants with a totally unnecessary exercise in paper collection because there may be some public domain films included in the Nielsen Study. We find the Multimedia argument utterly lacking in merit.

Multimedia also argues that MPAA has failed to provide a list of the programs accounting for one-third of the viewing hours in the Nielsen Study, and therefore "one-third of MPAA's share must be withheld." No serious argument has been made as to why this information is essential to our determination in this proceeding. We find no merit in this argument.

MPAA Case

The primary basis for the MPAA and Associated Program Suppliers Phase II claim was the 1982 Neilsen Study. As in past Phase II proceedings, the Tribunal has accorded substantial weight to these viewing data, but has not utilized the study as the sole basis for our allocations.

Syndicator Award

On the basis of the above, 1% of the Program Syndicators share is awarded to Multimedia. In accordance with voluntary agreements, 0.8 is awarded to the National Association of Broadcasters, and 0.7 is awarded to the Spanish International Network. 97.5 of the Program Syndicators share is awarded to the MPAA and Associated Program Syndicators.

Sports—Spanish International Network (SIN) Claim

This case marks the first Phase II proceeding in the Sports category. SIN is seeking a portion of the sports award based on its distribution of the 1982 World Cup—an international competition among professional soccer teams that occurs once every four years.

Jurisdictional Questions

1. The Joint Sport Claimants (JSC) argue that SIN must be denied a share of the sports royalties "because SIN did not assert a Phase II claim for royalties and the JSC Phase I award is only for their own programming." In an order of July 23, 1984 the Tribunal denied the JSC motion to dismiss SIN's sports claim.

The SIN claim for 1982 cable royalties, in responding to the Tribunal's requirement that claimants identify the nature of the works for which compensation is requested, stated: "Television programs in the Spanish language which it licenses for transmission on television stations in the U.S."

We are unable to accept the argument that a Tribunal Phase I award for sports covers only the programs of the JSC. This view is not in accordance with the Tribunal's treatment of Phase I categories as applying to generic categories of programs. The Tribunal in certain prior proceedings has given considerable attention to the competing claims of two categories of claimants to sports royalties. Nothing in our previous pronouncements on the allocation of sports royalties provides support for the arguments now advanced by JSC.

2. We also are unable to accept any argument that the voluntary Phase II agreement reached between SIN and other claimants to the royalties awarded under the Program Syndicator category bars SIN's claim to a share of the sports royalties, or provides compensation under the statutory compulsory licensing scheme for their sports programming in the 1982 proceeding. We again decline to intrude into any aspect of voluntary agreements.

3. SIN has argued that the JSC claimants have overstated the amount of their compensable programming by over 40 percent because they have "improperly" included in their claim Atlanta Braves baseball games broadcast by WTBS. On the basis of a decision by the United States District Court for the Southern District of New York in *ABC Sports, Inc. et al.* v. *Atlanta National League Baseball Club* SIN argues that the WTBS signal is not an over-the-air broadcast signal under Section 111 of the Copyright Act, that the Copyright Act did not intend for the compulsory license scheme to compensate copyright owners who had authorized distant signal carriage, that distant signal carriage of the Braves' games would not be an infringement of either the Braves or WTBS's copyright, and that the WTBS signal is not a distant signal subject to compulsory license.[11]

We need not in this proceeding address any of these issues presented by SIN. It is sufficient to state that, even under the flexible procedures of the Tribunal, it is not appropriate to litigate such matters before the Tribunal at the time chosen by SIN, particularly when the record is bare of any testimony that would illuminate the issues.

Evidentiary Record

We have had the opportunity in previous proceedings to consider the benefit of SIN's programming in general to cable operators. In our 1979 determination we concluded that "SIN's Spanish language programming is of particular marketplace value and benefit to cable operators in attracting Spanish-speaking subscribers."[12] But the only issue in this proceeding is the distant signal value and benefit of the World Cup.

From the record of this proceeding we are satisfied that the 1982 World Cup was an important event in sports, that it was popular with a limited audience and that the distant signal carriage of that event had some marketplace value. However, SIN acknowledged that only a relatively small incremental percentage of the Hispanic population would be reached by distant signal carriage.[13] Furthermore, as a distant signal the World Cup telecasts reached less than 4 percent of the cable industry.[14]

In our Phase I allocations we have attached particular importance to the benefit to cable operators of distant signal sporting events. But we are unable in this record to conclude that SIN's World Cup telecasts conferred any meaningful benefit on cable systems. Although SIN made the telecasts available free of charge only 12 cable systems not otherwise carrying the programming accepted SIN's offer.

Joint Sports Claimants sought to rebut evidence introduced by SIN that carriage of the World Cup benefited cable operators with a survey of cable operators who carried the telecasts. We agree with SIN that the methodology of the survey was flawed, by failing to compare the value of distant signal carriage of World Cup as compared to the value of distant signal carriage of the events of Joint Sports. But, other evidence in the total record establishes the benefit of JSC programming.

SIN sought in several ways to establish the marketplace value of the World Cup. It compared what SIN paid for rights to the World Cup with the price paid for the rights to broadcast Major League Baseball events. We agree with JSC that this analysis, even if factually accurate, is largely irrelevant as it does not relate to the value of the telecasts on a distant signal basis.

SIN has also proposed as a measure of the relative marketplace value of the World Cup a formula comparing the total number of subscriber events attributable to World Cup to the total number of subscriber events attributable to Joint Sports. Subscriber events are defined as the number of cable subscribers on distant signal cable systems times the number of relevant sports events carried by those systems.

[11] SIN Proposed Findings of Fact and Conclusions of Law, pp 37–49.

[12] 47 FR 9896 and 48 FR 9569.

[13] Tr. 421.

[14] Joint Sports Claimants Exhibit 5A; Tr. 1184–87.

It will come as no surprise to diligent readers of our opinions that the Tribunal has not found SIN's subscriber events formula to be a useful tool in the allocation of cable royalties. In addition to our often stated reservations about the utility of formulas, we are unable to see any relationship between the formula proposed and our distribution criteria, and past determinations.

Both SIN and JSC correctly note that the Tribunal has used viewing data as a "starting point" from which the distribution criteria are applied. By any measure, SIN's World Cup telecasts generated, on a distant signal basis, only an infinitesimal share of viewing.[15] We find in this record no basis for any significant adjustment from the viewing figure base.

We have already stated that we have not found the harm test to be of much utility in the division of cable royalties. Our record concerning SIN's business judgment to offer the World Cup as a "present" to the cable industry further dilutes the value of the harm criteria, and provides no support for an allocation of royalties to SIN.

On the basis of the above, we award 0.02 of the Sports share to SIN, and the balance of Sports share to JSC. This award as it relates to viewing is consistent with the viewing/award ratio reflected in our previous awards to SIN, and in the 1982 Phase II program syndicator voluntary agreement.[16]

Commissioner Hall did not participate in this determination.

Thomas C. Brennan,

Chairman.

September 20, 1984.

[FR Doc. 84-23907 Filed 9-24-84; 8:45 am]

BILLING CODE 1410-11-M

COUNCIL ON ENVIRONMENTAL QUALITY

Presidential Parkway, Atlanta, Georgia

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Information only, findings of the Council on Environmental Quality regarding national importance of proposed Presidential Parkway, Atlanta, Georgia.

SUMMARY: The Council on Environmental Quality's (CEQ) regulations for the implementation of the National Environmental Policy Act (NEPA) includes procedures for referring to CEQ federal interagency disagreements concerning proposed major federal actions that might cause unsatisfactory environmental effects. (40 CFR Part 1504). In determining what environmental objections to the matter are appropriate to refer to CEQ, an agency is instructed to consider possible violation of national environmental standards or policies, severity, geographical scope, duration, importance as precedents, and availability of environmentally preferable alternatives. (40 CFR 1504.2).

On June 25, 1984, CEQ received a referral from the Advisory Council on Historic Preservation (ACHP) regarding the proposed Presidential Parkway, Atlanta, Georgia. The Federal Highway Administration (FHWA), U.S. Department of Transportation, is the lead federal agency for the project. The FHWA has the role of approving or disapproving the State of Georgia's application for federal aid under the Federal-aid urban system (Title 23, U.S.C.). The FHWA responded to the referral on July 18, 1984.

One of the options under the CEQ referral regulations is for CEQ to "determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process." (40 CFR 1504.3(f)(4)). At a public meeting held on July 17, 1984, the CEQ decided to address the issue of national importance in relation to this referral. In a **Federal Register** notice published July 24, 1984, CEQ asked for written comments from the public on this issue. (49 FR 29812). The comment period closed on August 24, 1984. The CEQ further determined that it would be appropriate for any interested parties in either the private or public sector to meet individually with CEQ Council Members to discuss the proposed project, and that CEQ Council Members would make independent visits to the site of the proposed Presidential Parkway.

By unanimous vote, CEQ has determined that the issue is not one of national importance. Thus, CEQ's involvement in the referral process is concluded, and the Advisory Council on Historic Preservation and the Federal Highway Administration are requested to resume their normal decision process.

DATE: September 20, 1984.

SUPPLEMENTARY INFORMATION: There follows the written statements of the Chairman and Members of the Council upon their determinations regarding this issue. Note that Chairman A. Alan Hill and Member William Mills have issued a combined statement; Member Jacqueline Schafer has issued an individual statement.

A. Alan Hill,

Chairman.

Chairman A. Alan Hill and Dr. Willam Mills

Our determination that the Presidential Parkway referral does not raise an issue of national importance is based upon our visits to the site of the proposed project and the surrounding area, the written comments received regarding national importance, and our meetings and conversations with members of the public and private sector on this point.

We are mindful of the high degree of controversy which the proposed project has engendered and the desires of many individuals to see CEQ complete the referral process in this instance. Nevertheless, we have reached our determination based upon our understanding of the purpose of the national importance criteria and its application to this case. The purpose of the national importance provision in the NEPA regulations reflects CEQ's concern, that, ". . . The referral process be limited to truly important matters—matters of national importance—that might properly engage the attention of the President's Executive Office or even the President. We did not believe that the fact that an environmental impact statement had been prepared made a project or policy one of national importance. Nor would the fact of an interagency controversy, standing alone, make something of national importance. Our goal was to focus attention on a very small but very important subset of controversial federal proposals. We were trying to ensure that the process would not be open to all controversial proposals for which environmental impact statements had been prepared, because we did not want to burden ourselves, our colleagues in the EOP, or the President with proposals that were not of national importance." [1] The CEQ was also concerned about keeping the number of referrals at a manageable size, in light of its small staff.

We recognize that the referral raises concerns which are cognizable under NEPA, notably, the preservation of historic resources. However, we do not believe that the context and intensity of

[15] Joint Sports Proposed Findings of Fact and Conclusions of Law, pp 17 and 18.

[16] JSC Reply Findings, p 17, footnote 15.

[1] Letter from Gus Speth, former Council Member and former Chairman of CEQ to the Honorable A. Alan Hill, August 17, 1984. Mr. Speth also stated that he was *not* addressing the issue of national importance in regard to the Presidential Parkway as he did not know enough about the details of the issues raised by the ACHP to assess them adequately.

these issues rise to the level of "national importance." We do not believe that the referral raises new, precedent-making issues which are reasonably likely to affect national policies in the environmental arena. Nor do we find the level and intensity of controversy attendant to this proposed project to be so unique in the realm of public works projects that it warrants our review under the national importance provision.

We acknowledge the presence of historic sites in the area surrounding the route of the proposed Presidential Parkway, particularly the Olmsted parks. We regret the slight taking of the parkland which would occur should the Parkway be constructed, but we do not feel that this loss is one which is of national importance. Further, we do not perceive any nationally important adverse environmental impacts which would be likely to occur as a result of the Presidential Parkway's construction.

In arriving at these conclusions, we wish to strongly emphasize that our judgment is based solely upon the proposal as presented to us by the Georgia Department of Transportation and the Federal Highway Administration in regard to the proposed route of the Parkway. We realize that many people in Atlanta and surrounding communities feel strongly that the proposed 2.4 mile Presidential parkway is merely a "first step" to the completion of a road along the route of the proposed Stone Mountain Tollway, which was the subject of much controversy at an earlier time. We understand the deep and sincere fears regarding this prospect, and we wish to make it clear that we strongly maintain CEQ's position against the segmentation of highway proposals for the purpose of avoiding full compliance with NEPA. Our decision regarding national importance rests, in part, upon the proponents' representations that such segmentation will not occur. While we view the current impact on the Olmsted Parks as minor, we believe that any further Parkway development would have a serious impact and should be opposed.

A. Alan Hill.

William L. Mills.

Additional Views of Jacqueline E. Schafer, Member, CEQ

I have voted to determine that the issue of the impact of the Presidential Parkway in Atlanta is not one of national importance.

The referral from the Advisory Council on Historic Preservation places before us the opportunity to assess the merits of a project that has been thoroughly reviewed by other responsible and competent agencies at the local, state and federal level. The opportunity arises as a result of an interagency disagreement at the federal level concerning the acceptability of the anticipated environmental impacts of the instant project. We have been presented with a serious case that demands a serious approach to its consideration. CEQ's approach to this referral relies on an informed determination as to the "national importance" of the proposed "major federal action", the funding of a 2.4 mile arterial parkway on the Federal-aid Urban System. With so few precedents under the referral regulations of the National Environmental Policy Act to guide us, the Council elected to take comment on the question of "national importance". In the course of receiving these comments and of inspecting the site we were presented with considerable factual information concerning the merits and impacts of the project itself.

Clearly the Presidential Parkway poses an issue of enormous local importance: the appropriate use of undeveloped urban land will determine the character of the community. The project will have significant and complex impacts, both beneficial and adverse, on the affected neighborhoods. That the community is divided on this issue is most recently illustrated by the 7–7 vote taken on September 17 by the Atlanta City Council.

While this division may invite or tempt us to "weigh in" on one side or the other of a whole host of issues, the Council should confine its review to the national importance of the impact of the Presidential Parkway on the historic properties that lies at the heart of the referral from the Advisory Council on Historic Preservation. That a historic district is included in the National Register of Historic Places does not necessarily elevate *any* impact on such district to the status of national importance under the NEPA referral process. In my view, a design can be altered in its details, including changes in its use, yet retain fundamental integrity. Information presented to the Council persuades me that the design and operational aspects of the Presidential Parkway represent a significant attempt to preserve the integrity of the original design while adapting it to later needs. Its execution cannot be construed as the "loss of this national resource" that would constitute an impact of national importance. I cannot determine that *any* alteration of the original landscapes must necessarily be of national importance, nor can I determine that the preservation of the Olmsted legacy requires that no changes in the design or use may be tolerated. The legislative history of a bill to "identify, commemorate and preserve the legacy of historic landscapes of Frederick Law Olmsted" acknowledges the possibility and legitimacy of changing uses:

> It is my understanding that this legislation would not establish a priority for rigid adherence to original designs which would fail to take into account valid and important changing uses in the uses of the landscapes. (Congressional Record—House, August 6, 1984, page H 8456).

Jacqueline Schafer.

[FR Doc. 84-25490 Filed 9-24-84; 8:45 am]
BILLING CODE 3125-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Data Network; Meeting

September 20, 1984.

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on the Defense Data Network will meet in closed session on October 12, 1984 in the Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review progress in implementing the Defense Data Network Program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: October 12, 1984.

Patricia H. Means,

OSD Federal Register Liaison, Office of Department of Defense.

[FR Doc. 84-25390 Filed 9-24-84; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP84-128-000]

Alabama-Tennessee Natural Gas Co.; Compliance Filing

September 20, 1984.

Take notice that on September 13, 1984, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing Forty-Fifth Revised Sheet No. 3-A to its FPC Gas Tariff, Third Revised Volume No. 1. Alabama-Tennessee's filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111. Section 154.111 (a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers.

Alabama-Tennessee requests an effective date of September 14, 1984.

Alabama-Tennessee states that it have mailed copies of its filing to the persons named on the service list.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 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 September 26, 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. 84-25391 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-658-000]

Arizona Public Service Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984, Arizona Public Service Company (APS) tendered for filing five Notices of Cancellation for its Rate Schedule Nos. 10, 19, 24, 71, 72, between APS and the Colorado River Indian Irrigation Project (CRIIP), Rate Schedule No. 10; the Arizona Power Authority (APA), Rate Schedule No. 19; the Western Area Power Administration (WAPA), Rate Schedule No. 24; and the Salt River Project Agricultural Improvement and Power District (SRP), Rate Schedule Nos. 71 and 72.

APS is cancelling Rate Schedule Nos. 10 and 24 pursuant to stipulated termination dates.

APS is cancelling Rate Schedule No. 19, pursuant to its terms under Article.1, which stipulated a termination date simultaneous with Rate Schedule No. 18, which has already been cancelled.

Rate Schedule Nos. 71 and 72 are terminated simultaneously pursuant to terms under Rate Schedule No. 72, which stipulated a termination date on the in-use date of the Coronado-Silver King 500 kV line which was July 1, 1979.

APS further informs FERC that its Rate Schedule No. 95, Certificate of Concurrence to the "Inland Power Pool Agreement" filed by Public Service Company of Colorado (PSCC) has been superseded by Rate Schedule No. 104, Certificate of Concurrence to the "Revised Inland Power Pool Agreement", also filed by PSCC.

Copies of this filing were served upon the APA, CRIIP, SRP, WAPA, and the Arizona Corporation Commission.

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, N.E., 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 July 6, 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. 84-25392 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP84-227-001]

Columbia Gas Transmission Corp.; Amendment To Request Under Blanket Authorization

September 21, 1984.

Take notice that on September 10, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP84-227-001 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Virginia Linen Services, Inc. (Virginia Linen), under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposed to continue transporting for Virginia Linen up to 140 MMBtu equivalent of natural gas for use in Virginia Linen's Petersburg, Virginia, plant through June 30, 1985, instead of the November 29, 1984, termination date authorized in Docket No. CP84-227-000 under the prior notice procedure by notice issued February 10, 1984. It is stated that in all other respects the transportation would remain the same as authorized in Docket No. CP84-227-000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intevene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest in filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-25393 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-127-000]

Commercial Pipeline Co., Inc.; Filing

September 20, 1984.

Take notice that on September 13, 1984, Commercial Pipeline Co., Inc. ("Commercial") tendered its 45th Revised Sheet No. 3A, superseding 44th Revised Sheet No. 3A. This filing is made in compliance with Order No. 380, issued in Docket No. RM83-71-000 on May 25, 1984, and 18 CFR 154.111(a)(3), which require that revised pipeline rate schedules and tariffs be filed to separately state purchased gas costs. An

effective date of August 15, 1984, for Commercial's filing is provided.

Copies of the filings were served on Commercial's FERC jurisdictional customers, the Kansas Corporation Commission and the Missouri Public Service Commission.

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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rule of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 26, 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. 84-25394 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-135-000]

Consolidated Gas Transmission Corp., Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on September 14, 1984, filed Substitute Original Sheet No. 31 and First Revised sheet No. 31 to its FERC Gas Tariff, Original Volume No. 1. The revised tariff sheets are for effectiveness on June 25, 1984, and September 1, 1984, respectively. Both tariff sheets simply renumber tariff sheets previously filed by Consolidated under the tariff designations of its Corporate predecessor in interest, Consolidated Gas Supply Corporation.[1]

The First Revised Sheet is filed in compliance with Ordering Paragraph (F) of the Commission's August 31, 1984, suspension order in Docket Nos. TA84-2-22-002 and TA84-2-22-003. It replaces Forty-First Revised Sheet No. 16 to the Third Revised Volume No. 1 of Consolidated Gas Supply Corporation's tariff which was filed August 1, 1984, for effectiveness on September 1, 1984 as Consolidated's semi-annual PGA. Additionally, the First Revised Sheet, in compliance with the minimum bill rule in Docket No. RM83-71, separates gas and non-gas costs in the commodity components of Consolidated's rates.

The Substitute Original Sheet simply redesignates and is identical to Fortieth Revised Sheet No. 16 of Third Revised Volume No. 1 of Consolidated Gas Supply Corporation's tariff which was accepted for filing by letter order dated June 29, 1984 in Docket No. TA84-2-22-001 (PGA84-4). Consolidated asks that this Substitute Original sheet be made effective as of June 25, 1984, the same date that the entire Original Volume No. 1 was accepted for filing by letter order dated July 27, 1984, in Docket No. CP80-346-003.

Consolidated requests a waiver of any of the Commission's Rules and Regulations as are necessary to permit the revised tariff sheets to become effective as proposed.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All petitions or protests should be filed on or before September 26, 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. 84-25395 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-469-000]

Conway Oil Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 21, 1984.

On August 28, 1984, Conway Oil Company, 6226 Dominion Road, Santa Maria, California, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Santa Maria, California. The facility will use a reciprocating natural gas burning engine to generate 125 kW of electricity. Heat from the jacket water and the exhaust will be recovered in a closed loop water circulation system to heat oil from 100 degrees to 180 degrees prior to its shipment. Currently the natural gas intended for use as fuel for the proposed cogeneration facility is being burned in a conventional heater to heat the water circulation loop to provide the heat load.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 84-25396 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-134-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on September 14, 1984, tendered for filing Fourteenth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective July 31, 1984.

Fourteenth Revised Sheet No. 4 is filed in compliance with Commission's Order No. 380, issued on May 25, 1984, requiring natural gas pipelines to identify separately gas purchased costs included in their commodity rates.

Great Lakes states it is making this filing under protest due to the reasons stated by Great Lakes in its previous submissions made in Docket No. RM83-71, *et al*, as well as in its Petition for Review filed with the U.S. Court of

[1] The corporate reorganization of Consolidated Gas Supply Corporation was approved by the Commission in December of 1983 at 25 FERC Paragraph 61,397 (1983). Consolidated thereafter adopted the tariff of its corporate predecessor until a replacement tariff was prepared and filed on June 25, 1984. The replacement tariff was accepted for filing effective June 25, 1984 by letter order issued July 27, 1984, in Docket No. CP80-346-003.

Appeals for the District of Columbia (No. 84–1360).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before September 26, 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 to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–25397 Filed 9–24–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–482–000]

Ice Haus I; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 20, 1984.

On September 4, 1984, Ice Haus I (Applicant), a California general partnership, Box 474, Newport Beach, California 93662, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be using natural gas as its primary energy source. Exhaust heat from a combustion turbine-generator unit will supply a waste heat boiler. The generated steam will supply an extraction turbine-generator unit. The electric power production capacity will be 27,704 kilowatts. The extracted steam will be used by an industrial process in absorption refrigeration equipment providing refrigeration at the host ice manufacturing plant. The facility will be located at 17011 S. Central Avenue, Carson, California 90746, and is expected to begin operation the summer of 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 84–25398 Filed 9–24–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–125–000]

Inter-City Minnesota Pipelines Ltd., Inc.; Compliance Filing

September 20, 1984.

Taken notice that on September 11, 1984, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City Minnesota) tendered for filing Third Substitute Twentieth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1. Inter-City Minnesota states that this filing is made in compliance with Order No. 380, issued in Docket No. RM83–71–000 on May 25, 1984, and 18 CFR 154.111. Section 154.111(a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers.

Inter-City Minnesota states that the filing shows that it is already in conformity with § 154.111.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with 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 September 26, 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. 84–25399 Filed 9–24–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–133–000]

Louisiana-Nevada Transit Co.; Compliance Filing

September 20, 1984.

Take notice that on September 14, 1984, Louisiana-Nevada Transit Company (Louisiana-Nevada) tendered for filing Fifth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1. Louisiana-Nevada's filing is made in compliance with Order No. 380, issued in Docket No. RM83–71–000 on May 25, 1984, and 18 CFR 154.111. Section 154.111(a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers. Louisiana-Nevada states that its Rate Schedules G–1 and X–2 have been revised accordingly.

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 petitions or protests should be filed on or before September 26, 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. 84–25400 Filed 9–24–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP84–131–000]

MIGC, Inc.; Compliance Filing

September 20, 1984.

Take notice that on September 13, 1984, MIGC, Inc. (MIGC) tendered for filing Thirtieth Revised Sheet No. 32 to its FERC Gas Tariff, Original Volume No. 1. MIGC states that this filing is made in compliance with Order No. 380, issued in Docket No. RM83–71–000 on May 25, 1984, and 18 CFR 154.111. Section 154.111(a)(3) requires interstate pipelines to modify their existing tariff schedules to state "purchased gas costs" separately from other charges paid by the pipeline's customers.

MIGC requests an effective date of September 14, 1984.

MIGC asserts that this tariff filing should not be construed as indicating that MIGC has waived any rights to pursue its opposition to Section 154.111 at the Commission and in the Courts.

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 petitions or protests should be filed on or before September 26, 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. 84-25401 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-657-000]

PacifiCorp, Doing Business As Pacific Power & Light Co.; Filing

September 20, 1984.

The filing Company submits the following:

Take notice that on September 4, 1984 PacifiCorp doing business as Pacific Power & Light Company (Pacific) tendered for filing an Agreement in accordance with FERC Electric Tariff, Original Volume No. 3.

Pacific states that the Agreement provides for the sale of nonfirm power and energy in accordance with Service Schedule PPL-3 of the Tariff.

Pacific requests an effective date of August 1, 1984, and therefore requests waiver of the Commission's notice requirements.

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 petitions or protests should be filed on or before October 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 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. 84-25402 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL84-43-000]

Public Service Company of New Mexico; Petition for a Declaratory Order Disclaiming Jurisdiction or, in the Alternative, Request for Authorization Under Section 203 of the Federal Power Act

September 20, 1984.

Take notice that on August 31, 1984, Public Service Company of New Mexico ("PNM"), filed an application seeking an order determining that no approval is necessary and dismissing for lack of jurisdiction under section 203 of the Federal Power Act, or, in the alternative, for approval pursuant to that section authorizing PNM's acquisition of certain of the interstate natural gas pipeline and related facilities of Western Gas Interstate Company ("WGI") located in New Mexico.

PNM requests a declaratory order that its acquisition of certain interstate natural gas pipeline facilities currently owned by WGI which are subject to the Commission's jurisdiction does not require section 203 approval. The proposed acquisition of facilities and operations arises out of settlement of a pending protracted antitrust proceeding. Under the terms of the settlement, the parties agreed that Southern Union Company ("Southern Union") shall sell to PNM certain of its properties and assets relating to the distribution, gathering, transmission and storage of natural gas in New Mexico. This includes tangible properties, plant and equipment of WGI, a wholly-owned subsidiary of Southern Union.

PNM proposes to acquire certain of WGI's natural gas transmission facilities located in New Mexico and to perform the identical transmission and sales services performed by WGI through such facilities. The acquired facilities consist of WGI's Antelope Ridge facilities which were authorized by the Commission to be constructed and operated pursuant to a certificate, as amended, issued on November 3, 1978, and December 10, 1979. WGI now provides interstate transmission and sales service through the Antelope Ridge facilities for Gas Company of New Mexico under its Rate Schedule GR to its FERC Gas Tariff. The facilities will be operated in the same manner as set forth in the original certificates and will perform the identical transportation and sales services perform by WGI by means of such facilities.

Upon the consummation of the antitrust settlement agreement, WGI's Antelope Ridge facilities shall be acquired and operated by a wholly-owned subsidiary of Sunbelt Mining Company, Inc. Sunbelt Mining Company, Inc. is a wholly-owned subsidiary of PNM. As an alternative to its petition for a declaratory order disclaiming jurisdiction, PNM seeks approval for the acquisition pursuant to section 203 of the Federal Power Act and the regulations thereunder.

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 §§ 385.211 and 385.214 of 18 CFR. All such petitions or protests should be filed on or before October 11, 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. 84-25403 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF84-479-000]

SAI Geothermal, Inc.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 20, 1984.

On August 31, 1984, SAI Geothermal, Inc. (Applicant) of 3030 Patrick Henry Drive, Santa Clara, California 95054-1814, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The primary energy source for the facility will be geothermal steam with a power production capacity of 12,500 kilowatts. The facility will be located in Sonoma County, California, and wholly owned by the Applicant.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy

Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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. 84-25404 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-129-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on September 13, 1984 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheet:

Revised Substitute Seventieth Revised Sheet No. 14

This tariff sheet is being filed pursuant to Commission Order No. 380 issued May 25, 1984 which added Section 154.111 to the Commission's Rules and Regulations requiring that existing tariff sheets state purchased gas costs in the commodity rate separately from other charges. The attached tariff sheets so reflects the purchased gas cost rate separately for those rate schedules containing commodity minimum bill provisions.

The proposed effective date of the above tariff sheet in September 13, 1984.

In This connection, Texas Eastern has petitioned the United States Court of Appeals for the District of Columbia Circuit for review of Order Nos. 380 and 380-A. This filing is without prejudice to Texas Eastern's position on appeal and rights to further appeal and without prejudice to its rights in the event the court grants a stay.

In its Order No. 380 issued May 25, 1984, the Commission waived the Part 381 filing fees for tariff filings made by pipeline companies under Section 154.111 of its Regulations. Accordingly, Texas Eastern is not transmitting a filing fee herewith.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Texas Eastern respectfully requests that the Commission grant a waiver of the notice requirements as provided in Section 154.51 of the Regulations in order that the enclosed tariff sheets be made effective as proposed.

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, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed be filed on or before September 26, 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. 84-25405 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-130-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 20, 1984.

Take notice that Transwestern Pipeline Company (Transwestern) on September 13, 1984 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

Revised Substitute Twenty-fifth Revised Sheet No. 5

Revised Substitute Twenty-fourth Revised Sheet No. 6.

These tariff sheets are being filed pursuant to Commission Order No. 380 issued May 25, 1984 which added Section 154.111 to the Commission's Rules and Regulations requiring that existing tariff sheets state purchased gas costs in the commodity rate separately from other charges. The attached tariff sheets so reflect the purchased gas cost rate separately for those rate schedules containing commodity minimum bill provisions.

The proposed effective date of the above tariff sheets in September 13, 1984.

In this connection, Transwestern has petitioned the United States Court of Appeals for the District of Columbia Circuit for review of Order Nos. 380 and 380-A. This filing is without prejudice to Transwestern's position on appeal and rights to further appeal and without prejudice to its rights in the event the court grants a stay.

In its Order No. 380 issued May 25, 1984, the Commission waived the Part 381 filing fees for tariff filings made by pipeline companies under Section 154.111 of its Regulations. Accordingly, Transwestern is not transmitting a filing fee herewith.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state Commissions.

Transwestern respectfully requests that the Commission grant a waiver of the notice requirements as provided in Section 154.51 of the Regulations in order that the enclosed tariff sheets be made effective as proposed.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed be filed on or before September 26, 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. 84-25407 Filed 9-24-84; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

Correction

In FR Doc. 84-24698 appearing on page 36567 in the issue of Tuesday, September 18, 1984, make the following correction in the last column: The "Agreement No." in the tenth line should be corrected to read "224-010642."

40BILLING CODE 1505-01-M

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the

Shipping Act, 1916 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Jong Pyo Kim dba Sam Young Express Co., 13017 Artesia Blvd., Suite No. 104, Cerritos, CA 90701

Yowell Transportation Services, Inc., 7805 Ellis Road, Melbourne, FL 32901; Officers: Neil T. Yowell, Jr., Chairman, Carol Yowell, Secretary/Treasurer, Neil T. Yowell, III, President, Victor L. Yowell

Bernard J. McHale dba Bernard J. McHale Company, 2401 Lourance Blvd., Greensboro, NC 27407

By the Federal Maritime Commission.

Dated: September 20, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25337 Filed 9-24-84; 8:45 am]

BILLING CODE 6730-01-M

Pacific Westbound Conference et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000057-138.

Title: Pacific Westbound Conference (PWC).

Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line
Japan Line, Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Sea-Land Service, Inc.
United States Lines, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The parties having notified the Commission of their determination to dissolve the PWC effective October 31, 1984, the Commission hereby gives notice of its intent to terminate its prior approval of Agreement No. 202-000057, such termination to be effective October 31, 1984. The parties have requested a shortened review period.

Agreement No.: 202-008493-013.

Title: Trans-Pacific American Flag Berth Operators.

Parties:

American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would expand the geographic scope of the agreement to include all U.S. Coasts, Hawaii and Alaska and intermodal transportation in the United States and the Far East. It would also establish procedures with respect to independent action, neutral body self-policing, consultation and shipper's requests and complaints. Additionally, it would eliminate current transshipment provisions, make various non-substantive changes to reflect provisions of the Shipping Act of 1984 and would restate the agreement.

Agreement No.: 224-010607-001.

Title: Anacortes Terminal Agreement.

Parties:

Port of Anacortes
Bellingham Stevedoring Company

Synopsis: The amendment conforms the basic agreement with the Shipping Act of 1984 by removing the word "approval" from paragraph 3, titled "Term", and substituting therefor the word "review".

Agreement No.: 217-010643.

Title: Farrell Lines—SITRAM Space Charter Agreement.

Parties:

Farrell Lines Incorporated (Farrell)
Societe Invoirienne de Transport Maritime (SITRAM)

Synopsis: Establishes a space charter agreement in the trade between the Ivory Coast and North America whereby Farrell agrees to provide space aboard its vessels to SITRAM on a space available basis. The agreement succeeds Agreement No. 10412 which expired on September 16, 1984. The parties have requested a shortened review period.

Agreement No.: 224-010644.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (City)
Indies Terminal Company (ITC)

Synopsis: Agreement No. 224-010644 provides that the City will grant to ITC preferential use of a container terminal at Berths 216-225 at the Port of Los Angeles, including 90 acres of backland area. The term of the agreement is for five years. Compensation will be based upon tariff charges with a minimum guarantee and revenue sharing for increased volume of cargo. ITC will pay the City for crane charges.

Agreement No.: 224-010645.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (City)
Korea Shipping Corporation (KSC)

Synopsis: Agreement No. 224-010645 provides for the granting by the City to KSC the preferential use of Berths 87-89 and a secondary assignment to Berth 90, including 25 acres of backland area at the Port of Los Angeles. The term of the agreement is for five years. Compensation is based upon tariff charges with a minimum annual guarantee and revenue sharing for increased volume of cargo. The agreement obligates the City to make certain improvements and modifications to the premises.

By Order of the Federal Maritime Commission

Dated: September 20, 1984.

Francis C. Hurney,

Secretary.

[FR Doc. 84-25338 Filed 9-24-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central of Kansas, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1984.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Central of Kansas, Inc.*, Junction City, Kansas, to acquire Central Computer Services, Inc., Junction City, Kansas, thereby furnishing for itself, its subsidiaries, and others, data processing and transmission services, facilities, data bases, and access to such services, facilities, or data bases, only of a financial, economic, or banking nature. These activities would be conducted in Junction City, Kansas, and surrounding market area.

Board of Governors of the Federal Reserve System, September 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25323 Filed 9-24-84; 8:45 am]

BILLING CODE 6210-01-M

GHW Associates, el 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 § 225.4 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 October 16, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *GHW Associates*, Hackensack, New Jersey; to become a bank holding company by acquiring 51 percent of the voting shares of First County Bank of New Jersey, North Brunswick, New Jersey.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Wesbanco, Inc.*, Wheeling, West Virginia; to acquire 100 percent of the voting shares of First-Tyler Bank & Trust Co., Sisterville, West Virginia.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *BW Bancshares, Inc.*, Warrensburg, Illinois; to become a bank holding company by acquiring 81 percent of the voting shares of Community Bank of Warrensburg, Warrensburg, Illinois.

2. *Wapello Bankshares, Inc.*, Wapello, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of State Bank of Wapello, Wapello, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grant Avenue, Kansas City, Missouri 64198:

1. *Landmark Bancshares, Inc.*, Denver, Colorado; to become a bank holding company by acquiring 80 percent or more of the voting shares of Landmark National Bank, Denver, Colorado.

2. *Minnequa Bancorp, Inc.*, Pueblo, Colorado; to become a bank holding company by acquiring 80 percent or more of the voting shares of Minnequa Bank of Colorado, Pueblo, Colorado.

3. *Rogers County Bank Holding Company*, Claremore, Oklahoma; to become a bank holding company by acquiring 80 percent of the voting shares of Rogers County Bank, Claremore, Oklahoma.

Board of Governors of the Federal Reserve System, September 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25324 Filed 9-24-84; 8:45 am]

BILLING CODE 6210-01-M

Manufacturers Hanover Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 15, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York; *Barclays Bank PLC* and *Barclays Bank*

International Limited, both of London, England; *Chemical New York Corporation*, New York, New York; *National Westminster Bank PLC*, London, England and *Natwest Holdings, Inc.*, New York, New York; *Northeast Bancorp, Inc.*, New Haven, Connecticut; *The Bank of New York Company, Inc.*, New York, New York; *The HongKong and Shanghai Banking Corporation*, Hong Kong, B.C.C.; *Kellett N.V., Curacao, Netherlands Antilles; HSBC Holdings B.V.*, Amsterdam, The Netherlands; and *Marine Midland Banks, Inc.*, Buffalo, New York; to engage *de novo* through their subsidiary, The New York Switch Corporation, in data processing activities.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Tri-State Bankshares, Inc.*, Trenton, Georgia; to engage *de novo* directly in insurance activities in Trenton, Georgia, a town with a population not exceeding 5,000.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manufacturers National Corporation*, Detroit, Michigan; to expand *de novo*, the activities of its wholly-owned subsidiary, Manucor Leasing, Inc., Detroit, Michigan, and to engage in the activities of leasing of personal property. The geographic scope will include the entire United States.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *United Missouri Bancshares, Inc.*, Kansas City, Missouri; to engage *de novo*, directly in making, acquiring or servicing of loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or for the account of others.

Board of Governors of the Federal Reserve System, September 19, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25325 Filed 9-24-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory bodies scheduled to assemble during the month of October 1984.

Biological/Neurosciences Subcommittee of the Mental Health Research Education Review Committee
October 4; 8:00 a.m.
Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814
Open—October 4; 8:00–9:00 a.m.
Closed—Otherwise
Contact: Betty Russell, Room 9–109, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:00–9:00 a.m., October 4, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
October 11–12; 9:00 a.m.
Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814
Open—October 11; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 11, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Aging Subcommittee of the Life Course and Prevention Research Review Committee
October 12–13; 9:00 a.m.
Sheridan Room, Georgetown Hotel, 2121 P Street, NW., Washington, D.C. 20037
Open—October 12; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Victoria Souder, Room 9C02, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4728.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 12, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee
October 15–17; 8:30 a.m.
Council Room, Sheraton Inn Washington Northwest, 8727 Colesville Road, Silver Spring, Maryland 20910
Open—October 15; 8:30–10:00 a.m.
Closed—Otherwise
Contact: Ron Gold, Executive Secretary, DAPA, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–10:00 a.m., October 15, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Psychosocial Research Review Committee
October 17–19; 9:00 a.m.
Quality Inn—Embassy Suites, 2000 N Street NW., Washington, D.C. 20036
Open—October 17; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Laura Weinstein, Ph.D., Executive Secretary, Alcohol Psychosocial Research Review Committee, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–9:30 a.m., October 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychological Sciences Subcommittee of the Mental Health Research Education Review Committee
October 18–19; 1:00 p.m.
Gramercy Inn, North Scott Suite, 1616 Rhode Island Avenue, NW., Washington, D.C. 20036
Open—October 18; 1:00–2:00 p.m.
Closed—Otherwise
Contact: Sandra Buckhalter, Room 9–109, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 1:00–2:00 p.m., October 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
October 18–19; 9:00 a.m.
The Shoreham Hotel, Calvert Street and Connecticut Avenue, NW., Washington, D.C. 20008
Open—October 18; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Maureen Eister, Room 9C14, Parklawn Building, 5600 Fishers Lane Rockville, Maryland 20857, (301) 443–4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (Appendix I).

Board of Scientific Counselors, NIMH
October 18–20; 9:00 a.m.
October 18 and 20—National Insititutes of Health, Building 36, Conference Room 1B–07, 9000 Rockville Pike, Bethesda, Maryland 20205
October 19—St. Elizabeths Hospital, The William A. White Building, Room 146, Washington, D.C. 20032
Open—October 18; 9:00–9:15 a.m.
Closed—Otherwise
Contact: Dr. Frederick K. Goodwin, National Institutes of Health, Building 10, Room 4N–224, Bethesda, Maryland 20205, (301) 496–3501.

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: On October 18, the Board will meet in Building 36, Conference Room 1B–07, Bethesda, Maryland, for approximately 15 minutes for a report by the Director of Intramural Research, NIMH, on recent administrative developments. The remainder of the sessions will be devoted to a review of the intramural research projects from the Neuropsychiatry Branch, and the evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental health Administration, pursuant to the provisions of section 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee
October 18–20; 9:00 a.m.
Wellington Hotel, 2505 Wisconsin Avenue, NW., Washington, D.C. 20007
Open—October 18; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Christine Peers, Room 9C08, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1177.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to the mental health of the child and family and prevention, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 18, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal

assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Applied Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee

October 19; 9:00 a.m.

Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, D.C. 20007

Open—October 19; 9:00–10:00 a.m.

Closed—Otherwise

Contact: Emilie Embrey, Room 9–109, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 19, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee

October 23–25; 9:00 a.m.

Halpine Conference Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852

Open—October 23; 9:00–9:30 a.m.

Closed—Otherwise

Contact: Heinz Sorer, Ph.D., Extramural Policy and Project Review Branch, NIDA, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Drug Abuse Clinical and Behavioral Research Review Committee

October 23–25; 9:00 a.m.

Twinbrook Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852

Open—October 23; 9:00–9:30 a.m.

Closed—Otherwise

Contact: Daniel L. Mintz, Executive Secretary, DACB, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee

October 23–25; 9:00 a.m.

Rockville Conference Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, Maryland 20852

Open—October 23; 9:00–9:30 a.m.

Closed—Otherwise

Contact: Khursheed Asghar, Ph.D., Extramural Policy and Project Review Branch, NIDA, Room 10–42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, (301) 443–2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Alcohol Biomedical Research Review Committee

October 24–26; 9:00 a.m.

Gramercy Hotel, 1616 Rhode Island Avenue, NW., Washington, D.C. 20036

Open—October 24; 9:00–11:00 a.m.

Closed—Otherwise

Contact: Harvey P. Stein, Ph.D., Executive Secretary, Alcohol Biomedical Research Review Committee, Room 16C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852, (301) 443–6106.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–11:00 a.m., October 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applicatioins for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Psychopathology and Clinical Biology Research Review Committee

October 24–26; 9:00 a.m.

Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, D.C. 20008

Open—October 24; 9:00–10:00 a.m.

Closed—Otherwise
Contact: Irma Fisher, Room 9C24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1340.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Research Scientist Development Review Committee
October 24–26; 10:00 p.m.
Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, D.C. 20008
Open—October 25; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Diana Souder, Room 9C05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., October 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Mental Health Behavioral Sciences Research Review Committee
October 25–27; 9:00 a.m.
The Wellington Hotel, 2505 Wisconsin Avenue, NW., Washington, D.C. 20007
Open—October 25; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Naomi Lichtenberg, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3936.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health of support or research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(C)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology Research Subcommittee of the Neurosciences Research Review Committee
October 25–27; 9:00 a.m.
Silver Spring Holiday Inn, 8770 Georgia Avenue, Silver Spring, Maryland 20901
Open—October 25; 9:00–10:00 a.m.
Closed–Otherwise
Contact: Marilyn Anderson, Room 9C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–39444.

Purpose: The Committee is charged with the initial review of applications for assistance form the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with the recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 25, the meeting will be open for discussion of administrative announcements program developmens. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Epidemiologic and Services Research Review Committee
October 29–31; 9:00 a.m.
Sheraton Washington Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008
Open—October 29; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Gloria Yockelson, Room 9C18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1367.

Purpose: The Committee is charged with the initial review of applications for assistance form the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 29, the meeting will be open for discussion of administrative announcements and program developments. Otherwise the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Criminal and Violent Behavior Research Review Committee
October 31–November 2; 9:00 a.m.
Quality Inn Downtown, 1315 16th Street, NW., Washington, D.C. 20036
Open–October 31; 9:00–10:30 a.m.
Closed—Otherwise
Contact: Jean Bryne, Room 9C14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4868.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to

the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assualt; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:30 a.m., October 31, the meeting will be open for discussion of administrative announcements and program developments. Otherwise the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of Committee members may be obtained as follows: NIAAA: Mrs. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

This **Federal Register** notice is late because it was difficult to coordinate members' schedules.

Dated: September 19, 1984.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 84-25377 Filed 9-24-84; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 81N-0314]

Reexamination of the GRAS Status of Sulfiting Agents; Delay in Availability of Tentative Report and Opportunity for Public Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the tentative report of the ad hoc Review Panel on the Reexamination of the GRAS Status of Sulfiting Agents (the ad hoc Review Panel) will be publicly available a few weeks later than was previously announced. The ad hoc Review Panel was formed by the Federation of American Societies for Experimental Biology (FASEB), Life Sciences Research Office. FDA and FASEB are inviting oral and written comments on the tentative report.

DATES: The tentative report will be publicly available on October 15, 1984, rather than September 21, 1984, as was previously announced. An open meeting of the ad hoc Review Panel is tentatively scheduled for Thursday, November 29, 1984, 9 a.m., at a location in Bethesda, MD, that will be identified in the tentative report and announced in the future **Federal Register** notice. Requests to make oral presentations at the open meeting must be made in writing, be postmarked before November 23, 1984, and be received by November 26, 1984. Written comments on the tentative report must be postmarked before November 23, 1984, and be received by November 29, 1984.

ADDRESSES: Written requests for signle copies of the tentative report should be submitted to Sue Ann Anderson, Life Sciences Research Office, FASEB, 9650 Rockville Pike, Bethesda, MD 20814. Copies of the tentative report will also be on display at the Life Sciences Research Office and the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Written requests to make oral presentations at the open meeting should be sent to Sue Ann Anderson, Life Sciences Research Office, FASEB, and to the Dockets Management Branch (addresses above).

Written comments on the tentative report should be sent to Sue Ann Anderson, Life Sciences Research Office, FASEB, and to the Dockets Management Branch (addresses above).

FOR FURTHER INFORMATION CONTACT: Sue Ann Anderson, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301–530–7030.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 9, 1984 (49 FR 27994), FDA announced that FASEB had formed the ad hoc Review Panel to reexamine all relevant scientific data that bear on the human effects of sulfiting agents. FDA is announcing that the tentative report of the ad hoc Review Panel will be available on October 15, 1984, rather than September 21, 1984, as announced in the **Federal Register** of August 17, 1984 (49 FR 32908). The availability of the report has been delayed because the ad hoc Review Panel has not been able to locate, assemble, analyze, and interpret the information and data it needs in accordance with the planned schedule.

In its tentative report, the ad hoc Review Panel will consider the levels of exposure to sulfiting agents and the health effects of the use of these ingredients in deciding whether those uses are generally recognized as safe (GRAS).

The sulfiting agents (also known as sulfites) include potassium metabisulfite, sodium bisulfite, sodium metabisulfite, potassium bisulfite, sodium sulfite, and sulfur doixide.

In 1976, the Select Committee on GRAS Substances (the Select Committee), which was formed by FASEB, evaluated the GRAS status of the sulfiting agents in a report (PB–265 508), which is available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. Based in part on that report, in 1982 FDA proposed to affirm that the use of sulfiting agents in food is GRAS (47 FR 29956; July 9, 1982). However, a larger quantity of additional data and information on new and wider uses for sulfiting agents in foods and reports of health effects possibly associated with the consumption of sulfiting agents have become available since the Select Committee completed its review. In its tentative report, the ad hoc Review Panel will consider the recent scientific publications and the new information that were submitted to FDA in response to its proposal on the GRAS status of the use of sulfiting agents.

Public comment on the tentative report is invited at an open meeting of the ad hoc Review Panel tentatively scheduled for November 29, 1984, 9 a.m., at a location in Bethesda, MD, that will be identified in the tentative report and announced in a future **Federal Register** notice. Interested persons are invited to provide data and information on uses of sulfiting agents, exposures to these substances, and health effects of sulfiting agents as well as to give their views on the safety of the use of these substances at this meeting. Written requests to make oral presentations at the open meeting should be sent to the addressess above and must be postmarked before November 23, 1984, and received by November 26, 1984. In addition, interested persons may submit written comments on the tentative report. These comments should also be sent to the addressess above and must be postmarked before November 23, 1984.

Dated: September 20, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-25431 Filed 9-21-84; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcements for Grants for Establishment of Departments of Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1985 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of Section 780 of the Public Health Service Act.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under Section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations published in the **Federal Register** on May 4, 1983 (48 FR 20214).

Application materials are being made available without final action on the Fiscal Year 1985 budget and the enactment of health professions renewal legislation. Therefore, financial adjustments and programmatic changes may be necessary at a later date. Should such changes be necessary, all applicants will be notified.

A funding preference was announced in the **Federal Register** May 30, 1984 (49 FR 22540) for Fiscal Year 1984 awards only, therefore, it is not being used in Fiscal Year 1985.

The application deadline date is November 15, 1984. Applications shall be considered as meeting the deadline if they are either (1) *received* on or before the deadline date or (2) *postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Resources Development Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-25 Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 19, 1984.

Robert Graham,

Administrator, Assistant Surgeon General.

[FR Doc. 84-25365 Filed 9-24-84; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D-84-774; FRL-2023]

Delegation of Authority To Apply Administrative Actions To Lenders Participating in the Title I (National Housing Act) Program.

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Delegation of Authority.

SUMMARY: The Secretary of Housing and Urban Development (HUD) is delegating to the Mortgagee Review Board the authority to apply administrative actions to Title I (Property Improvements and Manufactured Home Programs) lenders. The administrative actions that may be applied and the grounds for applying those actions are enumerated and codified at 24 CFR 202.6, effective September 10, 1984. In applying administrative actions to Title I lenders, the Mortgagee Review Board will be governed by its internal procedures codified at 24 CFR Part 25.

EFFECTIVE DATE: September 18, 1984.

FOR FURTHER INFORMATION CONTACT: Phillip L. Schulman, Office of General Counsel, Room 10270, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Telephone: (202) 755-5557 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Following notice and public comments, on June 19, 1984, HUD published a final rule in the **Federal Register** (49 FR 24989) setting forth the requirements for Title I lender approval, including provisions for the termination of the Contract of Insurance and for the taking of administrative actions. The final rule, which is codified at 24 CFR Part 202, is effective on September 10, 1984. Under a previous delegation of authority published in the **Federal Register** on July 14, 1982, (47 FR 30653), the Deputy Assistant Secretary for Single Family Housing (formerly the Deputy Assistant Secretary for Single Family Housing and Mortgagee activities) was delegated the authority to approve or withdraw or suspend the approval of Title I lenders. The delegation dated July 14, 1982, will remain in effect to the extent that the Deputy Assistant Secretary for Single Family Housing will continue to have the authority to approve Title I lenders and to issue or cancel contracts of insurance. In so doing, the Deputy Assistant Secretary will be governed by the provisions of 24 CFR Part 202. However, since withdrawal or suspension of a Title I lender's approval constitutes an administrative action, provided for at 24 CFR § 202.6, the authority to impose such an action will be vested in the Mortgagee Review Board pursuant to the terms of this delegation of authority.

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Mortgagee Review Board the authority to apply administrative actions to Title I (Property Improvement and Manufactured Home Programs) lenders, pursuant to 24 CFR 202.6 (49 FR 24989), effective September 10, 1984. In applying administrative actions to Title I lenders, the Mortgagee Review Board shall be governed by the regulations codified at 24 CFR 202.6, and by its own internal procedures codified at 24 CFR Part 25.

Section B. Authority to Redelegate

The authority of the Mortgagee Review Board to redelegate to the employees of the Department any of the power and authority delegated under

Section A shall be governed by 24 CFR § 25.2.

Section C. Effect Upon Previous Delegations

The delegation of authority, published in the **Federal Register** on July 14, 1982 (47 FR 30653), granting the Deputy Assistant Secretary for Single Family Housing and Mortgagee Activities the authority to approve and withdraw or suspend the approval of Title I lenders and to issue or cancel contracts of insurance with Title I lenders shall remain in effect, except that the authority to withdrawn or suspend the approval of a Title I lender shall no longer be vested in the Deputy Assistant Secretary, but rather in the Mortgagee Review Board in accordance with Section A.

This delegation supersedes and revokes all other preceding delegations that are inconsistent with it.

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: September 18, 1984.

Samuel R. Pierce, Jr.,

Secretary, Department Housing and Urban Development.

[FR Doc. 84-25418 Filed 9-24-84; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Land Resource Management; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plats of survey of the lands described below accepted July 30, 1984, will be officially filed in the Montana State Office effective 8 a.m. on November 14, 1984.

Principal Meridian, Montana

T. 15 N., R. 18 W.

T. 15 No., R. 17 W.

The plat represents the dependent resurvey of a portion of the Flathead Indian Reservation boundary in Township 15 North, Range 18 West, Principal Meridian, Montana. The area described is in Missoula County.

Principal Meridian, Montana

The Plat represents the survey of a portion of the Flathead Indian Reservation bondary in Township 15 North, Range 17 West, Principal Meridian, Montana. The area described is in Missoula County.

Principal Meridian, Montana

T. 16 N., R. 17 W.

The plat, in two sheets, represents the survey of a portion of the Flathead Indian Reservation boundary in Township 16 North, Range 17 West, Principal Meridian, Montana. The area described is in Missoula County.

Principal Meridian, Montana

T. 16 N., R. 18 W.

The plat represents the survey of a portion of the Flathead Indian Reservation boundary in Township 16 North, Range 18 West, Principal Meridian, Montana. The area described is in Missoula County.

These surveys were requested by the Bureau of Indian Affairs.

Principal Meridian, Montana

T. 2 S., R. 9 W.

The plat represents the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines, and certain boundaries of mineral surveys; and the survey of the subdivision of sections 4 and 5, Township 2 South, Range 9 West, Principal Meridian, Montana. The area described is in Silver Bow County.

This survey was requested by the Butte District Office to facilitate their administrative needs.

EFFECTIVE DATE: November 14, 1984.

FOR FURTHER INFORMATON CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 12, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-25328 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-DN-M

Land Resource Management; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of Filing of Plat of Survey.

SUMMARY: Plats of survey of the lands described below accepted August 23, 1984, will be officially filed in the Montana State Office effective 8 a.m. on November 16, 1984.

Principal Meridian, Montana

T. 11 N., R. 12 W.

The plat represents the dependent resurvey of a portion of the south boundary of Township 12 North, Range 12 West, a portion of the west boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 5, 6, 7, and 22, Township 11 North, Range 12 West, Principal Meridian, Montana. The area described is in Powell County.

Principal Meridian, Montana

T. 13 N., R. 12 W.

The plat represents the dependent resurvey of a portion of the Third Standard Parallel North, and a portion of the subdivisional lines; and the survey of the subdivision of sections 22, 23, 26, 28, 32, and 33, Township 13 North, Range 12 West, Principal Meridian, Montana. The area described is in Powell County.

These surveys were requested by the Butte District Office to facilitate their administrative needs.

EFFECTIVE DATE: November 16, 1984.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated September 11, 1984.

Linda M. Wagner,

Chief, Branch of Records.

[FR Doc. 84-25327 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Establishment of Criteria for Identification of Non-Toxic Shot Zones for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This Notice is to solicit comments and recommendations from interested parties as to the specific criteria that should be proposed for the identification and establishment of non-toxic shot zones for waterfowl hunting.

DATE: Comments must be submitted by October 30, 1984.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Telephone 202-254-3207.

SUPPLEMENTARY INFORMATION: When eaten by waterfowl, spent lead pellets may have a toxic effect. The only non-toxic shot available at this time is steel shot. As indicated in 50 CFR 20.21(j), non-toxic shot is required for watefowl hunting in certain designated zones. These zones have been identified in a variety of ways since 1976; however, since 1978 no non-toxic shot zone can be implemented or enforced by the Fish and Wildlife Service (FWS) in a State

without approval of the appropriate State authorities. This restriction on use of funds by FWS has been contained in the Interior Department Appropriations Bill each year. As a consequences of this restiction, FWS has proposed additions and deletions to the designated non-toxic zones for waterfowl hunting only with the approval of State authorities. The manner in which non-toxic shot zones are selected has varied by region and State and the subject has been controversial.

Officials of the Department of the Interior have held discussions with interested organizations, States, and individuals concerning the nature, extent, and significance of lead poisoning in waterfowl and other wildlife. Through these discussions it has become clear that States, Flyway Councils, private organizations, and individuals are seeking greater participation from the FWS in addressing this subject. In response to this expressed need, FWS has developed a plan for moving toward resolution of the issue. The FWS plan includes:

- Monitoring selected locations throughout the United States for the occurrence of lead poisoning in migratory birds,
- Cooperating with States, Flyway Councils, other interested organizations and individuals, formulating more specific criteria for defining lead poisoning areas.
- Identifying needed research on lead poisoning, crippling loss, and similar topics of concern.
- Analyzing and summarizing current information on lead poisoning among bald eagles and developing management recommendations.
- Development of an information program in cooperation with States, Flyway Councils, private organizations and individuals.
- Increased efforts to monitor levels of lead in waterfowl in areas identified by the States and FWS.

In 1976, a Final Environmental Statement (FES) on the *Proposed Use of Steel Shot for Waterfowl Hunting* was published by the Interior Department. Page 264 of that document contained a discussion of how non-toxic shot zones would be selected. That discussion contains the following statement: The determination of areas where the use of steel shot will be required for waterfowl hunting will be based on evidence from all sources and will include consideration of magnitude of harvest, density of deposited shot, incidence of shot in gizzards, measurements of lead levels in wing bones, visible evidence of mortality, and enforcement considerations in establishing easily identifiable and meaningful boundaries, and such other factors as may be appropriate.

Since publication of the FES–1976, the occurrence of lead in the soft tissues of waterfowl, such as liver and kidney, and measurements relating to lead in blood and levels of certain enzymes that serve as indicators of lead ingestion have been used in defining problem areas. The original techniques, plus these newer procedures, have been used individually or in combination within States, FWS Regions, and among the four administrative units know as waterfowl flyways. However, no single technique or combination of techniques has had general acceptance among these administrative units. The failure to achieve uniformity in the zone selection process has resulted in what appears to be inequities in the application of non-toxic shot requirements for waterfowl hunting.

It our intent to propose in December 1984, criteria that will be more specific than those proposed in FES–1976 and serve as a guideline in the establishment of non-toxic shot zones for waterfowl hunting. Prior to the development of such a proposal, FWS welcomes the recommendations and comments of interested organizations and individuals.

Please address your comments to Director, Fish and Wildlife Service (MBMO), Department of the Interior, Washington, D.C. 20240.

Dated: September 20, 1984.

Robert A. Jantzen,

[FR Doc. 84–25346 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463. A meeting of the Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on November 27–29, 1984, in New Orleans, Louisiana. The agenda of the meeting is as follows:

November 27

9:00 a.m.–5:00 p.m.: Gulf of Mexico Information Transfer Meeting

November 28

8:30 a.m.–5:00 p.m.: Continuation of the Information Transfer Meeting

November 29

9:00 a.m.–12:00 noon: Closing Plenary Session of the Information Transfer Meeting

1:00 p.m.–5:00 p.m.: Regional Technical Working Group Business Meeting

A. Sale Results: Western Gulf of Mexico No. 84.

B. Status of Proposed 1985 Lease Sales Nos. 94/98/102.

C. Scoping Briefing: 1986 Proposed Lease Sales Nos. 104/105.

D. New 5-Year OCS Oil and Gas Leasing Program.

E. Briefing on the Environmental Studies Program.

F. Regional Activities Update.

The meeting will be held in the International Hotel, 300 Canal Street, New Orleans, Louisiana. All sessions are open to the public, and interested persons may make oral or written presentations at the Business Meeting upon request. Such requests should be made not later than November 21, 1984, to Mr. Sydney H. Verinder, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, P.R. Box 7944, Metairie, Louisiana 70010, ot telephone (504) 838–0627.

A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Manager at the above address not later than 60 days after the meeting.

Dated: September 17, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 84–25380 Filed 9–24–84; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Tenneco Oil Exploration

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 3145 and 1196, Blocks 60 and 61, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 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: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region, Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 17, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 84-25364 Filed 9-24-84; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 14 1984. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 10, 1984.

Carol D. Shull,

Chief of Registration, National Register.

ARKANSAS

Garland County

Hot Springs, *Hot Springs Central Avenue Historic District*, Central Ave., from Prospect to Park Sts.

Pulaski County

Little Rock, *Farrell House (Thompson, Charles L., Design Collection TR)*, 2109 Louisiana

COLORADO

Fremont County

Cannon City, *Robinson Mansion*, 12 Riverside Dr.

La Plata County

Durango, *East Third Avenue Historic Residential District (The Boulevard)*, E. 3rd. Ave. between 5th, and 15th Sts.

Pueblo County

Pueblo, *White, Asbury, House*, 417 W. 11th St.

INDIANA

Fountain County

Covington, *Sewell, William C. B., House*, 602 E. Washington St.

KENTUCKY

Jefferson County

Louisville, *German Bank Building*, 150 S. 5th St.

LOUISIANA

Caddo Parish

Shreveport, *St. Paul's Bottoms*, Roughly bounded by Western and Pierre Aves., Alston, Christian, Oakland, and Snow Sts.

MAINE

Penobscot County

Bradley vicinity, *Collins Bridge Site (Maine Archaeological Survey Site 74.16)*, ME 178

MARYLAND

Anne Arundel County

Annapolis, *Fort Nonsense*, Millersville vicinity, *Bunker Hill*, MD 178 and Millersville Rd.

Howard County

Elkridge, *Lawn, The*, 5388 Old Lawyers Hill Rd.

MASSACHUSETTS

Middlesex County

Newton, *Weeks Junior High School*, 7 Hereward Rd.

MISSOURI

Jackson County

Kansas City, *Peppard, Joseph Grear, House*, 1704 Jefferson St.

NEVADA

Washoe County

Reno, *Francovich House*, 557 Washington St.
Reno, *Pincolini Hotel*, 214 Lake St.

White Pine County

Ely, *Nevada Northern Railroad Rolling Stock*, Northern Nevada Railroad Yards

NEW JERSEY

Hudson County

Jersey City, *Van Vorst Park Historic District (Boundary Increase)*, Roughly bounded by Railroad Ave., Henderson, Bright, Varick and Monmouth Sts.

NORTH CAROLINA

Burke County

Morgantown, *Gaston Chapel*, 100 Bouchelle St.
Morgantown, *Mountain View*, 604 W. Union St.
Salem vicinity, *Gilboa Methodist Church*, U.S. 64

Cherokee County

Bell View vicinity, *Cobb, John Franklin, House*, U.S. 19-129

Dare County

Kitty Hawk, *Kitty Hawk Life-Saving Station*, U.S. 158

Durham County

Durham, *Erwin Cotton Mills Company Mill No. 1 Headquarters Building*, W. Main and 9th Sts.

Pitt County

Greenville, *U.S. Post Office*, 215 S. Evans St.

Rockingham County

Eden vicinity, *Lower Sauratown Plantation*

OKLAHOMA

Muskogee County

Fort Gibson, *Administration Building (Post Hospital) (Fort Gibson Post-Civil War Military Buildings TR)*, 803 Garrison Ave.
Fort Gibson, *Blacksmith Shop (Fort Gibson Post-Civil War Military Buildings TR)*, 905 Garrison Ave.

Fort Gibson, *Commandant's Quarters (Fort Gibson Post-Civil War Military Buildings TR)*, 905 Coppinger Ave.
Fort Gibson, *Officer's Quarters (Fort Gibson Post-Civil War Military Buildings TR)*, 907 Coppinger Ave.
Fort Gibson, *Post Adjutant's Office (Fort Gibson Post-Civil War Military Buildings TR)*, 905 Garrison Ave.

TEXAS

Eastland County

Cisco, *Cisco Historic District*, Roughly bounded by Conrad Hilton Ave., W. 3rd St., Ave. K, W. 8th and 9th Sts.

UTAH

Beaver County

Black Rock Station Petroglyph Sites (42 MD 43, 47, 485, 593, and an isolated boulder) (Great Basin Style Rock Art TR)
Mud Spring (Great Basin Style Rock Art TR)
Ryan Ranch (42 BE 618) (Great Basin Style Rock Art TR)

Box Elder County

Brigham City, *Brigham City Carnegie Library (Carnegie Library TR)*, 26 E. Forest St.
Garland, *Garland Carnegie Library (Carnegie Library TR)*, 86 W. Factory St.

Cache County

Richmond, *Richmond Carnegie Library (Carnegie Library TR)*, 6 W. Main St.

Garfield County

Panguitch, *Panguitch Carnegie Library (Carnegie Library TR)*, 75 E. Center St.

Millard County

Cottonwood Wash (42 MD 183) (Great Basin Style Rock Art TR)
Deseret (42 MD 55) (Great Basin Style Rock Art TR)
Mountain Home Wash (Great Basin Style Rock Art TR)
Site 42 MD 284 (Great Basin Style Rock Art TR)

Sanpete County

Ephraim, *Ephraim Carnegie Library (Carnegie Library TR)*, 30 Main St.
Manti, *Manti Carnegie Library (Carnegie Library TR)*, 12 Main St.
Mount Pleasant, *Mount Pleasant Carnegie Library (Carnegie Library TR)*, 24 Main St.

Sevier County

Glenwood (42 Sv 1377) (Great Basin Style Rock Art TR)
Richfield, *Richfield Carnegie Library (Carnegie Library TR)*, 83 E. Center St.

Summit County

Hoytsville vicinity, *Birch, Annie, House (Scandinavian-American Pair-Houses TR)*, Off IR 80

Tooele County

Tooele, *Tooele Carnegie Library (Carnegie Library TR)*, 47 E. Vine St.

Utah County

Pleasant Grove, *Johnson, Peter Axel, House (Scandinavian-American Pair-Houses TR)*, 1075 N. 100 East

[FR Doc. 84-25348 Filed 9-24-84; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30545]

Peoria and Pekin Union Railway Company; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10901 the lease and operation by Peoria and Pekin Union Railway Company of railroad track in Peoria County, IL. No employee protective conditions are imposed.

DATE: This exemption is effective on September 24, 1984. Petitions for reconsideration must be filed by October 15, 1984.

ADDRESSES: Send pleadings referring to Finance Docket No. No. 30545 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's representative: Anne D. Smith, White & Case, 1747 Pennsylvania Avenue, NW, Washington, DC 20006.

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., Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call toll free (800) 424-5403, or 289-4357 (DC Metropolitan area).

Decided: September 18, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio. Commissioners Lamboley and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 84-25321 Filed 9-24-84; 8:45 am]
BILLING CODE 7035-01-M

DEPARMENT OF JUSTICE

Information Collection(s) Under Review

September 21, 1984.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the items contained in this list should be directed to the reviewer listed at the end of each entry *AND* to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

- **Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection**

(1) Larry E. Miesse, 202/633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION TO FILE PETITION FOR NATURALIZATION
(4) N-400
(5) On occasion
(6) Individuals or households. Data required to establish petitoners eligibility for naturalization and to enable designated officers of the Immigration and Naturalization

Service to make appropriate recommendations to the naturalization court.
(7) 331,000 respondents
(8) 61,000 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veder—395–4814

(1) Larry E. Miesse, 202/633 –4312
(2) Immigration and Naturalization Service, Department of Justice
(3) APPLICATION TO FILE PETITION ON BEHALF OF CHILD
(4) N–402
(5) On occasion
(6) Individuals or households. Filed by a U.S. citizen to petition for naturalization on behalf of a natural or adopted alien child. Used by the INS to determine eligibility and make appropriate recommendations to the naturalization court.
(7) 15,000 respondents
(8) 7,500 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder—395–4314

• New Collection

(1) Larry E. Miesse, 202/633–4312
(2) Drug Enforcement Administration, Department of Justice
(3) DANGEROUS DRUG "STREET" STUDIES IN EIGHT U.S. CITIES
(4) None
(5) Annually
(6) Individuals or households. This information will be used in formulating the Federal Strategy for Drug Abuse and Prevention Control. Data to be collected from random participants in drug treatment programs.
(7) 480 respondents
(8) 240 burden hours
(9) Not applicable under 3504(h)
(10) Robert Veeder-395–4814

Larry E. Miesse,

Agency Clearance Officer Department of Justice.

[FR Doc. 84–25338 Filed 9–24–84; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–15, 140]

Negative Determination Regarding Application for Reconstruction; Alten Foundry and Machine Works, Inc., Lancaster, OH

By an application dated August 4, 1984 the International Moulders and Allied Workers Union requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at the Alten Foundry and Machine Works, Inc., Lancaster, Ohio. The determination was published in the **Federal Register** on July 17, 1984 (49 FR 28938).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The foundry which produced the iron castings and the machine shop which produced the pumping units and reducers closed in mid-1983.

The Department's denial was predicated on investigation findings that did not satisfy the "contributed importantly" test in Section 222 of the Group Eligibility Requirements of the Trade Act of 1974. This test is generally confirmed through a survey of company customers.

The union claims that the Department's survey of Alten's customers was inadequate.

Findings in the investigative case file do not support the union's claim. The results of the Department's survey of Alten's customers accounted for the major share of Alten's 1982 and the first half of 1983 sales. None of the respondents imported iron castings in 1982 or in the first half of 1983. Pumping units and reducers accounted for a small percent of 1982 sales. All pumping units were sold to an exclusive distributor who did not import pumping units. All reducers were exported. Under the Trade Act, the loss of export sales would not provide a basis for certification.

U.S. imports of iron castings decreased absolutely in 1982 compared to 1981 and in the first nine months of 1983 compared to the same period in 1982. The ratio of imports to domestic production of iron castings has been less than three percent during the last five years.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision.

Accordingly, the application is denied.

Signed at Washington, D.C., this 11th day of September 1984.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84–25412 Filed 9–24–84; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–15,182]

Negative Determination Regarding Application for Reconsideration; Goodyear Tire and Rubber Co., Jackson, MI

By an application dated August 21, 1984, the United Rubber Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at the Jackson, Michigan plant of the Goodyear Tire and Rubber Company. The determination was published in the **Federal Register** on July 29, 1984 (49 FR 29880).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered: or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the "contributed importantly" test of Trade Act of 1974 was not met.

The union claims in its application for reconsideration that the Department's decision is based largely on Goodyear's corporate performance rather than on the performance at the Jackson plant. The union also claims that U.S. aggregate imports of truck tires increased in 1983 compared to 1982; that bias and radial truck tires are like and directly competitive; and that a survey of Goodyear's customers should have been conducted by the Department.

There is no dispute with the facts that imports of truck tires increased and that sales and production and employment at the Jackson plant declined. The issue is whether increased imports contributed importantly to those declines.

The facts developed in the investigation reveal that an explosion at

the Jackson plant caused the company to shift permanently radial tire producion to other domestic plants.

The Jackson plant was a high cost facility compared to other domestic Goodyear facilities and consequently bias ply production was gradually transferred to other domestic plants as well. During the period these transfers were taking place, overall company sales and domestic production of tires were increasing while company imports were decreasing. Obviously company customers were buying more domestically produced tires from the company than imports relative to prior years. Under these circumstances a customer survey would not yield information that imports were substituting for domestic production even if customers were also increasing imports from other sources because the company's domestic production and sales increased over the relevant period.

Increasing imports in the aggregate also would not be an important factor in the declines in sales or production and in employment at the Jackson plant because it is clear that other domestic company production substituted for the Jackson's plant output.

Conclusion

After review of the application and the investigative file. I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 12th day of September 1984.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 84-25413 Filed 9-24-84; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Republic Steel Corp. 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 September 10, 1984-September 14, 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, 323; Republic Steel Corp., (LTV Steel Co.), Drainage Products Div-Fairhope Plant, Canton, OH

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-15, 351; Caterpillar Tractor Co., Milwaukee, WI

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-15, 346; Consolidation Coal Co., Turkey Gap Mine, Dott, WV

Aggregate U.S. imports of metallurgical coal are negligible.

TA-W-15, 253; Brown Shoe Co., Ironton, MO

Separations from the subject firm resulted from a transfer of production to other domestic facilities.

Affirmative Determinations

TA-W-15, 241; Brown Shoe Co., Pittsfield, IL

A certification was issued covering all workers separated on or after April 9, 1983 and before July 15, 1984.

TA-W-15, 250; JMS Fashions, Patchogue, NY

A certification was issued covering all workers separated on or after March 1, 1983 and before January 1, 1984.

TA-W-15, 308; Modern Juniors, North Bergen, NJ

A certification was issued covering all workers separated on or after April 6, 1983 and before July 1, 1984.

TA-W-15, 304; Calhoun Manufacturing Co., Division Modern Juniors, Saint Matthews, SC

A certification was issued covering all workers separated on or after April 13, 1983 and before July 1, 1984.

TA-W-15, 340; Ronson Metals Corp., Newark, NJ

A certification was issued covering all workers engaged in the production of mischmetal separated on or after May 16, 1983.

I hereby certify that the aforementioned determinations were issued during the period September 10, 1984–September 14, 1984. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 18, 1984.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 84-25415 Filed 9-24-84; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Certification of Interest Relief: Certification of States Qualifying for Partial Relief of Interest Due on Advances Under Title XII of the Social Security Act; Colorado et al.

Title XII of the Social Security act provides for several forms of deferral of interest and a discounted rate of interest payable by States on advances received by them from the Federal unemployment account in the Unemployment Trust Fund if the States meet criteria set forth in the statue. The certification to the Secretary of the Treasury of specified State that meet the respective criteria with respect to interest due prior to October 1, 1984, is published below.

Dated: September 18, 1984.

Patrick J. O'Keefe

Deputy Assistant Secretary of Labor.

September 12, 1984.

Hon. Donald T. Regan,

Secretary of the Treasury Washington, DC 20220.

Dear Secretary Regan: The Department of Labor has reviewed States' applications for relief from interest payments which are due prior to October 1, 1984. The interest relief options available to States are:

(1) High Unemployment Deferral: Section 1202(b)(2)(C) of the Social Security Act (SSA) allows a State to defer 75 percent of interest otherwise due if the rate of insured unemployment under the State law for the period consisting of the first six months of the preceding calendar year equaled or exceeded 7.5 percent. The State must pay 75 percent of interest otherwise due in three annual installments of at least 25 percent beginning with the year after the year in which it was due. The interest deferred does no accrue interest.

(2) Legislative-Action Deferral: Section 1202(b)(8) of the SSA allows a State to defer 80 percent of interest otherwise due if the State has taken no action since October 1, 1982, to reduce the State's tax effort or

unemployment fund solvency and has taken action after March 31, 1982, which increases revenues to the State's unemployment fund and decreases benefits by at least 25 percent in the calendar year for which the first deferral is requested; deferrals for the second and third years immediately following the year in which the first year change is effective are available if the State produces a solvency effort of at lease 35 and 50 percent, respectively. The State must pay 80 percent of interest otherwise due in four annual installments of at least 20 percent beginning with the year after the year in which it was due. Interest does not accrue or deferred interest. Once a legislative-action deferral is approved, a State must continue to maintain its solvency effort. Failure to do so will result in the State being required to make immediate payment of all deferred interest. This type of deferral remains available for 1984 and 1985 payments only.

(3) Average Tax Rate Deferral: Section 1202(b)(8) of the SSA azllows a State to defer 80 percent of interest otherwise due if the State has taken no action since October 1, 1982, to reduce the State's tax effort or unemployment fund solvency and for taxable year 1982, total State unemployment compensation revenues to the unemployment fund equaled at least two percent of total wages paid by employers covered under the State unemployment compensation law. The State must pay 80 percent of interest otherwise due in four annual installments of at least 20 percent beginning with the year after the year in which it was due. Interest does not accrue on deferred interest. This type of deferral remains available for 1984 and 1985 payments only.

(4) High Unemployment Delay of Payment Due: Section 1202(b)(9) of the SSA allows a State to delay up to nine months the payment of interest due September 30 of any calendar year after 1982 during which the average total unemployment rate (TUR) in the State was 13.5 percent or higher for lthe most recent 12-month period for which data are available. The State must meet the 13.5 percent TUR requirement each succeeding year in order to delay payments nine months in such succeeding years.

(5) Discounted Interest Rate: Section 1202(b)(8)(D) of the SSA allows a State to receive a discounted interest rate that would be one percentage point below the interest rate that would otherwise apply. The discounted rate for interest due prior to October 1, 1984, would be 9.00 percent for interest accrued October through December 1983 and 8.78 percent for interest accrued January through September 1984. This discounted interest rate is available to a State which has taken no action since October 1, 1982, to reduce the State's tax effort of unemployment fund solvency and has taken action since March 31, 1982, which produces a solvency effort of at least 50, 80, and 90 percent rather than 25, 35, and 50 percent, respectively, as specified under the legislative-action deferral. A discounted interest rate remains available for 1984 and 1985 payments only.

I hereby certify that the States shown on the accompanying table meet all the criteria specified by law to qualify for the interest relief shown.

Sincerely,

Robert A Schaerfl,

Acting Director, Unemployment Insurance Service.

State	Interest relief
Colorado	Legislative-Action Deferral (25%).
District of Columbia.	Legislative-Action Deferral (35%) Discounted Rate (80%).
Illinois	Legislative-Action Deferral (35%).
Kentucky	Do.
Michigan	Legislative-Action Deferral (35%) Discounted Rate (80).
Ohio	Legislative-Action Deferral (35%).
Pennsylvania	Do.
West Virginia	Average Tax Rate Deferral High Unemployment Delay.
Wisconsin	Legislative-Action Deferral (35%) Discounted Rate (80%).

[FR Doc. 84-25441 Filed 9-25-84; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 84-73]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission. The NASA Supplement to the Federal Acquisition Regulation has been previously cleared by OMB (2700-0043), subject to submission of clearance requests for specific reporting and recordkeeping requirements.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letter, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by October 5, 1984. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546. Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: NASA FAR Supplement, Part 18-27, Patents, Data and Copyrights

Type of Request: Existing regulation (no change proposed)

Frequency of Reports: Annually and other

Type of Respondent: Small and Large Businesses, State and Local Governments and Non-Profit Institutions

Annual Responses: 2,280

Annual Burden: 27,360 hours.

Annual-Need/Users: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 84-25314 Filed 9-24-84; 8:45 am]

BILLING CODE 7510-01-M

[Notice 84-75]

Intent To Grant an Exclusive Patent License; HealthMate, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to HealthMate, Inc., of Northbrook, Illinois, an exclusive, royalty-bearing, revocable license to practice the inventions as described in U.S. Patent No. 4,345,153 for a "Low Intensity X-Ray and Gamma-Ray Spectrometer," which issued on November 15, 1983, and U.S. Patent Application No. 459,842 for a "Three Dimensional and Tomographic Imaging Device for X-Ray and Gamma-Ray Spectrometer," which was filed on January 21, 1983. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives

written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by November 26, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: September 18, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–25316, Filed 9–24–84; 8:45 am]

BILLING CODE 7510–01–M

[Notice 84–74]

Intent To Grant an Exclusive Patent License; John J. McMullen Associates, Inc.

AGENCY: Nation Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant an Exclusive Patent License.

SUMMARY: NASA hereby gives notice of intent to grant to John J. McMullen Associates, Inc., of Pascagoula, Mississippi, an exclusive, field of use, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,415,450 for a "Method for Treating Wastewater Using Microorganisms and Vascular Aquatic Plants," which issued on November 15, 1983, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by November 26, 1984.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, (202) 453–2430.

Dated: September 18, 1984.

S. Neil Hosenball,

General Counsel.

[FR Doc. 84–25315 Filed 9–24–84; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

President's Committee on the Arts and Humanities; Meeting

Thursday, October 18, 1984 at nine o'clock in the morning has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting VII. This meeting has been scheduled in the Council Room, Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC. This is a regularly scheduled meeting at which committee activities will be reviewed and progress reported.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds which augment their operational costs and support projects and programs which have been initiated by the President's Committee.

The agenda will include briefings by the Chairmen of the National Endowment for the Humanities and the National Endowment for the Arts on the highlights of their activities; Library/Radio Initiative; Great Performances; Press Conferences; Tax; Philadelphia Alliance for Teaching Humanities in the Schools; Los Angeles Coporate Arts Projects; The Corporation as a Catalyst, presentation by Rawleigh Warner, Jr., Chairman of the Board and CEO, The Mobil Corporation; and Motivational Study on Individual Giving, presentation by William Dietel, President, Rockefeller Brothers Fund.

This meeting is expected to adjourn before lunch. Please call the President's Committee (202) 682–5409 or (212) 883–6764 if you wish to attend.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84–25330 Filed 9–24–84; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Humanities

Humanities Panel Meetings

Correction

The NFAH document published in the Sunshine Act Meetings section on page 36190 in the issue of Friday, September 14, 1984, should have appeared in the regular Notices section of the issue.

In addition, the **Federal Register** document number appearing at the end of the document should have read "FR Doc. 84–24486".

BILLING CODE 1505–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and time: Wednesday and Thursday, October 10 and 11, 1984 from 9:00 am to 5:00 pm.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Closed.

Contact person: Dr. DeLill Nasser, Program Director, Eucaryotic Genetic, Room 329G Telephone: 202/357–0112.

Purpose of adivsory panel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84–25345 Filed 9–24–84; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Genetics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Genetics.

Date and time: Thursday and Friday, October 11 and 12, 1984 from 9:00 am to 5:00 pm.

Place: Room 643, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Philip Harriman, Program Director, Procaryotic Genetic, Room 329; Telephone: 202/357-9687.

Purpose of subpanel: To provide advice and recommendations concerning support for research instrumentation.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: September 19, 1984.

M. Rebecca Winkler,

Committee Management Coordinator.

[FR Doc. 84-25344 Filed 9-24-84; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Radiological Effects; Revised Agenda

The agenda for the ACRS Subcommittee on Reactor Radiological Effects scheduled for *Thursday, September 27 and Friday, September 28, 1984,* Room 1046, 1717 H Street, NW, Washington, DC has been revised as follows: Delete from the Friday, September 28, 1984, agenda that portion of the entry which reads, "and (2) DOE on their systematic approach regarding reactor safety and radiation protection research."

All other items regarding this meeting remain the same as published on Wednesday, September 12, 1984 (49 FR 35880).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634-1413) 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: September 20, 1984.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 84-25371 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards will hold a meeting on October 11-13, 1984, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on August 21, 1984.

The agenda for the subject meeting will be as follows:

Thursday, October 11, 1984

8:30 A.M.-8:45 A.M.: ACRS Chairman's Report (Open)—The ACRS Chairman will report briefly on matters of current interest.

8:45 A.M.-10:45 A.M.: Evaluation of Nuclear Power Plant Incidents/ Accidents (Open)—The Committee members will discuss proposed ACRS comments and recommendations regarding the need for an independent board to investigate and evaluate accidents and incidents which occur in nuclear facilities.

10:45 A.M.-12:00 Noon: Selection of Unresolved Safety Issues (Open)—The members of the Committee will hear reports from cognizant ACRS subcommittee chairmen and will discuss proposed ACRS comments regarding the NRC Staff review and categorization of high priority unresolved generic issues. Members of the NRC Staff will participate as appropriate.

1:00 P.M.-2:00 P.M.: Experience Levels for Reactor Operators (Open)—The members will discuss experience requirements for nuclear power plant operating personnel.

2:00 P.M.-3:30 P.M.: Meeting with NRC Commissioners (Open)—The members of the Committee will meet with the NRC Commissioners to discuss ACRS comments and recommendations regarding the need for an independent board to investigate and evaluate incidents and accidents that occur in nuclear facilities.

3:30 P.M.-5:15 P.M.: ACRS Subcommittee Activities (Open/ Closed)—The members will hear and discuss the reports of cognizant ACRS Subcommittee chairmen regarding current subcommittee activities including resolution of USI A-45, Shutdown Decay Heat Removal Requirements, and BWR pipe cracking.

Portions of this session will be closed to discuss information provided in confidence by foreign sources.

5:15 P.M.-6:00 P.M.: Future ACRS Activities (Open)—The members will discuss anticipated ACRS Subcommittee activities and items proposed for consideration by the full Committee.

Friday, October 12, 1984

8:30 A.M.-9:30 A.M.: NRR Activities (Open)—The members will hear a report regarding NRR activities from the Director, NRR.

9:30 A.M.-12:00 Noon: Pressurized Thermal Shock (Open)—The members will hear and discuss the report of its subcommittee and reports from representatives of the NRC Staff regarding the results of safety research applicable to this matter and a proposed NRC rule regarding pressurized thermal shock of reactor pressure vessels.

Portions of this session will be closed to discuss Proprietary Information applicable to the matter being discussed.

1:00 P.M.-3:30 P.M.: Backfitting of Nuclear Facilities (Open)—The members will hear and discuss the reports of its subcommittee and representatives of the NRC Staff regarding proposed NRC requirements regarding the management of backfitting requirements for nuclear power plants. Representatives of the nuclear industry will participate as appropriate.

3:30 P.M.-4:30 P.M.: Reactor Operating Experience (Open)—The members will hear and discuss reports from representatives of the NRC Staff regarding recent operating events and incidents at nuclear power plants.

4:30 P.M.-6:00 P.M.: ACRS Subcommittee Activities (Closed)—The members will hear and discuss the report of its Subcommittee on Maintenance Practices and Procedures regarding maintenance policies and practices in Japanese nuclear power plants. The members will also discuss proposed activities of its Subcommittee on Regulatory Policies and Practices.

This portion of the meeting will be closed to discuss information provided in confidence by a foreign source.

Saturday, October 13, 1984

8:30 A.M.-12:00 Noon: ACRS Reports (Open/Closed)—The members will discuss proposed ACRS comments and recommendations to the NRC regarding topics considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed and information provided in confidence by foreign sources.

1:00 P.M.–2:30 P.M.: ACRS Subcommittee Activities (Open)—The members will hear and discuss the reports of its subcommittees regarding current activities including performance of fire protection systems in nuclear power plants, PRA for the Limerick Nuclear Station, quality assurance during design and construction of nuclear facilities, and residual contamination limits at decommissioned nuclear facilities.

2:30 P.M.–3:30 P.M.: ACRS Reports (Open/Closed)—The members will complete discussion of proposed ACRS comments and recommendations regarding matters considered during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed and information provided in confidence by a foreign source.

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 information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted 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: September 19, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84–25370 Filed 9–24–84; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–324]

Carolina Power & Light Co., Brunswick Steam Electric Plant, Unit 2; Notice of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the schedular requirements of 10 CFR 50.49 to Carolina Power & Light Company (the licensee) for the Brunswick Steam Electric Plant, Unit 2, located at the licensee's site near Southport, North Carolina.

Environmental Assessment

Identification of Proposed Action

The extension would extend the deadline for final environmental qualification of electrical equipment within the scope of the rule from the end of the 1984 refueling outage to November 30, 1985. The proposed extension is in accordance with the licensee's request for extension dated April 25, 1984, as supplemented July 6 and August 30, 1984. In the April 25, July 6 and August 30, 1984 submittals the licensee requested an extension of the deadline until November 30, 1985 for certain items of equipment. Unit 2 is currently scheduled for a special shutdown on or before November 30, 1985 for the purpose of completing the required modifications and thereby meeting the requirements of 10 CFR 50.49(g).

The Need for the Proposed Action

10 CFR 50.49(g) requires a licensee to complete final environmental qualification of electrical equipment within the scope of the rule by the end of the second refueling outage after March 31, 1982 or by March 31, 1985, whichever is earlier. The refueling outage which began in March 1984 is the second refueling outage at the Brunswick Steam Electric Plant, Unit 2 since March 31, 1982. Therefore, the regulation would require completion of final qualification at the Brunswick Steam Electric Plant, Unit 2 before startup from this refueling outage.

The April 25, July 6 and August 30, 1984 letters explain the process by which Carolina Power & Light Company intends to achieve final qualification of any equipment for which final qualification has not been achieved at the end of the refueling outage. Carolina Power & Light Company concluded that this process including additional analysis and testing, equipment procurement and installation, cannot be completed before the end of the outage. This process was reviewed and approved by the NRC staff.

Environmental Impacts of the Proposed Action:

The purpose of the final environmental qualification of electrical equipment required by 10 CFR 50.49 is to ensure that electrical equipment which is needed to achieve safe shutdown or mitigate a reactor accident is capable of performing properly under the environmental conditions which might ensue (for example, high temperature and pressure) during such an accident. The environmental impact of delaying final qualification is the slightly increased risk of radiological releases during the next twelve months of power operation which would be associated with a reactor accident if the equipment failed due to the accident environment.

To ensure that this risk is minimized, the licensee has provided justifications for continued operation for equipment for which final qualification will not be completed by the end of the outage. These justifications are based on the acceptance criteria for such justifications provided in 10 CFR 50.49. These justifications provided reasonable assurance that an accident would be properly mitigated even though the final qualification of the equipment is not complete. Therefore, this incremental risk is quite low and the releases if they did occur would be bounded by releases which have been previously determined as possible consequences for other

accidents at the Brunswick Steam Electric Plant, Unit 2. Therefore, the Commission concludes that there are not significant radiological environmental impacts associated with this proposed extension.

The proposed extension involves only systems located entirely within the restricted area as defined in 10 CFR Part 20. Also, the proposed extension does not affect non-radiological plant effluents or other non-radiological environmental impacts. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed extension.

The principal alternative to the proposed action would be to deny the extension and not allow reactor startup until final qualification was complete. Such an action would negate the insignificant incremental risk described above. However, such an action would result in the loss of approximately twelve full power months of generated electricity, a large adverse impact.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License) for the Brunswick Steam Electric Plant, Units 1 and 2).

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed extension.

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 extension dated April 25, 1984, and supplements dated July 6 and August 30, 1984, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the Southport—Brunswick County Library, 108 W. Moore Street, Southport, North Carolina 28461.

Dated at Bethesda, Maryland, this 18th day of September, 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-25375 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendments To Facilities Operating Licenses and Final Determination of No Significant Hazard Consideration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 109 to Facility Operating License Nos. DPR-31, and Amendment No. 103 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of the Turkey Point Plant Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance and shall be implemented within 60 days of issuance.

These amendments revise Section 5.2 of the Technical Specifications to delete the present enrichment restriction of 3.5 weight per cent. The fuel storage specifications, Section 5.4, are revised to allow storage of fuel with increased enrichment in the existing new fuel storage racks, spent fuel storage racks and add an additional K_{eff} (neutron multiplication factor) requirement for the existing new fuel storage racks under conditions of low density (optimum moderation). The increase for the existing new fuel storage racks is 57.7 grams (4.5 weight per cent) of U-235 and 52.4 grams (4.1 weight per cent) of the existing spent fuel storage racks. A K_{eff} of 0.98 for optimum moderation conditions is included for the existing new fuel storage racks in addition to the existing K_{eff} of 0.95 for fully flooded with unborated water.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in these license amendments.

Notice of Consideration of Issuance of Amendments and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** (49 FR 25360) on June 20, 1984. A request for a hearing was filed on July 12, 1984, by the Center for Nuclear Responsibility, Inc. and Ms. Joette Lorion.

Under its regulations, the Commission may issue and make an amendment immediately effective, nonwithstanding the pendency before it of a request for a hearing from any persons, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that these amendments involve no significant hazards consideration.

The basis for this determination is contained in the Safety Evaluation related to this action. Accordingly, as described above, these amendments have been issued and made immediately effective and any hearing will be held after issuance.

These amendments involve changes in the installation or use of facility components located within the restricted area as defined in 10 CFR Part 20. The staff has determined that the amendments involve no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has made a final no significant hazards consideration finding with respect to these amendments. Accordingly, these amendments meet the eligibility criteria for categorical exclusion set forth in CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of these amendments.

For further details with respect to the action see (1) the application for amendments dated April 4, 1984, as supplemented on May 25, 1984 and June 15, 1984, (2) Amendment Nos. 109 and 103 to Facility Operating License No. DPR-31 and DP-41 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this September 5, 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch #1, Division of Licensing.

[FR Doc. 84-25373 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-498 OL, STN 50-499 OL; ASLBP No. 79-421-07 OL]

Houston Lighting and Power Co., et al. (South Texas Project Units 1 and 2); Change of Location of Prehearing Conference

September 19, 1984.

The location of the October 15–16, 1984 prehearing conference, as announced in our Order dated September 7, 1984 (49 FR 36037, September 13, 1984), has been changed from Forum Room No. 5 to Forum Rooms 1–2, Astro Village Hotel, 2350 South Loop W (I–610 at Kirby), Houston, Texas.

Dated at Bethesda, Maryland, September 20, 1984.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 84-25374 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344-OLA; ASLBP No. 84-498-05 LA]

Portland General Electric Co., et al., Trojan Nuclear Plant; Notice of Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Portland General Electric Co., et al.* (Trojan Nuclear Plant), Docket No. 50–344–OLA, is hereby reconstituted by appointing Administrative Judge Helen F. Hoyt in place of Administrative Judge Ivan W. Smith, who, because of a schedule conflict, is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Helen F. Hoyt, Chairman, Dr. Peter A. Morris; and Dr. Oscar H. Paris.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR §2.701 (1980). The address of the new Board member is: Helen F. Hoyt, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 19th day of September, 1984.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 84-25372 Filed 9-24-84; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Federal Procurement Reforms and General Policies Governing the Federal Procurement Process; Public Meeting and Request for Public Comment

AGENCY: Office of Federal Procurement Policy; Office of Management and Budget.

ACTION: Solicitation of views.

SUMMARY: In developing the "Proposal for a Uniform Federal Procurement System" the Office of Federal Procurement Policy recognized the desirability of greater private sector involvement in the policy development process. As one means of fostering greater public participation, OFPP holds an annual public hearing to elicit comments from interested parties with respect to existing policies, new policies or other procurement problems.

Date, Time and Location of Meeting

The meeting will be held on Friday, November 30, 1984, in Room 2010 of the New Executive Office Building, 726 Jackson Place, N.W., Washington, DC. The meeting will begin at 9:30 a.m.

Clearance to attend meeting: Because the security system requires advance identification of visitors, please call Brenda Harper or Margaret Davis, 202–395–6803 by noon on November 29, 1984 to advise of your attendance.

Current background: There have been several innovations in the Federal procurement process within this past year. The Federal Acquisition Regulation (FAR) was implemented in April, establishing a single simplified regulatory base for contracting throughout the Federal Government. The statutory basis for Federal Government contracting is still split between the Federal Property and Administrative Services Act, the Armed Services Procurement Act, and a multitude of less comprehensive procurement legislation so that, to some extent, different rules still do apply among Federal agencies. Nonetheless, a single primary regulation and a unified regulatory system should ease the administrative burden on those doing business with the Government as well as on Government contracting personnel.

The Executive agencies have continued to implement Executive Order 12352, "Federal Procurement Reforms." Implementation guidance was developed and furnished to the agencies by several interagency task groups under the Executive Committee on Federal Procurement Reforms. The Executive Committee is comprised of the eight largest procuring agencies plus the Office of Personnel Management and the Small Business Administration. Two significant packages sent to the Heads of Executive Agencies and Establishments this year were: (1) Guidance for Developing Criteria to Evaluate/Certify Procurement Systems and to Enhance Competition, and (2) Guidelines for the Simplification of Small Purchases. These publications can be obtained through the OFPP Point of Contact listed below.

GOVERNMENT PRESENTATION: Attendees will be briefed on several current areas of interest. These include an update on the Study of Alternatives in the Procurement of Professional Services which OFPP was directed to do by Pub. L. 98–369. A public meeting was held on September 13 to solicit comments on this subject. A notice of the meeting, including background information on the study, was published in the **Federal Register** on August 29, 1984. Copies of the OFPP study plan can be obtained from OFPP at the address given below. Possible revisions to OMB Circulars A–76 and A–109 will also be briefing topics

Public Presentation of Views at Meeting

Oral Presentations

You may make an oral presentation on your own behalf or as a representative of any entity or any interested group, whether public or private. If you wish to provide oral testimony, you should notify Ms. Marianne Healy by November 26 by calling 202–395–6803 or writing to the address below. Oral presentations will be limited to 10 miniutes. A written summary of the presentation should be provided to OFPP on the day of the meeting.

Written Presentations

Written testimony may be submitted until November 29 to the Office of Federal Procurement Policy at the address below.

FOR FURTHER INFORMATION CONTACT: Ms. Marianne Healy, Office of Management and Budget, New Executive Office Building, Room 9025, 726 Jackson Place, NW, Washington, DC 20503—(202) 395–6803.

Dated: September 20, 1984.

Donald E. Sowle,

Administrator.

[FR Doc. 84-25406 Filed 9-24-84; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632–6000.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on August 28, 1984 (49 FR 34114). Individual authorities established or revoked under Schedules A, B, or C between August 1, 1984 and August 31, 1984 appear in a listing below. Future notices will be published on the fourth Tuesday of each month or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30, of each year.

Schedule A

The following exception is established:

Department of the Army

Associate Director of Admissions for Plans and Programs, U.S. Military Academy, West Point, New York. Effective August 24, 1984.

Schedule B

No exceptions were established or revoked in Schedule B during the month of August.

Schedule C

The following exceptions are established:

Department of Agriculture

One Private Secretary to the Deputy Under Secretary for International Affairs and Commodity Programs. Effective August 1, 1984.

One Director of Congressional and Public Affairs, Federal Crop Insurance Corporation. Effective August 1, 1984.

One Confidential Assistant to the General Counsel, Office of the General Counsel. Effective August 1, 1984.

One Midwest Area Director to the Deputy Administrator for State and County Operations. Effective August 2, 1984.

One Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective August 15, 1984.

One Confidential Assistant to the Manager, Federal Corp Insurance Corporation. Effective August 31, 1984.

Department of Commerce

One Congressional Liaison Specialist to the Deputy Assistant Secretary for Congressional Affairs. Effective August 10, 1984.

One Confidential Assistant to the Special Assistant to the Deputy Secretary. Effective August 10, 1984.

One Special Assistant to the Director of Public Affairs. Effective August 16, 1984.

One Confidential Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration. Effective August 16, 1984.

One Congressional Liaison Specialist to the Under Secretary for Economic Affairs. Effective August 30, 1984

One Special Assistant to the Assistant Secretary for Telecommunications and Information. Effective August 30, 1984.

One Confidential Assistant to the General Counsel. Effective August 30, 1984.

Department of Defense

One Private Secretary to the Director of Net Assessment, Office of the Under Secretary of Defense (Policy). Effective August 13, 1984.

One Joint Chiefs of Staff Representative to the Conference on Disarmament in Europe. Effective August 15, 1984.

One Private Secretary to the Assistant Secretary of Defense (Comptroller). Effective August 15, 1984.

One Private Secretary to the Senior Judge, U.S. Court of Military Appeals. Effective August 16, 1984.

One Special Assistant to the Deputy Assistant Secretary of Defense (Readiness and Training). Effective August 20, 1984.

Department of Education

One Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance, Office of Postsecondary Education. Effective August 1, 1984.

One Special Assistant to the Director of Intergovernmental Affairs, Office of the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective August 16, 1984.

Department of Energy

One Legal Advisor to a Member of the Commission, Federal Energy Regulatory Commission. Effective August 30, 1984.

Department of Health and Human Services

One Confidential Assistant to the Director of Community Services. Effective August 3, 1984.

One Confidential Secretary to the Assistant Secretary for Legislation. Effective August 23, 1984.

One Assistant to the Secretary (Special Programs). Effective August 27, 1984.

Department of Housing and Urban Development

One Special Assistant to the Secretary. Effective August 1, 1984.

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective August 2, 1984.

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective August 7, 1984.

One Confidential Assistant to the Assistant Secretary for Public Affairs. Effective August 7, 1984.

One Senior Legislation Specialist to the Deputy Assistant Secretary for Legislation. Effective August 7, 1984.

One Associate Deputy Assistant Secretary for Policy Development and Research. Effective August 8, 1984.

One Executive Assistant to the Deputy Assistant Secretary for Legislation, Office of the Assistant Secretary for Legislation and Congressional Relations. Effective August 15, 1984.

One Senior Legislation Specialist to the Deputy Assistant Secretary for Legislation, Office of the Assistant Secretary for Legislation and Congressional Relations. Effective August 15, 1984.

One Staff Assistant to the Under Secretary. Effective August 16, 1984.

One Special Assistant to the Deputy Assistant Secretary for Multifamily Housing Programs. Effective August 30, 1984.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and Director of Congressional and Legislative Affairs. Effective August 1, 1984.

One Special Assistant to the Secretary. Effective August 1, 1984.

One Supervisory Public Affairs Specialist to the Director, Bureau of Land and Management. Effective August 15, 1984.

One Special Assistant to the Deputy Director, National Park Service. Effective August 16, 1984.

Department of Justice

One Secretary (Stenography) to the Deputy Attorney General. Effective August 3, 1984.

One Attorney-Advisor (General) to the Assistant Attorney General, Land and Natural Resources Division. Effective August 3, 1984.

One Attorney-Advisor to the Assistant Attorney General, Civil Rights Division. Effective August 6, 1984.

One Special Assistant to the Assistant Attorney General, Civil Division. Effective August 15, 1984.

One Associate Director of Public Affairs, Offices, Boards, and Divisions. Effective August 16, 1984.

One Staff Assistant to the Assistant Attorney General, Civil Rights Division. Effective August 17, 1984.

One Confidential Assistant and Private Secretary to the Assistant Attorney General, Land and Natural Resources Division. Effective August 22, 1984.

Department of Labor

One Special Assistant to the Secretary. Effective August 10, 1984.

One Executive Assistant to the Assistant Secretary for Veterans' Employment and Training. Effective August 27, 1984.

One Special Assistant to the Secretary. Effective August 27, 1984.

One Special Assistant to the Deputy Under Secretary for International Affairs. Effective August 30, 1984.

Department of the Navy

One Special Assistant to the Deputy Under Secretary of the Navy (Policy). Effective August 30, 1984.

Department of State

One Secretary (Stenography) to the Director, Bureau of Politico-Military Affairs. Effective August 15, 1984.

One Secretary (Stenography) to the Assistant Secretary for the Bureau of Inter-American Affairs. Effective August 16, 1984.

One Staff Assistant to the Assistant Secretary for the Bureau of International Organization Affairs. Effective August 26, 1984.

One Secretary (Stenography) to the Assistant Secretary for the Bureau of East Asian and Pacific Affairs. Effective August 29, 1984.

One Special Assistant to the Assistant Secretary for the Bureau of Near Eastern and South Asian Affairs. Effective August 30, 1984.

One Staff Assistant to the Under Secretary for Management. Effective August 30, 1984.

One Staff Assistant to the Under Secretary for Management. Effective August 30, 1984.

Department of Transportation

One Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety administration. Effective August 1, 1984.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective August 3, 1984.

One Special Assistant to the Director of Public Affairs, Urban Mass Transportation Administration. Effective August 17, 1984.

Department of the Treasury

One Special Assistant to the Assistant Secretary for Policy, Planning, and Communications. Effective August 15, 1984.

One Public Affairs Specialist to the Assistant Secretary for Policy, Planning, and Communications. Effective August 16, 1984.

One Staff Assistant to the Assistant Secretary for Administration. Effective August 30, 1984.

Action

One Special Assistant to the Executive Officer. Effective August 7, 1984.

Agency for International development

One Deputy Assistant to the Administrator for Public Affairs. Effective August 20, 1984.

One Associate Director for Legislative Affairs. Effective August 20, 1984.

One Special Assistant to the Assistant Administrator, Bureau for Africa. Effective August 20, 1984.

One Special Assistant to the Assistant to the Admninistrator for External Affairs. Effective August 20, 1984.

One Special Assistant to the Assistant to the Administrator for External Affairs. Effective August 20, 1984.

One Deputy Director, Women in Development. Effective August 27, 1984.

Commodity Futures Trading Commission

One Special Assistant to a Commissioner. Effective August 2, 1984.

Consumer Product Safety Commission

One Staff Assistant to the Chairman. Effective August 13, 1984.

One Congressional Relations Specialist to the Director, Office of Congressional Relations. Effective August 13, 1984.

Environmental Protection Agency

One Program Advisor to the Assistant Administrator for Water. Effective August 1, 1984.

One Special Assistant to the Regional administrator in Philadelphia, Pennsylvania. Effective August 7, 1984.

One Confidential Assistant to the Executive assistant to the Administrator. Effective August 18, 1984.

Executive Office of the President

One Special Assistant to the Executive Assistant to the United States Trade Representative. Effective August 8, 1984.

Federal Trade Commission

One Staff Assistant to the Chairman. Effective August 2, 1984.

General Services Administration

One Confidential Assistant to the Assistant Administrator for Federal Supply and Services. Effective August 3, 1984.

International Trade Commission

One Confidential Assistant to a Commissioner. Effective August 3, 1984.

National Endowment for the Humanities

One Public Affairs Officer to the Assistant Chairman. Effective August 15, 1984.

Securities and Exchange Commission

One Secretary (Stenography) to the Director, Division of Enforcement. Effective August 3, 1984.

U.S. Information Agency

One Staff Assistant to the Director. Effective August 15, 1984.

Dated: September 13, 1984.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-25215 Filed 9-24-84; 8:45 am]

BILLING CODE 6325-01-M

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

Correction

In FR Doc. 84-24725, appearing on page 36718 in the issue of Wednesday, September 19, 1984, make the following correction:

In the first column, the date of the meeting of the Federal Prevailing Rate Advisory Committee reading "Thursday, October 15, 1984" should have read "Thursday, October 25, 1984".

BILLING CODE 1505-01-M

PENSION BENEFIT GUARANTY CORPORATION

Approval of Certain Plan Amendments Requiring PBGC Approval Under ERISA Section 4220

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of class approval.

SUMMARY: This notice advises the public of the Pension Benefit Guaranty Corporation's granting of approval to four classes of plan amendments requiring the PBGC's approval under section 4220 of the Employee Retirement Income Security Act of 1974, as amended. Under section 4220, certain plan amendments adopted after September 25, 1983, may not be put into effect without the PBGC's approval. The PBGC may disapprove an amendment only if it finds that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The PBGC has determined that these four plan amendments would not in any plan create an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. Therefore, the effect of this notice is to grant class approval for these amendments, so that plans may adopt them without filing individual requests for approval.

EFFECTIVE DATE: September 25, 1984.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4860. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Section 4220(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act, (the "Act"), provides that certain multiemployer plan amendments adopted after September 25, 1983, may be put into effect only with the approval of the Pension Benefit Guaranty Corporation or if the PBGC fails to disapprove the amendment within 90 days after receipt of notice of the amendment. Under section 4220(c), the PBGC may disapprove an amendment only if it determines that the amendment creates an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The PBGC's approval under section 4220 is required for all plan amendments authorized by sections 4201–4219 (other than an amendment permitted by section 4211(c)(5), dealing with the adoption of alternatives to the statutory methods for allocation of a plan's unfunded vested benefits).

The PBGC has determined that four plan amendments authorized by sections 4201–4219, and therefore covered by section 4220, would not in any case have the effect of creating an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. Consequently, the PBGC is granting approval for these four classes of amendments.

The plan amendments receiving this approval are those authorized by sections 4203(c)(4) (permitting plans that primarily cover employees in the entertainment industry to limit the applicability of the special withdrawal liability rule), 4205(c)(1) (allowing a retain food industry plan to be amended to substitute "35 percent" for "70 percent" in the partial withdrawal liability rule of section 4205(b)(1)(A)), 4210(b)(2) (allowing a plan, other than one primarily covering employees in the building and construction industry, to adopt the six-year "free look" rule), and 4211(c)(1) (permitting certain plans to adopt one of the three statutory alternatives for determining the unfunded vested benefits allocable to a withdrawing employer).

In a notice published in the **Federal Register** on May 2, 1983 (48 FR 19806), the PBGC advised the public that it was considering granting approvals for plan amendments authorized by section 4203(c)(4) and section 4205(c)(1) of the Act. The PBGC noted that an amendment under section 4203(c)(4) broadens the events giving rise to withdrawal liability by making the general withdrawal liability rules applicable to a group or class of employers that otherwise would be subject to the special, more limited withdrawal rules applicable to entertainment plans. The PBGC also observed that an amendment authorized by section 4205(c)(1) gives a retain food plan at least as much, and usually greater, protection against declines in covered work as that provided by the statutory rule requiring a 70 percent decline in contributions as a condition for the imposition of partial withdrawal liability.

For these reasons, the PBGC has concluded that an amendment under either section 4203(c)(4) or 4205(c)(1) would not in any case create an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. Therefore, a plan sponsor need not submit amendments authorized by these sections to the PBGC for approval.

The third amendment approved under this notice is one authorized by section 4210(b)(2). This so-called "free look" rule provides that a plan, other than one primarily covering employees in the building and construction industry, may be amended to provide that an employer that withdraws in a complete or partial withdrawal is not liable to the plan if the employer:

(i) Was first obligated to contribute to the plan after September 26, 1980;

(ii) Was obligated to contribute to the plan for no more than the lesser of six consecutive plan years preceding the date of withdrawal or the number of years required for vesting under the plan;

(iii) Contributed less than 2 percent of all employer contributions for each plan year in which it was required to contribute; and

(iv) Never previously used this section to avoid withdrawal liability to the plan.

In addition, this "free look" rule applies only if:

(i) The plan is amended to provide for its application;

(ii) The plan provides that benefits of participants accrued as a result of service with an employer before the employer was required to contribute to the plan may not be payable if the employer ceases contributions to the plan; and

(iii) The ratio of plan assets to benefit payments during the plan year preceding the first plan year for which the employer was required to make plan contributions was at least 8 to 1.

These standards ensure that adoption of the provision will not create an unreasonable risk. Plans can permit a "free look" only to small, short-term contributors—those contributing less than 2 percent of total plan contributions for less than 7 years—and the ratio of plan assets to benefit payments for the plan year preceding the first plan year for which the employer was required to contribute must be at least 8 to 1. Further, if the ratio of plan assets to benefit payments falls below 8 to 1, a "free look" amendment cannot be applied to any new employer. These statutory requirements make it unnecessary to consider whether, in a particular case, an amendment authorized by section 4210(b)(2) will pose an unreasonable risk of loss to plan participants and beneficiaries or to the PBGC. The PBGC therefore grants approval to all such amendments.

Finally, approval is extended to certain amendments authorized by section 4211(c)(1). With the exception of a plan described in section 404(c) of the Internal Revenue Code, an employer's

share of unfunded vested benefits is determined by the presumptive method of section 4211(b) unless the plan is amended pursuant to section 4211(c)(1). Section 4211(c)(1) permits a plan, other than one primarily covering employees in the building and construction industry, to adopt by amendment one of the three allocation methods described in sections 4211(c)(2) (the modified presumptive method), 4211(c)(3) (the rolling-5 method), and 4211(c)(4) (the direct attribution method).

The four statutory methods result in the same overall degree of allocation of a plan's unfunded vested benefits, notwithstanding the fact that different amounts may be allocated to individual employers under each method. Adoption of any of the three alternative methods could create a risk of loss only if the effect of changing methods were to shift liabilities to employers who were unable to pay the increase in withdrawal liability. However, because each method apportions liability based on the withdrawing employer's participation in the plan, measured either by that employer's contributions relative to the total contributions to the plan or by the unfunded vested benefits directly earned by employees of that employer, there is no reason to believe that changes in the allocation method shift liabilities in any substantial or systematic way toward weaker employers. Moreover, assessing this potential risk would require detailed inquiries into the financial situations of various employers, which would place a heavy burden on plan sponsors, employers, and the PBGC. Such a burden cannot be justified in light of the minimal possibility that an increased risk might be determined to exist. Therefore, the PBGC grants approval to all plan amendments that simply adopt one of the three allocation methods described in sections 4211(c)(2), 4211(c)(3), and 4211(c)(4).

This notice covers all plan amendments specified above, regardless of proposed effective date. It also extends to subsequent repeals of these amendments. However, this notice does not apply to any amendment that limits or otherwise modifies the statutorily prescribed amendments. Finally, the PBGC emphasizes that this approval relates only to the issue of risk under section 4220; it shall have no effect in determining whether a particular plan amendment was adopted in accordance with applicable statutory and plan provisions.

Issued at Washington, D.C. on this 19th day of September 1984.

C.C. Tharp,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 84-25417 Filed 9-24-84; 8:45 am]

BILLING CODE 7708-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23425; (70-7021)]

Middle South Energy, Inc.; Proposal To Issue and Sell First Mortgage Bonds; Exception From Competitive Bidding

September 20, 1984.

Middle South Energy, Inc. ("MSE"), P.O. Box 61000, New Orleans, Louisiana 70161, a wholly owned subsidiary of Middle South Energy, Inc. ("MSU"), a registered holding company, has proposed a transaction subject to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

MSE proposes to issue and sell First Mortgage Bonds ("Bonds") in one or more series through October 31, 1985, by means of an underwritten offering or offerings through an investment banker, in an aggregate principal amount not to exceed $400 million. The Bonds will be issued and sold under one or more supplemental indentures to MSE's existing Mortgage and Deed of Trust, as supplemented, and will have such other terms and conditions as shall be approved by this Commission. MSE proposes to apply the net proceeds from the issuance and sale of the Bonds to finance MSE's 90% interest in the Grand Gulf I Nuclear Station ("Grand Gulf I"). This will include the repayment of then outstanding short-term borrowings and/or to the repayment of borrowings then outstanding under its Second Amended and Restated Bank Loan Agreement, dated June 15, 1981 ("Domestic Bank Loan Agreement"). Borrowings under the Domestic Bank Loan Agreement are expected to total approximately $1.711 billion by the end of 1984. As of August 15, 1984, MSE had $1.698 billion of short-term debt outstanding under the Domestic Bank Loan Agreement. By the first quarter of 1985, when Grand Gulf I is expected to be placed into commercial operation, MSE will have expended $3.065 billion (excluding nuclear fuel) for its interest in Grand Gulf I.

The capital structure of MSE as of May 31, 1984 indicates:

	Per books percent	Pro forma percent
First Mortgage Bonds	11.3	19.7
Other Long-Term Debt	53.3	41.4
Common Equity	35.4	38.9
Total Capitalization	100.0	100.0

As additional security for its Bond obligations, MSE may be required to assign, for the benefit of the Bond holders, its rights under the Availability Agreement, dated June 21, 1974, as amended, pursuant to the terms of an Eleventh Assignment of Availability Agreement, Consent and Agreement. In addition, MSE may be required to assign its rights under the Capital Funds Agreement, dated as of June 21, 1974, pursuant to the terms of an Eleventh Supplementary Capital Funds Agreement and Assignment.

MSE requests an exception from the competitive bidding requirements of Rule 50 pursuant to Rule 50(a)(5) in connection with the proposed issuance and sale of Bonds to underwriters for sale to the public. MSE states that the exception is justified because the company lacks an earnings or operating history due to the fact that its only project, the Grand Gulf Station, has not been placed in commercial operation, and for other reasons stated in its proposal. MSE proposes, and is hereby authorized, forthwith, to select one or more investment banking firms which will act (or form a group of firms to act) as underwriters for the offering, and to negotiate the price and other terms on which the shares to be sold in that offering will be issued to such underwriters for public sale.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 15, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact and/or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-25410 Filed 9-24-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Mitsubishi MU-2 Airplanes; Availability of Special Certification Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Documentation.

SUMMARY: The Director of the FAA, Central Region, has conducted a review of the issues involved in the Mitsubishi MU-2 Special Ceritification Review. He has also reviewed and discussed with his staff a document entitled "Mitsubishi MU-2 Special Certification Review, Final Report". Based on this review, the Director approves issuance of the Mitsubishi MU-2 Special Certification Review. A copy of this document is on file in the FAA Rules Docket and is available for examination and copying at the Rules Docket, and also may be obtained from the Office of the Regional Counsel, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on September 7, 1984.

Murray E. Smith,

Director, Central Region.

[FR Doc. 84-25427 Filed 9-24-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series—No. 27-84]

Treasury Notes of September 13, 1984; Series Y-1986

September 20, 1984.

The Secretary announced on September 19, 1984, that the interest rate on the notes designated Series Y-1986, described in Department Circular—Public Debt Series—No. 27-84 dated September 13, 1984, will be 11⅞ percent. Interest on the notes will be payable at the rate of 11⅞ percent per annum.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 84-25366 Filed 9-24-84; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: "L.A. GEAR CALIFORNIA, INC."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "L.A. GEAR CALIFORNIA, INC." used by L.A. Gear California, Inc., a corporation organized under the laws of the State of California, located at 122 West 25th Street, Los Angeles, California 90007. The application states that the trade name is used in connection with the following merchandise manufactured in Hong Kong, Taiwan, Korea, Brazil and the United States: men's, women's and children's sportswear (specifically shirts, skirts, shorts, pants, dresses, jackets and jumpsuits); footwear, fashion accessories (specifically hosiery, leather and nylon handbags, and carrying bags).

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before November 26, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 19, 1984.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 84-25384 Filed 9-24-84; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 187
Tuesday, September 25, 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 Deposit Insurance Corporation	1
Federal Reserve System	2
Postal Service	3, 4
Securities and Exchange Commission	5
Tennessee Valley Authority	6

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:30 p.m. on Wednesday, September 19, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation with respect to an administrative enforcement action against an administrative enforcement action against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

At that same meeting, the Board of Directors also: (1) Received bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Bank of Verdigre and Trust Company, Verdigre, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska, on Wednesday, September 19, 1984; (2) accepted the bid for the transaction submitted by The National Bank of Neligh, Neligh, Nebraska; and (3) provided such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Mr. H. Hoe Selby, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 20, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 84-25488 Filed 9-21-84; 11:33 am]

BILLING CODE 6714-01-M

2

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 12:00 noon, Monday, October 1, 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. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 28, 1984.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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: September 21, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-25532 Filed 9-21-84; 8:45 am]

BILLING CODE 6210-01-M

3

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Tuesday, October 2, 1984, in Cleveland, Ohio, and at 8:00 a.m. on Wednesday, October 3, in Room 52 A/B of the Cleveland Post Office, 2400 Orange Avenue, Cleveland, Ohio. As indicated in the following paragraph, the October 2 meeting is closed to public observation. The October 3 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the Secretary of the Board, David F. Harris, at (202) 245-3734.

At its meeting on September 10, 1984, and by telephone vote on September 20-21, 1984, the Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for October 2. (See 49 FR 36596, September 18, 1984.) The agenda items of the meeting to be closed concern: (1) discussion of personnel matters; (2) strategic planning in connection with continued collective bargaining negotiations involving the Postal Service and four labor organizations representing certain postal employees; and (3) consideration of the Postal Rate Commission's September 7, 1984, Opinion and Recommended Decision in Docket No. R84-1.

Agenda

Tuesday Session, October 2 (Closed)

1. Discussion of Personnel Matters.

2. Strategic Planning—Collective Bargaining.

3. Consideration of Postal Rate Commission recommended decision in the omnibus rate case, Docket No. R84-1.

Wednesday Session, October 3 (Open)

1. Minutes of the Previous Meeting, September 10-11, 1984.

2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the Members of miscellaneous current developments concerning the Postal Service. Nothing that requires a decision by the Board is brought up under this item.)

3. Officer Compensation. (The Board will consider approval of a recommendation by the Postmaster General regarding adjustment in officer compensation.)

4. Review of Capital Investment Program. (Annually the Board considers approval of Postal Service capital investment plans, in accordance with section 3.4(f) of the Bylaws. Mr. Biglin, Senior Assistant Postmaster General, Administration Group, will present the Postal Service's capital investment program.)

5. Report of Regional Postmaster General. (Mr. Carlin, Regional Postmaster General, Central Region, will report on postal operations in the Central Region.)

6. Capital Investments:

a. Red Bank, NJ General Mail Facility;

b. Potomac, MD Management Academy—additional improvements.

7. Determination of sites for Board of Governors' meetings in 1985.

8. Consideration of Tentative Agenda for the November 13–14, 1984, meeting in Pittsburgh, PA.

David F. Harris,

Secretary.

[FR Doc. 84–25512 Filed 9–21–84; 3:37 am]

BILLING CODE 7710–12–M

4

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting.

By telephone vote on September 20–21, 1984, the Board voted to add discussion of personnel matters to the agenda for the closed meeting on Tuesday, October 2, 1984, in Cleveland, Ohio.

The Board determined that pursuant to section 552b(c)(6) of title 5, United States Code, and section 7.3(f) of title 39, Code of Federal Regulations, the discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b) because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest did not require that the Board's discussion of this matter be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and section 7.6(a) of title 32, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion this portion of the meeting to be closed may properly be closed to public observation pursuant to section 552b(c)(6) of title 5, United States Code, and section 7.3(f) of title 32, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 84–25511 Filed 9–21–84; 3:37 pm]

BILLING CODE 7710–12–M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published)

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, September 12, 1984.

CHANGE IN THE MEETING: Deletion.

A closed meeting scheduled for Tuesday, September 18, 1984, at 2:30 p.m. to discuss the following matter has been cancelled.

Institution of administrative proceeding of an enforcement nature.

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Martin at (202) 272–2179.

Shirley E. Hollis,

Acting Secretary.

September 20, 1984.

[FR Doc. 84–25453 Filed 9–21–84; 11:42 am]

BILLING CODE 6010 01—M

6

TENNESSEE VALLEY AUTHORITY

(Meeting No. 1338)

TIME AND DATE: 10:15 a.m. (EDT), Thursday, September 27, 1984.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda Items

Approval of minutes of meeting held on September 12, 1984.

Discussion Item

1. Update on Implementing TVA's Prime Farmland Policy.

Action Items

C—Power Items

C1. Renewal power contract with Athens, Alabama.

C2. Cooperative agreement with the Kentucky Energy Cabinet for the Atmospheric Fluidized Bed Combustion Demonstration Plant Project.

D—Personnel Items

D1. Renewal of consulting contract with Robert B. Jansen, Mead, Washington, for consultation on the design and construction of major hydro projects, requested by the Division of Engineering Design.

D2. Recommendations on rates of pay and certain monetary fringe benefits for salary policy employees in represented positions resulting from the thirty-third (1984) annual salary negotiations; and recommendations concerning management schedules and certain other employees.

E—Real Property Transactions

E1. Abandonment of certain easements rights affecting approximately 0.04 acre of Boone Reservoir land in Washington County, Tennessee—Tract No. BR–135F.

F—Unclassified

F1. [1] Supplement to Agreement No. TV–60244A with the Office of Surface Mining (OSM), U.S. Department of the Interior providing for aerial photographic and related activities to be performed by TVA.

F2. Contract No. TV–65124A between TVA and Northeast Mississippi Junior College providing for the establishment of a high technology computer training center.

F3. Contract No. TV–65082A between TVA and Appalachian Regional Commission providing for the establishment of a demonstration regional training facility at Walker College in northwest Alabama.

F4. Contract No. TV–65131A between TVA and Walker College providing for cooperation in a demonstration model regional training facility at the college in northwest Alabama.

F5. Supplement to Contract No. TV–50963A between TVA and Tennessee Valley Center for Minority Economic Development, Inc., to implement a program plan for economic development for socially and economically disadvantaged persons in the seven-State TVA region.

F6. Payments to State and counties in lieu of taxes for fiscal year ending September 30, 1984, as provided under Section 13 of the TVA Act, as amended.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 20, 1984.

W.F. Willis,

General Manager.

[FR Doc. 84–25510 Filed 9–21–84; 3:13 pm]

BILLING CODE 8120–01–M

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[1] Item approved by individual Board members. This would give formal ratification to the Board's action.

federal register

Tuesday
September 25, 1984

Part II

Department of Health and Human Services

Public Health Service; Office of the Assistant Secretary for Health; Alcohol, Drug Abuse, and Mental Health Administration; National Institutes of Health; Centers for Disease Control; Health Resources and Services Administration; and Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Office of the Assistant Secretary for Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Office of the Assistant Secretary for Health (OASH).

ACTION: OASH is publishing this document to meet the requirements of Pub. L. 97–375, the Congressional Reports Elimination Act. This statute amends the Privacy Act (5 U.S.C. 552a, section 3(e)(4)) to limit republication to revised system notices only.

SUMMARY: This preamble summarizes significant changes to systems of individually indentifiable records which have occurred since the 1983 annual publication. Four of these revised systems are published in their entirety below and are complete as of the date of signature. None of the modifications being made meet the Office of Management and Budget criteria either for a new or altered system report, or for an advance period of public comment.

OASH has added one new system of records to its inventory since the 1983 annual publication; and one system was also subsequently republished to add a routine use. No systems were deleted.

OASH is republishing the table of contents to the inventory of all of its current systems of records. The citation of the most recent publication of each system is provided following the system's title; an asterisk indicates that the system notice so designated has been modified and is being republished below.

SUPPLEMENTARY INFORMATION: .

A. General Information

1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system, which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act itself in Section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act):

"(3) For a routine use (as described in the routine use section of each specific system notice):

"(4) To the Bureau of the Census for purposes of planning or carryng out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has value;

"(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))."

2. OASH has carefully reviewed each of its system notices again this year with a view toward enhancing clarity and specificity as well as to incorporate normal updating changes. However, we are only republishing those system notices where the changes affect the public's need-to-know (See B.1. immediately below). All other changes, such as a change in organizational designation to reflect a reorganization, are being made to the database (inventory) only.

B. Specific Information

1. This year, PHS has made a special effort to review the "Safeguards" section of all Privacy Act system notices to ensure that the published description both fully and accurately reflects the manner in which both manual and computerized records in each system are protected. As a result, the "Safeguards" section of all notices of OASH systems of records has been reformatted to delineate clearly who the authorized users are and what physical and procedural safeguards are being used to protect the records.

We are publishing the following four systems of records below, because the changes made in the "Safeguards" section affect the public's need-to-know due to the nature of the records in these systems:

09–37–0010, "Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population, HHS/OASH/NCHS."

09–37–0011, "Health Manpower Inventories and Surveys, HHS/OASH/NCHS."

09–37–0012, "Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occurring in the United States During Each Year, HHS/OASH/NCHS."

09–37–0013, "Health Resources Utilization Statistics, HHS/OASH/NCHS."

The Commissioned Personnel Operations Division (CPOD) published in the **Federal Register,** Vol. 48, No. 219, pp. 51744–51757, a comprehensive restructuring of all CPOD system notices, which included complete and accurate safeguards.

In all other OASH systems of records, the changes to the "Safeguards" section have been incorporated into the database.

2. OASH published one new system of records during the year: 09–37–0016, "Users of Health Statistics, HHS/OASH/NCHS," **Federal Register,** Vol. 49, No. 105, p. 22540.

3. Also during the year, OASH added a new routine use and the Special Disclosure Statement permitting disclosures to Consumer Reporting Agencies (see A.1.12. above) to system of records: 09–37–0015, "National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR". This addition was published in the **Federal Register,** Vol. 49, No. 124, p. 25151.

Readers who notice any inadvertent errors or omissions in OASH system notices are invited to bring them to my attention at the following address:

Department of Health and Human Services, Public Health Service, Office of the Assistant Secretary for Health, Office of Management, 5600 Fishers Lane, Room 17–25, Rockville, Maryland 20857.

Dated: September 11, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

Inventory of Privacy Act Systems of Records

Table of Contents

09–37–0001 Office of the Assistant Secretary for Health Correspondence Control System, HHS/OASH/OM, publ. Federal Register, Vol. 48, No. 230, p. 53793
09–37–0002 PHS Commissioned Officer Personnel Data System, HHS/OASH/OM, publ. Federal Register, Vol. 48, No. 219, p. 51748
09–37–0003 PHS Commissioned Corps Medical Records, HHS/OASH/OM, publ. Federal Register, Vol. 48, No. 219, p. 51751
09–37–0005 PHS Commissioned Corps Board Proceedings, HHS/OASH/OM, publ. Federal Register, Vol. 48, No. 219, p. 51752
09–37–0006 PHS Commissioned Corps Grievance, Non-Board and Pre-Board Involuntary Retirement/Separation, and Disciplinary Files, HHS/OASH/OM, publ. Federal Register, Vol. 48, No. 219, p. 51755
09–37–0008 PHS Commissioned Corps Unofficial Personnel Files and Other Station Files, HHS/OASH/OM, publ. Federal Register, Vol. 48, No. 219, p. 51756
09–37–0009 Applicants for National Center for Health Statistics Technical Assistance, HHS/OASH/NCHS, publ. Federal Register, Vol. 49, No. 230, p. 53794
*09–37–0010 Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population, HHS/OASH/NCHS
*09–37–0011 Health Manpower Inventories and Surveys, HHS/OASH/NCHS
*09–37–0012 Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occurring in the United States during Each Year, HHS/OASH/NCHS
*09–37–0013 Health Resources Utilization Statistics, HHS/OASH/NCHS
09–37–0014 Curricula Vitae of Consultants to the National Center for Health Statistics, HHS/OASH/NCHS, publ. Federal Register, Vol. 47, No. 109, p. 45690
09–37–0015 National Center for Health Services Research Grants Records System, HHS/OASH/NCHSR, publ. Federal Register, Vol. 49, No. 124, p. 26151
09–37–0016 Users of Health Statistics, HHS/OASH/NCHS, publ. Federal Register, Vol. 49, No. 105, p. 22540

*Indicates that the system notice is being republished below.

09–37–0010

SYSTEM NAME:

Health and Demographic Surveys Conducted in Probability Samples of the U.S. Population. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782.

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409; and at selected contractor location. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and members of households selected by probability sampling techniques to be representative of the civilian population of the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The incidence of illness and accidental injuries, prevalence of diseases and impairments, the extent of disability, the utilization and cost of health care services, and other health characteristics of individuals obtained in household interviews and from their named health care providers and insurers; or (2) the nutritional status, prevalence levels of specially defined chronic diseases, growth and development patterns and distributions of various health related measurements and related data obtained in a survey involving health examinations, tests, and other measurement procedures; or (3) marital and child bearing history and intended future births, the use of prenatal care, and the family planning practices of individual women obtained by interview. Demographic and socioeconomic characteristics such as age, marital status, education, occupation, and family income are also obtained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(b) (42 U.S.C. 242k).

PURPOSE(S):

The data are used for statistical purposes only. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis, and interpretation, to meet the legislative mandates of 42 U.S.C. 242k, i.e., to determine levels of illness and disability and their effects on the population, the use of health care facilities, trends in family formation and dissolution, and the like.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data are disseminated for purposes of statistical research and analysis outside DHHS in forms which do not permit the identification of individuals, such as publications of statistical tables, specially requested tabulations and public use computer tapes. These are communicated to interested persons outside DHHS, such as members of Congress and their staffs, other executive branch agencies, universities, States, cities, private foundations, etc. The findings are used by demographers, sociologist, health statisticians, epidemiologists, other scholars and concerned citizens, to evaluate health matters, make determinations on needs for legislation, appropriations, new service programs, and the like.

The Department occasionally contracts with a private firm for the purpose of collecting analyzing, aggregating, or otherwise refining records in this system. Relevant records are disclosed to such a contractor. The contractor is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tapes.

RETRIEVABILITY:

A serial number tied to the selection process of successively smaller geographic areas is assigned to each record on magnetic tape. This serial number is cross-indexed to the original, individually identifiable record.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records

do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry divices and 24-hour security guards.

3. Procedural Safeguards: All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in the system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

Original survey records are reviewed for accuracy, edited, and data (without personal identifiers such as name or Social Security Number) are transferred to magnetic tape. The original records are retained in office files of NCHS until the process of conversion to magnetic tape and verification of information is completed. This process is completed within approximately nine months. The original records are then sent to the Federal Records Center where they are stored for 5 years for interview survey records and 10 years for examination records. Microfilm copies of examination records are retained at the Federal Records Center for 40 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager.

RECORD ACCESS PROCEDURES:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Respondents included in the survey samples.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d) (1) through (4), and (e)(4) (G) and (H) in accordance with the provisions of subsection 552a(k)(4) of the Privacy Act of 1974. The reason this system has been exempted is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, October 8, 1975, page 47413.

09–37–0011

SYSTEM NAME:

Health Manpower Inventories and Surveys. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; and at selected contractor locations. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals trained in specific health occupations, such as dentists, nurses, pharmacists, optometrists, dental hygienists, and other providers of health care services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on educational attainment, place of education, activity status, place and setting of employment or practice, place of residence, date of birth, sex, and marital status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(b) (42 U.S.C. 242k).

PURPOSE(S):

The data are used for statistical purposes only. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis, and interpretation to meet legislative mandates of the Public Health Service Act, Section 306 (42 U.S.C. 242k), such as an annual report on health resources, including a description and analysis of the statistics included under Section 306(b)(1)(G). In addition, probability samples of individuals are selected by NCHS for statistical research purposes. Tables, magnetic tapes, and statistical samples of individuals are provided for statistical purposes only to the Bureau of Health Professions, Health Resources and Services Administration, for its use in determining health manpower scarcity areas, for loan forgiveness, and developing and evaluating educational and training programs for health manpower.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data are made available to Health Systems Agencies and the State Agency designated under the Public Health Service Act (42 U.S.C. 300 l and m) for statistical purposes only for developing and evaluating health plans.

The data are also disseminated for the purpose of statistical research and analysis outside DHHS in forms which do not permit the identification of individuals, such as publication of statistical tables, specially requested tables, and public use magnetic tapes. These are communicated to interested persons outside DHHS, such as Members of Congress, other executive branch agencies, professional associations, universities, State, cities, private foundations, etc. The statistical summaries are used by health manpower researchers, legislators statisticians and concerned citizens to evaluate the Nation's health manpower resources, make determinations on needs for legislation, new health manpower training programs, and the like.

The Department occasionally contracts with a private firm for the purpose of collecting, analyzing,

aggregating or otherwise refining records in the system. Relevant records are disclosed to such a contractor. The contractor is required to maintain Privacy Act safeguards with respect to such records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tape.

RETRIEVABILITY:

Name and address, date of the inventory or survey, and other identifiers permit the retrieval of a computer record of the individual's information contained on magnetic tape. Original records of information are reviewed by the contractor and/or National Center for Health Statistics (NCHS) staff for accuracy and edited, and data with personal identifier (such as name and address) are transferred to magnetic tape. The records are then matched by personal identifiers to produce an unduplicated file of individuals in a health occupation.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. The automated records and the computer equipment are in secured areas with fire extinguishers and sprinkler system. Access to the buildings in which the manual and the automated records are stored is controlled by special entry devices and 24-hour security guards.

3. Procedural Safeguards: All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions. Data stored in computers are accessed through the use of passwords/keywords known only to the principal investigators and authorized personnel. These passwords/keywords are changed frequently.

Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards of Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

The original records are retained in the offices of national professional associations and/or State boards of licensure, or the NCHS data processing facility until the process of conversion to magnetic tape and verification of information is completed and a subsequent inventory or survey is initiated. For these reasons the records may be retained for a period of up to five years before disposal.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosure of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Health practitioners, state licensing agencies, or professional associations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d)(1) through (4), and (e)(4)(G) and (H) in accordance with the provisions of subsection 552a(k)(4) of the Privacy Act of 1974. The reasons that the system has been exempted is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, October 8, 1975, page 47413.

09–37–0012

SYSTEM NAME:

Vital Statistics for Births, Deaths, Fetal Deaths, Marriages and Divorces Occuring in the United States during Each year. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None

SYSTEM LOCATION:

Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782;

Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are born and their parents; individuals who die; individuals who are married or divorced; and parents experiencing fetal deaths.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include microfilm images of State records or machine-readable data prepared by the State from records collected under the laws of each State for births, deaths fetal deaths, marriages and divorces. The records contain the demographic characteristics of individuals associated with each event. In addition, the birth records include information on the characteristics of each live birth, the health status of the infant, and socioeconomic characteristics of the parents. The death records contain medical information relating to cause of death and to socioeconomic characteristics of the deceased; the fetal death record contains medical information relating to cause of death and socioeconomic characteristics of the parents. Marriages

and divorces include demographic and socioeconomic characteristics of both parties to the event and legal information regarding the event.

Periodically the National Center for Health Statistics (NCHS) conducts followback surveys, collecting information on random samples of births and deaths through mail questonnaires. The content of questionnaires for the followback surveys varies. Past surveys have collected information on such topics as hospital utilization in the last year of life, smoking habits of the deceased, health status of infants, and pregnancy and employment histories of mothers.

Lists of names and other identifying information in the system are provided to NCHS by individuals and organizations who for health research purposes seek to have them matched against files of decedents in order to identify State death records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(h) (42 U.S.C. 242k.)

PURPOSE(S):

The data are used for statistical purposes only. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis, and interpretation, to meet the legislative mandates of 42 U.S.C 242k, i.e., to determine the extent and nature of illness and disability of the population of the U.S., including life expectancy and levels of infant and maternal mortality, environmental and other health hazards, trends in family formation, growth, and dissolution, and other related matters. The followback surveys are designed primarily to expand the scope of data that NCHS can collect from the national registration system, to make the registration system more responsive to changing needs for data, and to evaluate the quality of data collected on the birth and death records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The processed data are disseminated for public use in forms that do not permit identification of individuals, such as published statistical tables, special unpublished tabulations, and public use computer tapes, which carry no individual identifiers. They are used by members of Congress and their staffs, other executive branch agencies, state and city governments, public and private research institutions, life insurance companies, faculty and students of universities, physicians, workers in health information, newspaper reporters and feature writers, etc. The findings are used to make determinations on needs for legislation, appropriations, and programs in the health field; to pinpoint health problems, measure progress of national health programs, and make population estimates; for epidemiological studies, marketing research, sociological studies, and studies of the family; and for other research directed at understanding our society.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tapes.

RETRIEVABILITY:

Some States submit microfilm copies of certificates of birth, death, fetal death, marriage, and divorce, and statistics are extracted from them. These microfilms contain individual identifiers; they are the only individually identified records in the system. Other States submit vital statistics data on magnetic tape, showing only a State file number for each case but no personal identifiers

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry devices and 24-hour security guards.

3. Procedural Safeguards: All employees of NCHS and contractor personnel with access to NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safequards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

The microfilm copies of the individually identifiable records are retained in office files of NCHS until the process of conversion to magnetic tape and verification of information is completed. The death records are sent to the Federal Records Center ten years after tabulation for deaths occurring during the three year period surrounding census years and one year after tabulation for other years. They are held until disposed of, 15 years after tabulation for deaths of the censal years, and five years after tabulation for other years. Records of births, fetal deaths, marriages, and divorces are disposed of two years after tabulation. The questionnaires for the followback surveys are destroyed after conversion to magnetic tape, tabulation, and analyses have been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management. Public Health Service. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Vital statistics records are obtained from State vital statistics offices, or, in rare instances, from other State or county repositories of marriage or divorce data. Information in followback surveys in obtained from hospitals, physicians, or relatives of the infants or the deceased.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in subsections 552a(c)(3), (d)(1) through (4), and (e)(4)(G) and (H), in accordance with the provision of subsection 552a(k)(4) of the Privacy Act of 1974. The reason that the system has been exempted is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the Federal Register, October 8, 1975, page 47413.

09-37-0013

SYSTEM NAME:

Health Resources Utilization Statistics. HHS/OASH/NCHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782; Federal Records Center, 4205 Suitland Road, Suitland, Maryland 20409; and at selected contractor locations. A current list of contractor sites is available by writing to the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Recipients of medical care included in statistical surveys and reports of the National Center for Health Statistics (NCHS), including but not limited to: (1) Staff and residents of nursing homes selected by random sampling techniques to be representative of nursing homes in the U.S. (2) physicians providing medical care and patients visiting such physicians; (3) patient medical records from selected short-stay hospitals.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing information on: (1) The utilization of long-term care and nursing home care through data on clients and residents (demographic and social characteristics, health status and charges paid for care) and the facility (general characteristics certification, services offered and expense); (2) the demographic characteristics, medical and other problems of persons visiting physicians, and the physicians' diagnoses, treatment, and disposition decisions made during such visits as obtained from physicians during randomly assigned one-week survey periods; (3) the demographic characteristics administrative information (admission and discharge dates, discharge status, and medical record number), and medical information (diagnoses and surgical procedures) abstracted from the face sheet of short-stay hospital medical records; (4) records of family planning medical services provided by the clinics participating in a nationwide sample survey reporting system, the demographic and socioeconomic characteristics, including education and welfare status, of the recipients of these services, and the extent to which these services (excluding physicians' offices) are funded by Federal grants.

In many cases, these records do not contain individual identifiers when they come under control of the National Center for Health Statistics; they carry only sequence numbers, which only the originating agency would be able to translate into a personal identifier—and even then, not in all cases. Names of residents and staff of nursing homes and patients of physicians are listed on separated forms for sampling purposes only and are not included in the final statistical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 306(b) (42 U.S.C. 242k).

PURPOSE(S)

The data are used for statistical purposes only, as specified by statute, Section 308(d) of 42 U.S.C. 242m. Uses within the Department include the preparation of aggregated data in the form of statistical tables for publication, analysis and interpretation to meet the legislative mandates of 42 U.S.C. 242k, i.e., collection of statistics on the utilization of health services, including the utilization of: (1) Long-term care services and nursing home facilities to determine levels of illness and disability, effects on the serviced population, and the costs of care; (2) ambulatory health services by specialties and types of practice of the health professionals providing such services; (3) short-stay hospitals to determine characteristics of patients, length of stay, diagnosis and surgical operations, and utilization patterns of care in hospitals of different size and ownership; (4) family planning facilities to provide statistics on the size of and services dispensed by these facilities, the numbers and characteristics of family planning patients, the overall proportion of the "target population" which is being reached by family planning programs on a national scale, and the like. The family planning data are distributed to the Deputy Assistant Secretary for Population Affairs, DHHS, and the Bureau of Community Health Services in the Health Resources and Services Administration for the purpose of executing national family planning programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The data are disseminated in forms which do not permit the identification of individuals, such as publications of statistical tables, special requested tabulations, and public use computer tapes. These are communicated to interested persons outside DHHS, such as members of Congress and their staffs, other executive branch agencies, universities and medical schools, state and local health planning agencies, private foundations, etc. The findings are used by demographers, sociologists, health statisticians, epidemiologists, medical educators, health planners, other scholars, and concerned citizens, to evaluate health matters, make determinations on needs for legislation, appropriations, new service programs, and the like.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and magnetic tapes.

RETRIEVABILITY:

Data are retrieved by individual identifier only in the editing stage of data processing and only for the purpose of correcting errors in the recording of information. Original survey records are reviewed for accuracy and edited, then data (without personal identifiers such as name or Social Security Number) are transferred to magnetic tape.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as

appropriate for the particular records maintained. NCHS and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users: Persons authorized and needing to use the records, including project directors, contract officers, interviewers, analysts, statisticians, statistical clerks, and key punch operators on the staffs of the Center and the contractors.

2. Physical Safeguards: The manual portions of the records are stored in locked files or offices when not in use. (The automated portions of the records do not contain individually identifiable data. Because they are not subject to the Privacy Act, descriptions of the computer safeguards used are not included in this notice.) Access to the buildings in which the manual records are stored is controlled by special entry devices and 24-hour security guards.

3. Procedural safeguards: All employees of NCHS and contractor personnel with access of NCHS records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information; periodic training sessions are conducted to reinforce the confidentiality restrictions.

Contractors who maintain records in this system are instructed to make no further disclosure of the records. Privacy Act requirements are specifically included in contracts for survey and research activities related to this system. The HHS project directors, contract officers, and project officers oversee compliance with these requirements.

These safeguards are in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual; supplementary chapter PHS.hf: 45–13; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 312); and the NCHS Staff Manual on Confidentiality.

RETENTION AND DISPOSAL:

The original records are retained in office files of NCHS or NCHS contractors for two years. The procedure for family planning records differs in that the original documents are retained in office files for only two months. In all instances, the original records are then sent to the Federal Records Center where they are stored for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Center for Health Statistics, Center Building, Room 2–19, 3700 East-West Highway, Hyattsville, Maryland 20782.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address.

RECORD ACCESS PROCEDURE:

Access to record systems which have been granted an exemption from the Privacy Act access requirement may be made at the discretion of the System Manager. Positive identification is required from anyone seeking access. Appeal of access refusal may be made to the Director, Office of Management, Public Health Service. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

If access has been granted, contact the System Manager and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Hospitals, physicians, clinics, nursing homes, and other providers of health care.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

With respect to this system of records, exemption has been granted from the requirements contained in Subsections 552(a)(3), (d)(1) through (4), and (e)(4)(G) and (H), in accordance with provisions of Subsections 552a (k)(4) of the Privacy Act of 1974. The reason for this exemption is that this system contains only records required by statute to be maintained and used solely as statistical records. The exemption was published in the **Federal Register**, September 11, 1978, page 40229.

[FR Doc. 25245 Filed 9–24–84; 8:45 am]
BILLING CODE 4160–17–M

Alcohol, Drug Abuse, and Mental Health Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services (DHHS); Public Health Service (PHS); Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

ACTION: ADAMHA is publishing this document to meet the requirements of Section 3(e)(4) of the Privacy Act (5 U.S.C. 552a), as amended by the Congressional Reports Elimination Act of 1982 (Pub. L. 97–375), providing for annual publication of the existence and character of revised systems of records which are subject to the Act.

SUMMARY: The preamble summarizes significant changes to systems of individually identifiable records which have occurred since the due date for submissions to the 1982 annual republication (August 13, 1982).

SUPPLEMENTARY INFORMATION: ADAMHA has reviewed all of its systems of records and has made minor editorial changes to many systems. However, ADAMHA is only republishing those systems which have changes affecting the public's right and need to know in compliance with the Congressional Reports Elimination Act of 1982.

1. Changes

Changes appearing in this year's publication include, but are not necessarily limited to, the following:

a. Inclusion of the notification procedures for accessing children's records in system notice 09–30–0005, "Saint Elizabeths Hospital Research Subjects Data Record, HHS/ADAMHA/NIMH," and a change in the title of the System Manager.

b. In system notice 09–30–0008, "Saint Elizabeths Hospital Social Services Record System, HHS/ADAMHA/NIMH," revision of routine use number 6 to clarify the purpose for contracting with private firm and deletion of a obsolete routine use to disclose a record otherwise exempt from mandatory disclosure where the appropriate official of the Department determines it is in the public interest to do so.

c. Revision of routine use number 3 in system notice 09–30–0028, "Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH," to specify who is considered "authorized parties, who have legitimate interest in the patient," as previously published.

d. Clarification of the Safeguards by reformatting the language; the Notification Procedures and Record Access Procedures by adding additional language; and of the authority through an editorial change.

2. New Systems Not in 1983 Publication

09–30–0046, "Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA," published February 17, 1984, **Federal Register** (FR), Vol. 49, No. 34, pp. 6180–6182.

3. System Notices Deleted

No system notices have been deleted. ADAMHA is only republishing those systems of records that have been changed. Each system, with the exception of two systems which have not been changed since the 1982 annual publication and one system in which a major alteration was made just prior to the 1982 annual publication, was last published in the **Federal Register**, November 29, 1983, Vol. 48, No. 230, pp. 53795–53833. The two systems which had no changes since the 1982 publication were last published in the **Federal Register**, October 13, 1982, Vol. 47, No. 198, pp. 45427–45468. These systems are system 09–30–0026, "Saint Elizabeths Hospital Research Project Records, HHS/ADAMHA/NIMH," and system 09–30–0035, "Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH." The system which underwent a major alteration just prior to the 1983 annual publication is system 09–30–0041, "Subject Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA," published in the **Federal Register**, June 9, 1983, Vol. 48, No. 112, pp. 26672–26674.

4. Readers who notice any errors or omissions in ADAMHA system notices are invited to bring them to my attention at the following address: Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12–105, Rockville, Maryland 20857.

Dated: August 28, 1984.

Joseph R. Leone,

Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

5. Table of Contents

The following is a list of system notices which ADAMHA currently maintains.

09–30–0002 Statistical Research Data on Adolescent Runaways in Prince Georges County, MD., 1962–65, HHS/ADAMHA/NIMH

09–30–0003 Medical Records Files of Patients Seen in Therapy Programs of the Mental Health Study Center, HHS/ADAMHA/NIMH

09–30–0004 Intramural Research Program Records of Research Performed on In- and Out-Patients with Various Types of Mental Illness, HHS/ADAMHA/NIMH

*09–30–0005 Saint Elizabeths Hospital Research Subjects Data Records, HHS/ADAMHA/NIMH

09–30–0006 Saint Elizabeths Hospital Medical Support Programs File System, HHS/ADAMHA/NIMH

09–30–0007 Saint Elizabeth Hospital Clinical Support Services Record System, HHS/ADAMHA/NIMH

*09–30–0008 Saint Elizabeths Hospital Social Services Record System, HHS/ADAMHA/NIMH

09–30–0009 Saint Elizabeths Hospital Multidisciplinary Raw Data Consultation Files HHS/ADAMHA/NIMH

09–30–0010 Saint Elizabeths Hospital Juvenile Education Monitoring System, HHS/ADAMHA/NIMH

09–30–0011 Saint Elizabeths Hospital Emergency Psychiatric Service Non-Admission File System, HHS/ADAMHA/NIMH

09–30–0012 Saint Elizabeths Hospital Pre-Service Education Records, HHS/ADAMHA/NIMH

09–30–0013 Saint Elizabeths Hospital Training Videotape Records, HHS/ADAMHA/NIMH

09–30–0014 Saint Elizabeths Hospital Financial System, HHS/ADAMHA/NIMH

09–30–0015 Saint Elizabeths Hospital General Security System, HHS/ADAMHA/NIMH

09–30–0016 Saint Elizabeths Hospital Patients' Personal Property Record System, HHS/ADAMHA/NIMH

09–30–0017 Saint Elizabeths Hospital Legal Office Record System, HHS/ADAMHA/NIMH

09–30–0018 Saint Elizabeths Hospital Area D Community Mental Health Center Citizens Advisory Group Records, HHS/ADAMHA/NIMH

09–30–0019 Saint Elizabeths Hospital Court-Ordered Forensic Investigatory Materials File, HHS/ADAMHA/NIMH

09–30–0020 Administrative Records on Civilly Committed Drug Abusers under the Narcotic Addict Rehabilitation Act, HHS/ADAMHA/NIDA

09–30–0021 Patient Medical Records on PHS Beneficaries 1935–1974 and Civilly Committed Narcotic Addicts 1967–1978 Treated at the PHS Hospitals, Fort Worth, Texas and Lexington, Kentucky, HHS/ADAMHA/NIDA

09–30–0022 National Institute on Drug Abuse Addiction Research Center Federal Prisoner and Non-Prisoner Patient Files, HHS/ADAMHA/NIDA

09–30–0023 Records of Contracts Awarded to Individuals, HHS/ADAMHA/OA

09–30–0024 Saint Elizabeths Hospital General Administrative Record System HHS/ADAMHA/NIMH

09–30–0026 Saint Elizabeths Hospital Research Project Records, HHS/ADAMHA/NIMH

09–30–0027 Grants: Research, Research Training, Research Scientist Development, Education, Demonstration, Fellowships, Clinical Training, Community Services, Cooperative Agreements, HHS/ADAMHA/OA

*09–30–0028 Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes, HHS/ADAMHA/NIMH

09–30–0029 Records of Guest Workers, HHS/ADAMHA/OA

09–30–0030 Records of Visiting Fellows, HHS/ADAMHA/OA

09–30–0031 Saint Elizabeths Hospital Management Information Reporting System, HHS/ADAMHA/NIMH

09–30–0033 Correspondence Files, HHS/ADAMHA/OA

09–30–0035 Three Mile Island Mental Health Survey Respondents Record, HHS/ADAMHA/NIMH

09–30–0036 Mental Health Epidemiologic and Biometric Research Data, HHS/ADAMHA/NIMH

09–30–0037 Psychotherapy of Opiate-Dependent Individuals, HHS/ADAMHA/NIMH

09–30–0038 Subject-Participants in Pharmacokinetic Studies on Drugs of Abuse, HHS/ADAMHA/NIDA

09–30–0039 Drug Abuse Treatment Outcome Prospective Study (TOPS), HHS/ADAMHA/NIDA

09–30–0041 Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMHA/NIDA

09–30–0043 Shipment Records of Drugs of Abuse to Authorized Researchers, HHS/ADAMHA/NIDA

09–30–0046 Survey of Alcohol Use Among Youth and Young Adults, HHS/ADAMHA/NIAAA

*These systems of records have been changed during this year's review and are being republished below.

09-30-0005

SYSTEM NAME:

Saint Elizabeths Hospital Research Subjects Data Record. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Saint Elizabeths Hospital
Washington, D.C. 20032 AND
Washington National Records Center
4205 Suitland Road
Washington, D.C., 20409

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons participating in approved research studies at Saint Elizabeths Hospital in the following categories: (1) Inpatients, outpatients, and relations of patients; (2) hospital staff including stipended trainees; and (3) non-hospital related subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record categories include: data from interviews, medical and non-medical test and laboratory data, self-report information, informant observation data, and data from previous records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301 (42 U.S.C. 241).

PURPOSE(S):

Purposes include: data analysis; case study illustration; hypothesis generating study; subject reimbursement; diagnosing and treating mental disorders, and improving diagnostic and treatment methods; generating new knowledge about the nature and causes of mental and emotional illneses, and about rehabilitating the mentally ill; generating new knowledge about human behavior; program evaluation and assessment; and historical research.

1. Records are routinely disclosed to qualified physicians for the purpose of obtaining medical background data.

2. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individuals).

4. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to -- (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except -- (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

STORAGE:

Written documents and photographs are in file folders and filing cabinets; audio and video tape reels are in storage cabinets.

RETRIEVABILITY:

System is filed by name, code, and/or hospital case number of subject, dates when research was conducted, research program area, and primary investigator.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access to research files is limited to authorized researchers and medical staff.

2. Physical Safeguards: File folders are kept in locked storage cabinets. Fire and life safety codes are strictly enforced. Offices are locked when not in use. Offices are monitored by security guards at night and on weekends.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel. An employee picture I.D. program is in effect. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual. Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the Federal Records Disposal Schedule.

Director, Overholsen Division of Training
Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

To determine if a record exists, contact

Privacy Act Coordinator
Office of the Director, Overholsen Division of Training
Saint Elizabeths Hospital
Washington, D.C. 20032

Provide a notarized signature if request is by mail, or suitable identification if request is made in person.

All of the following data must be provided when requesting notification:

(a) Full name, date and place of birth;

(b) Inclusive dates of participation in the research study;

(c) Type of research study;

(d) Location of the unit where research was conducted;

(e) Name of primary investigator;

(f) The status of the requester with respect to the hospital, e.g., in-patient, out-patient, former patient, staff or trainee, or non-hospital related subject;

(g) If possible, in the case of patients, the hospital number. A parent or guardian who requests notification of or access to a child's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child as well as proof of his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from research subjects, observers, previous records, and test results.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0008

SYSTEM NAME:

Saint Elizabeths Hospital Social Services Record System. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

A widely decentralized system at Saint Elizabeths Hospital (SEH). Individual records are kept in the offices of social workers responsible for patients on the rolls of the various Hospital Divisions. Social workers' offices are located in each inpatient and outpatient division or clinic at Saint Elizabeths Hospital, Washington, D.C. 20032. Records of individuals in transition programs may be located at contractor sites. For a current listing of contractor sites, contact the System Manager. Inactive records are stored at Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past and present patients on the rolls of Saint Elizabeths Hospital; home sponsors; caretakers; owners and operators of facilities providing services to patients.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files on inpatients and outpatients containing demographic data; social workers' contact with families and the community including social, marital and family status, job status; identifying information containing name, address, telephone numbers, social security numbers, Medicaid numbers, date of birth, legal status, financial information, hospital number, Veterans Administration numbers, Health Insurance numbers, Civil Service Numbers, family composition; statement on background, names of relatives, conservators with addresses and telephone numbers; correspondence sent other agencies; information regarding psychiatric and medical condition; social histories; progress notes (carbon copies of notes may be placed in ward chart) hand written progress notes not in chart, return to hospital notes, interval histories, placement and planning notes; information regarding psychiatric and medical condition, financial resources, treatment plans, correspondence to relatives, friends, other agencies, etc. Telephone interviews or conversations, incident reports and copies of reportable occurrences, group therapies and individual therapies by social workers, daycare status and group activities, religious histories; intra-agency evaluative and assessment data and reports received from other sources, outside agencies that provide supportive services; essential information regarding services sought or received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

24 U.S.C. 161, et seq.; Hospitalization of the Mentally Ill Act, 21 DC Code 562.

PURPOSE(S):

Information is used:

1. In planning to assess the patient's overall ability to be placed and to adjust or function in the type of environment to which he or she has been referred.
2. For accountability to other hospital personnel and reference for recording or sharing information with staff and other necessary persons upon request.
3. To share information with team, reference for casework services and reference for completing forms.
4. To monitor patient's progress and periodically assess placement situations in outplacement facilities. To monitor outplacement facilities outside the hospital and assist in placement of patients by providing accurate, up-to-date information regarding available facilities; and to determine the status of compliance of a facility with certain standards through appropriate licensing agencies. To familiarize staff with outplacement facilities. To assess outplacement operators, administrators or owners ability to provide the level of care needed by individual patients. To share patient's background and appropriate information with outplacement owners, operators and sponsors.
5. To expedite family involvement in planning patient care and to expedite mobilization of community resources on behalf of the patient.
6. As a resource in diagnosis, treatment, planning prognosis goals and communication with other disciplines.
7. As resource material gathered by the social workers used to prepare narrative summaries for the patient's medical records.
8. To keep informed about social services provided patients; patient problem areas in the unit for purpose of evaluating services provided and need for action, and for reporting to the Clinical Directors or person in charge of service.
9. As resource material for diagnostic planning and implementation of treatment plan and documentation of services offered.
10. For reference in order to complete summaries for medical records; to have readily available pertinent information with which to respond to personal and telephone contacts; to provide needed information to hospital staff, officials of other agencies reponsible for the provision of adjunct services.
11. To provide inservice training for continued professional development.
12. To provide Hospital staff and patients with essential information for selecting appropriate living arrangements for patients in the community.
13. To provide information to placement workers from other community service organizations in order to facilitate patient placements and to develop necessary community support services.
14. To serve as a uniform system for location of staff, indication of qualifications and areas of responsibility, in order to assist in provision of resources (financial and other) to patients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Information is routinely disclosed to the following sources for the purposes of obtaining financial assistance for patients, locating community recreation resources, providing job placement and training for patients, securing alternative placements in other institutions, providing education, securing living and care arrangements and aiding in followup care, and providing required reports to court, state government or Federal government agencies:

a. Foster home sponsors, caretakers, owners and operators of facilities providing services to patients
b. Agencies of the District of Columbia Government
c. The Superior Court for the District of Columbia
d. The United States District Court for the District of Columbia
e. The Veteran's Administration
f. The Office of Personnel Management
g. Anchor Mental Health Association

h. State Departments of Social Services throughout the United States;

2. Information disclosed routinely to persons, who are not employees of SEH, on a need to know basis, who have a responsibility for the care and treatment of patients of SEH.

3. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal (e.g., Department of Justice), State or local (e.g., State and local licensing boards) charged with the responsiblity of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

4. A record from this system of records may be disclosed as a 'routine use' to a Federal, state or local agency maintaining civil, criminal or other relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

5. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department will make such records available.

6. The Department contemplates that it will contract with a private firm for the purpose of providing supportive services to patients. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

7. A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to -- (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except -- (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

8. Disclosures may be made to organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

9. Disclosures may be made in the course of employee discipline or competence determination proceedings to parties involved in the proceedings such as police, attorneys, and Office of Personnel Management employees.

10. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

11. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards, file folders, logs, notebooks, Rolodex, and Kardex.

RETRIEVABILITY:

By patient's name and staff's name.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access is restricted to authorized social workers and support staff.

2. Physical Safeguards: File folders are kept in locked desks or file cabinets in social workers' offices. Offices are locked when not occupied. Fire and life safety codes are strictly enforced.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel. Access to records is strictly limited to those staff members trained in accordance with the Privacy Act. An employee picture I.D. program is in effect. Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the project officer and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts related to this system. The project officer, contract officer and staff of the SEH Outplacement Office oversee compliance with these requirements.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 in the General Administration Manual.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the ADAMHA Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Social Services
A Building, Room 221 Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

Active or discharged patients in this system of records may learn if a record exists upon written request, with notarized signature if request is made by mail, or with suitable identification if request is made in person, directed to:
Privacy Act Coordinator
Office of the Director of Social Services
A Building, Room 221
Saint Elizabeths Hospital
Washington, D.C. 20032
All of the following information must be provided when requesting notification:
(a) Full name;
(b) The approximate dates of contact with the hospital;
(c) The nature of the material desired;
(d) Hospital number, if possible.

A parent or guardian who requests notification of a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record content being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Past and present patients of Saint Elizabeths Hospital, home sponsors, caretakers, owners, and operators of facilities providing services to Saint Elizabeths patients, other employees of Saint Elizabeths Hospital, employees of various agencies of the District of Columbia and the United States.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-30-0028

SYSTEM NAME:

Saint Elizabeths Hospital General Medical/Clinical Records System and Related Indexes. HHS/ADAMHA/NIMH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This is a widely decentralized system of records. Inactive patient records are located in the basement of the Dix Building. Active patient records are located in the division where the patient is residing, including possibly contractor locations. A current listing of contractor sites is available from the System Manager. Saint Elizabeths Hospital clinical divisions are listed below under System Manager. Inactive records may also be stored at the Washington National Records Center, 4205 Suitland Road, Washington, D.C. 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All past and present patients of Saint Elizabeths Hospital.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient and outpatient psychiatric medical/clinical records. The medical/clinical record contains identifying data (name, date and place of birth, age, sex, race, marital status, legal category, social security number, leave and residential status, admission and discharge dates, identification of relatives and hospital identification number) and medical/clinical information (physician's admission note, results of physical examinations, descriptions of patient's present and past physical and mental health, diagnosis, prognosis, consultant's opinions, social history, treatment plan, results of diagnostic tests and procedures, notes of patient's response to treatment, progress notes, nurses' notes, incident reports, and reports or notes of others who contributed to a patient's treatment and/or social work efforts, and correspondence with Saint Elizabeths Hospital concerning such a patient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

24 U.S.C. 161, et seq.; Hospitalization of the Mentally Ill Act, 21 DC Code 562.

PURPOSE(S):

1. To document a patient's illness, chief complaint, history, physical examination, diagnostic test and procedure reports, to plan treatment whether as an inpatient or an outpatient.
2. To promote continuity of care for followup of treatment; for reference upon future treatment and care.
3. To provide a basis for reports mandatory under Federal and local laws.
4. In some instances, to provide a basis for action in the course of employee discipline or competence determination proceedings.
5. To transact hospital business in filing insurance claims, verification of patient's competency, disability, or retirement benefits, verification of leave status and residence.
6. To serve as a basis for hospital administrative planning and evaluation of its programs.
7. To serve as impersonal documents for the hospital staff continuing education and studies.
8. To be used by hospital staff for assessment of the quality of treatment, for medical audit and utilization review.
9. To be used for the legal defense of the hospital and its staff in cases where a claim is based on patient's mental or physical conditions and arising from the patient's treatment at Saint Elizabeths Hospital.
10. To be used for statistical reports, monthly analysis of clinical division services, monthly, quarterly, annual reports.
11. To serve as a basis for reports to accrediting agencies, Joint Commission on Accreditation of Hospitals, American Hospital Association, American Psychiatric Association, Medicare Licensure, etc.
12. To prepare indexes based on medical/clinical records that are routinely used for: (a) speedy identification and location of specific patients; (b) monitoring the completeness of patient records, particularly records of patients discharged or deceased; (c) monitoring the changing status of patients in terms of either transfers within the hospital or outside the hospital; (d) easy identification of basic demographic data used for statistical and/or research purposes; and, (e) quick review of current treatment regimen in some cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made:

1. To facilitate treatment of patient when admitted to other facilities; to send records to new physician.

2. To personnel who are not employees of the hospital for accreditation or licensure of the hospital.

3. Of reports to a referring source such as a physician or a court; and to authorized organizations and state and local agencies (which may include contractors) that may provide services to patients, such as the Interstate Services Section of the District of Columbia government.

4. To Assistant United States Attorneys, Assistant Corporation Counsel, defense attorneys, and the Mental Health Commission, who request a patient's medical records in cases where a physician-patient privilege is waived by statute, in order that information necessary to perform statutory governmental functions in civil commitment, adult criminal, and juvenile proceedings, will be available to the parties and the fact-finders.

5. In the case of a patient who lacks the capacity to give informed consent to the release of his or her medical records, and who has no legal guardian to act on his or her behalf, disclosure may be made to appropriate individuals or organizations so that such individuals or organizations may provide a benefit or service to the patient, such as (but not limited to) welfare benefits or occupational services.

6. For a research purpose, when the department: (a) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) has required the recipient to -- (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature or retaining such information, and (3) make no further use or disclosure of the record except -- (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; (d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

7. To organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review, including Professional Standards Review Organizations.

8. Disclosures may be made in the course of employee discipline or competence determination proceedings to parties involved in the proceedings such as police, attorneys, and Office of Personnel Management Employees.

9. To a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

10. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected (e.g., to the Department of Justice or other appropriate Federal agencies in defending claims against the United States when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual.)

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

1. Active Patients - File folders with general medical record and correspondence file are kept in metal file cabinets. Index cards, monitoring cards, kardex and addressograph plates are kept in their appropriate containers.
2. Inactive Patients (Discharged and Deceased Patients) - Clinical and correspondence records are filed in separate coded folders with unit numbering system. Patients index - 3x5 card file of all patients hospitalized or treated at SEH in a Kardveyer; Diagnostic Indexes - a 5x7 separate index card file stored in a Visu-Triver.

RETRIEVABILITY:

Data are retrieved by patient's name and hospital number.

SAFEGUARDS:

Safeguards:

1. Authorized Users: Access is limited to authorized hospital personnel.

2. Physical Safeguards: Active records are filed in locked nursing stations on patient wards. Doors lock automatically when closed. Discharged patient records are maintained in locked offices in the Medical Records Branch. Fire and life safety codes are strictly enforced.

3. Procedural Safeguards: All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel. An employee picture I.D. program is in effect. Access to records is limited to staff trained in accordance with the Privacy Act.

4. Implementation Guidelines: DHHS Chapter 45-13 and supplementary Chapter PHS.hf: 45-13 of the General Administration Manual.

RETENTION AND DISPOSAL:

Records will be retired to a Federal Records Center five years after date of discharge.

SYSTEM MANAGER(S) AND ADDRESS:

I. For Records of Inactive Patients:

Superintendent
Room 105, Administration Building
Saint Elizabeths Hospital
Washington, D.C. 20032

II. For Records of Active Patients:

Director
Area D Community Mental Health Center
Dix Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Division of Child and Adolescent Services
Dix Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Noyes Division
Noyes 7, Saint Elizabeths Hospital

Washington, D.C. 20032

Director
Forensic Division
John Howard Pavilion, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Godding Division
Godding 6, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Marr Division
Nichols Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Mental Health Program for the Deaf
L Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Medicine Branch
W. W. Eldridge Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
O'Malley Division
Q Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Director
Richardson Division
P Building, Saint Elizabeths Hospital
Washington, D.C. 20032

Clinical Director
William A. White Division
William A. White Building
Saint Elizabeths Hospital
Washington, D.C. 20032

NOTIFICATION PROCEDURE:

A patient or former patient may learn if a record exists upon written request, with notarized signature if request is made by mail, or with suitable proof of identity if request is made in person, directed to, as appropriate:

Active Patients:
Privacy Act Coordinator
Office of the Director (Division where person receives treatment; see list under 'System Manager')
Saint Elizabeths Hospital
Washington, D.C. 20032

Inactive Patients:
Privacy Act Coordinator
Office of Medical Records Branch
A Building
Saint Elizabeths Hospital
Washington, D.C. 20032

All of the following information must be provided when requesting notification: (a) full name; (b) for discharged patients, approximate dates enrollment at Saint Elizabeths Hospital; (c) if possible, the patient's hospital number; (d) the nature of the material desired. A parent or guardian who requests notification of a child's/incompetent person's record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent person as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the records contents being sought. An individual may also request an accounting of disclosures of his/her record, if any.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under notification procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Medical records are a compilation of sociological, medical, clinical and historical data of a patient. They are a complete report of an illness resulting from an accumulation of a large amount of information about a patient. The information recorded was given by the patient, his/her relatives, or other third persons interested in the patient, from existing records used as reference, from clinical tests (different departments such as lab, X-ray, EEG, etc.), physicians, psychiatrists, nurses, social workers, other therapists who entered their observations and assessments by means of progress notes, reports, etc.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-25242 Filed 9-24-84; 8:45 am]
BILLING CODE 4160-20-M

National Institutes of Health

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Department of Health and Human Services; Public Health Service; National Institutes of Health.

ACTION: Privacy Act: Annual republication of notices of revised systems of records.

SUMMARY: The National Institutes of Health (NIH) is publishing this document to establish changes to notices of systems of records which have been revised following a comprehensive review of all systems of records maintained by NIH. None of these changes requires a report of altered system to be sent to the Congress and the Office of Management and Budget. The notices republished below are complete and accurate as of August 31, 1984.

Furthermore, we are summarizing the addition of one new system which was published and deletion of two systems which have been terminated since the 1983 publication. We are also publishing a complete list of all systems of records which NIH currently maintains.

SUPPLEMENTARY INFORMATION: The following information summarizes the current status of all systems of records which NIH maintains:

A. *Revised System Notice.* We have revised system notices republished below as follows:

(1) A routine use was inadvertently omitted in past **Federal Register** publications in system of records 09-25-0001, "Clinical Research: Patient Records, HHS/NIH/NHLBI." This routine use allows disclosure to Congress in response to a request on behalf of the subject individual.

(2) Under the "Purpose" section of system of records 09-25-0033, "International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC," the purpose has been narrowed in scope. Program review and evaluation have been deleted from the purposes of the system.

(3) System 09-25-0075, "Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD," has been updated to reflect a change in the system location and system manager address.

(4) In each of the following systems of records, the "Safeguards" section has been updated to provide a clearer description of safeguards implemented.

09-25-0033, "International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC."
09-25-0054, "Administration: Property Accounting, HHS/NIH/ORS."
09-25-0078, "Administration: Consultant File, HHS/NIH/NHLBI."
09-25-0105, "Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and

Relatives of Inpatients, HHS/NIH/OD."

09–25–0128, "Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINCDS."

09–25–0135, "Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRR."

(5) In the Table of Contents which appeared in the last annual publication, system of records 09–25–0067, "Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI," was inadvertently omitted.

(6) Editorial changes have been made to several system notices to make them clearer and more accurate.

B. *New Systems of Records.* The following new system of records did not appear in the 1983 annual publication:

09–25–0154, "Biomedical Research: Records of Subjects in Cancer Studies of the Division Resource, Centers and Community Activities, HHS/NIH/NCI," published in the **Federal Register**, Novemer 23, 1983, Vol. 48, No. 227, pp. 52981.

C. *Deleted Systems of Records.* The following systems of records which appeared in the 1982 annual publication are now being deleted:

(1) 09–25–0051, "Grants: NIH Fellowship Payroll, HHS/NIH/DFM," published in the **Federal Register**, October 13, 1982, pp. 45804. This system of records is being deleted as the records in this system are covered by a departmentwide umbrella system of records, 09–90–0024, "Accounting Records of Payments to and Collections from Individuals from Operating Division Agency and Regional Financial Management and Disbursing Offices, HHS/OS/ASMB."

(2) 09–25–0068, "Clinical Research: National Cancer Institute/American Cancer Society National Breast Cancer Screening of Antihypertensives, HHS/NIH/NCI," published in the **Federal Register**, October 13, 1982, pp. 45810. This system of records has been terminated and the records have been destroyed.

D. Section 3(b) of Privacy Act permits the following types of disclosures for which no routine use is required, in addition to those made at the request of the subject individual.

"(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) required under section 552 of this title;

"(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

"(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) pursuant to the order of a court of competent jurisdiction; or

"(12) to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S..C 3711(f))."

We are only republishing those system notices which have been changed, and all system notices other than the new one cited, including those now being deleted, were last published in the **Federal Register**, Vol. 47, No. 198, pp. 45773–45856, October 13, 1982, and selectively updated in Vol. 48, No. 230, pp. 53833–53852, November 29, 1983.

Dated: September 14, 1983.

James B. Wyngaarden,

Director.

Table of Contents

*09–25–0001 Clinical Research: Patient Records, HHS/NIH/NHLBI.

09–25–0002 Clinical Research: Patient Phonocardiogram Records, HHS/NIH/NHLBI.

09–25–0003 Administration: Authorized Radionuclide Users File, HHS/NIH/ORS.

09–25–0004 Administration: Registry of Individuals Exposed to Chemical Carcinogens, HHS/NIH/ORS.

09–25–0005 Administration: Library Circulation and User I.D. File, HHS/NIH/OD.

09–25–0007 Administration: NIH Safety Shoes and Safety Glasses Issuance Program, HHS/NIH/ORS.

09–25–0008 Administration: Radiation Workers Monitoring, HHS/NIH/ORS.

09–25–0009 Clinical Research: Radiotherapy Patient File, HHS/NIH/ORS.

09–25–0010 Research Resources: Registry of Individuals Potentially Exposed to Microbial Agents, HHS/NIH/NCI.

09–25–0011 Clinical Research: Blood Donor Records, HHS/NIH/CC.

09–25–0012 Clinical Research: Candidate Normal Volunteer Records, HHS/NIH/CC.

09–25–0013 Clinical Research: Preadmission Medical Records, HHS/NIH/CC.

09–25–0014 Clinical Research: Student Records, HHS/NIH/CC.

09–25–0015 Clinical Research: Collaborative Clinical Epilepsy Research, HHS/NIH/NINCDS.

09–25–0016 Clinical Research: Collaborative Perinatal Project HHS/NIH/NINCDS.

09–25–0019 Clinical Research: Genetic Counseling, HHS/NIH/NINCDS.

09–25–0020 Clinical Research: Genetics of Neurological Disorders, HHS/NIH/NINCDS.

09–25–0021 Clinical Research: Guam Patient/Control Registry, HHS/NIH/NINCDS.

09–25–0026 Clinical Research: Nervous System Studies, HHS/NIH/NINCDS.

09–25–0028 Clinical Research: Patient Medical Histories, HHS/NIH/NINCDS.

09–25–0031 Clinical Research: Serological and Virus Data in Studies Related to the Central Nervous System, HHS/NIH/NINCDS.

*09–25–0033 International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

09–25–0034 International Activities: Scholars Program, HHS/NIH/FIC.

09–25–0035 International Activities: International Health Exchange Programs Participants, HHS/NIH/FIC.

09–25–0036 Grants: IMPAC (Grant/Contract Information), HHS/NIH/DRG.

09–25–0037 Clinical Research: Gerontology Research Center Longitudinal Aging Study, HHS/NIH/NIA.

09–25–0038 Clinical Research: Patient Data, HHS/NIH/NIADDK.

09-25-0039 Clinical Research: Diabetes Mellitus Research Study of Southwestern American Indians, HHS/NIH/NIADDK.
09-25-0040 Clinical Research: Southwestern American Indian Patient Data, HHS/NIH/NIADDK.
09-25-0041 Research Resources: Scientists Requesting Hormone Distribution, HHS/NIH/NIADDK.
09-25-0042 Clinical Research: National Institute of Dental Research Patient Records, HHS/NIH/NIDR.
09-25-0044 Clinical Research: Sensory Testing Research Program, HHS/NIH/NIDR.
09-25-0046 Clinical Research: Catalog of Clinical Specimens from Patients, Volunteers and Laboratory Personnel, HHS/NIH/NIAID.
09-25-0048 Clinical Research: Serology-Epidemiology Parasite Research, HHS/NIH/NIAID.
09-25-0049 Clinical Research: Atlanta Federal Prison Malaria Research Projects, HHS/NIH/NIAID.
09-25-0053 Clinical Research: Vision Studies, HHS/NIH/NEI.
*09-25-0054 Administration: Property Accounting, HHS/NIH/ORS.
09-25-0057 Clinical Research: Burkitt's Lymphoma Registry, HHS/NIH/NCI.
09-25-0060 Clinical Research: Division of Cancer Treatment Clinical Investigations, HHS/NIH/NCI.
09-25-0064 Clinical Research: Japanese Hawaiian Cancer Studies, HHS/NIH/NCI.
09-25-0067 Clinical Research: National Cancer Incidence Surveys, HHS/NIH/NCI.
09-25-0069 NIH Clinical Center Admissions of the National Cancer Institute, HHS/NIH/NCI.
09-25-0074 Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI.
*09-25-0075 Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD.
09-25-0077 Clinical Research: Biological Carcinogenesis Branch Human Specimen Program, HHS/NIH/NCI.
*09-25-0078 Administration: Consultant File, HHS/NIH/NHLBI.
09-25-0087 Administration: Employees and Consultants, HHS/NIH/NIAID.
09-25-0088 Clinical Research: Researchers Using H-2 Soluble Antigen and H-2 Antiserum, HHS/NIH/NIAID.
09-25-0089 Clinical Research: HLA Antiserum and Tray Users, HHS/NIH/NIAID.
09-25-0091 Administration: General Files on Employees, Donors and Correspondents, HHS/NIH/NEI.
09-25-0093 Administration: Authors, Reviewers and Members of the Journal of the National Cancer Institute, HHS/NIH/NCI.
09-25-0096 Contracts: National Cancer Institute Contract Management System Principal Investigators, Project Officers and Contract Specialist, HHS/NIH/NCI.
09-25-0099 Clinical Research: Patient Medical Records, HHS/NIH/CC.
09-25-0100 Clinical Research: Neuropharmacology Studies, HHS/NIH/NINCDS.
09-25-0102 Administration: Grants Associates Program Working Files, HHS/NIH/DRG.
*09-25-0105 Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/OD.
09-25-0106 Administration: Executive Secretariat Correspondence Records, HHS/NIH/OD.
09-25-0108 Personnel: Guest Workers/Visiting Fellows/Student Scientists/Scientists Emeriti, HHS/NIH/DPM.
09-25-0112 Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD.
09-25-0115 Administration: Curricula Vitae of Consultants and Clinical Investigators, HHS/NIH/NIAID.
09-25-0117 International Activities: U.S.-Japan Program Panel Members, HHS/NIH/NIAID.
09-25-0118 Contracts: Professional Services Contractors, HHS/NIH/NCI.
09-25-0121 International Activities: Senior International Fellowships Program, HHS/NIH/FIC.
09-25-0124 Administration: Pharmacology Research Associates, HHS/NIH/NIGMS.
09-25-0126 Clinical Research: National Heart, Lung, and Blood Institute Epidemiological and Biometric Studies, HHS/NIH/NHLBI.
*09-25-0128 Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINCDS.
09-25-0129 Clinical Research: Clinical Research Studies Dealing with Hearing, Speech, Language and Chemosensory Disorders, HHS/NIH/NINCDS.
09-25-0130 Clinical Research Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI.
09-25-0131 Clinical Research: Clinical Epidemiologic Studies in the Division of Cancer Cause and Prevention, HHS/NIH/NCI.
09-25-0133 Clinical Research: Kidney Transplant Histocompatibility Study (KTHS), HHS/NIH/NIADDK.
09-25-0134 Clinical Research: Epidemiology Studies, National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.
09-25-0135 Grants: PROPHET System Applicant Research Prospectuses, HHS/NIH/DRR.
09-25-0138 Biomedical Research: Studies of Possible Influence on Cognitive and Emotional Development of Children, HHS/NIH/NICHD.
09-25-0140 International Activities: Scientific Visitors at the National Institutes of Health, HHS/NIH/FIC.
09-25-0141 Patient and Donor Records in the Blood Component Support Program for the Division of Cancer Treatment, HHS/NIH/NCI.
09-25-0142 Clinical Research: Records of Subjects in Intramural Research, Epidemiology, Demography and Biometry Studies on Aging, HHS/NIH/NIA.
09-25-0143 Biomedical Research: Records of Subjects in Clinical, Epidemiologic and Biometric Studies of the National Institute of Allergy and Infectious Diseases, HHS/NIH/NIAID.
09-25-0147 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Heart, Lung, and Blood Institute, HHS/NIH/NHLBI.
09-25-0148 Contracted and Contract-Related Research: Records of Subjects in Clinical, Epidemiological and Biomedical Studies of the National Institute of Neurological and Communicative Disorders and Stroke, HHS/NIH/NINCDS.
09-25-0149 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of General Medical Sciences, HHS/NIH/NIGMS.
09-25-0150 Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of Environmental Health Sciences, HHS/NIH/NIEHS.
09-25-0151 Administration: Alert Records Concerning Investigations or Determinations of Misconduct by Current or Potential Recipients of Funds for Biomedical Research, HHS/NIH/OD.
09-25-0152 Biomedical Research: Records of Subject in National Institute of Dental Research Contracted Epidemiological and Biometric Studies, HHS/NIH/NIDR.
09-25-0153 Biomedical Research: Records of Subjects in Biomedical and Behavioral Studies of Child Health and Human Development, HHS/NIH/NICHD.
09-25-0154 Biomedical Research: Records of Subjects in Cancer Studies of the Division Resources, Centers and Community Activities, HHS/NIH/NCI.

*Systems which have been changed and are being republished.

09-25-0001

SYSTEM NAME:

Clinical Research: Patient Records, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

Write to System Manager at the address below for the address of the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients of the National Heart, Lung, and Blood Institute (NHLBI) under study at the National Institutes of Health (NIH).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical histories, diagnostic studies, laboratory data, treatment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation," "National Heart, Lung, and Blood Institute," and "Research and Training in Diseases of the Heart, Blood Vessels, Lung, and Blood and in the Management of Blood Resources," of the Public Health Service Act (42 U.S.C 241, 287, 287a).

PURPOSE:

1. For use by physicians in evaluation and treatment of patients under study at NIH.

2. To furnish patient data to patients, their families, and with patients' consent, to their private physicians.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the requirements of the Privacy Act with respect to such records.

Certain infectious diseases may be reported to state government as required by law.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card index, laboratory books, computer memory.

RETRIEVABILITY:

Indexed by name or patient number.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to authorized physicians and their assistants.

Physical Safeguards: Records are kept in secure locked metal or wood file cabinets and, in some instances, in locked offices.

Procedural Safeguards: Access to files is strictly controlled by files staff. Access to computerized records is controlled by keyword codes available only to authorized users.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule (HHS Records Management Manual, Appendix B–361), item 3000–G–3, which allows records to be kept as long as they are useful in scientific research.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Division of Intramural Research, NHLBI, Building 10, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Privacy Act Coordinator, NHLBI, Building 31, Room 5A29, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Referring physicians, hospitals and medical centers, patients and families, results of procedures and tests of NIH patients.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0033

SYSTEM NAME:

International Activities: Fellowships Awarded by Foreign Organizations, HHS/NIH/FIC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 38A, Room 615, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Write to the system manager at the address below for the address of any Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. citizens qualified in health-related sciences submitting applications through the National Institutes of Health for fellowships for study abroad.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and associated records and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

"International Cooperation" of the Public Health Service Act (42 U.S.C. 242*l*).

PURPOSE OF THE SYSTEM::

To assist U.S. citizens in obtaining fellowships from foreign organizations, Fogarty International Center (FIC) program staff collects applications and submits them to the Division of Research Grants for technical review. Afterwards, the applications are sent to the awarding organization in the foreign country. These foreign countries make the selection for award.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

After review by the operating agency review panel the applications and all supporting documents are forwarded to the foreign organizations or agencies making awards.

In addition, such application may be made available to authorized employees and agents of the Federal Government for purposes of investigations, inspections and audits, and, in appropriate cases, to the Department of Justice for prosecution under civil and criminal laws.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name and fellowship number.

SAFEGUARDS:

Authorized users: Employees who maintain records in this system are instructed to grant regular access only to FIC program staff. Other one-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards; The records are maintained in locked file cabinets, and offices are locked during off-duty hours.

Procedural Safeguards: Access to files is strictly controlled by files staff. Records may be removed from files only at the request of the system manager or other authorized employees.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Years at NIH: 1. Number of years held at Federal Records Center before disposal: 5.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, International Research Awards Branch, FIC, Building 38A, Room 615, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Requests for notification of or access to records should be addressed to the system manager, as listed above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Applicants and persons supplying references.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0054

SYSTEM NAME:

Administration: Property Accounting, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 13, Room 2W35, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NIH Computer Center, Building 12, 9000 Rockville Pike, Bethesda, MD 20205.

Building 31, Room B1C06, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Office of Facilities Engineering, MD 102–01, NIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the National Institutes of Health who are issued tools or card keys.

CATEGORIES OF RECORDS IN THE SYSTEM:

Property management.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 5901; 5 U.S.C. 7903; 40 U.S.C. 318a; 42 U.S.C. 241.

PURPOSE OF THE SYSTEM:

Used for tool and card keys issuance and control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, or foreign, charges with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

In the event of litigation where the defendant is (a) the Department, any

component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, and on magnetic media.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to those officials whose duties require use of the information. Other one-time and special access is granted on a need-to-know basis and release is specifically authorized by the system manager or other authorized personnel.

Physical Safeguards: Records are kept in officially designated office locations which are locked when unattended by office personnel.

Procedural Safeguards: Access to files is strictly controlled by office personnel. Access to computerized records is controlled by keyword codes available only to authorized users.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP System Manaual.

RETENTION AND DISPOSAL:

Records are kept until two years after an item is released by an individual.

SYSTEM MANAGER(S) AND ADDRESS:

For tools: Administrative Officer, DES, Building 13, Room 2W35, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

For card keys: Security Specialist, DAS, Building 31, Room B1C06, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Chief, Office of Facilities Engineering, MD 102–01, HIEHS, P.O. Box 12233, Research Triangle Park, N.C. 27709.

NOTIFICATION PROCEDURE:

Write to the System Manager to determine if a record exists. The requester must also verify his or her identify by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0075

SYSTEM NAME:

Administration: Principal Investigators Submitting Proposals for Protection from Research Risks, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 31, Room 4B09, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons submitting research proposals to the National Institutes of Health involving risks to subjects or matters pertaining to the protection of the rights and welfare of human research subjects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Research protocol, identification of Principal Investigator, institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation" of the Public Health Service Act (42 U.S.C. 241a).

PURPOSE:

Monitoring of research proposals that may involve undue risks to subjects or ethical considerations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on card file.

RETRIEVABILITY:

Records are retrieved by name of Principal Investigator.

SAFEGUARDS:

Authorized Users: Members of the professional staff of the Office for Protection from Research Risks (OPRR) may use information from the file in connection with follow-up procedures of research proposals identified as involving potential risk to the protection of the rights and welfare of human research subjects.

Physical Safeguards: Records are maintained in offices which are monitored during business hours and are locked during off-duty hours.

Procedural Safeguards: Requests for information from the file are made to the Compliance Coordinator who supervises and is responsible for the file. These safeguards are developed in accordance

with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Records are kept for 6 years after the end of a research project or 6 years after final action in any case involving litigation.

SYSTEM MANAGER(S) AND ADDRESS:

Director, OPRR, Building 31, Room 4B09, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Proposals submitted by individuals, but identified by employees or consultants of HHS as possibly involving undue hazards.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0078

SYSTEM NAME:

Administration: Consultant File, HHS/NIH/NHLBI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

List of consultants available for use in evaluation of National Heart, Lung, and Blood Institute special grants and contracts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, résumés, lists of publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation" and "Establishment of Institutes" of the Public Health Service Act (42 U.S.C. 241, 287).

PURPOSE:

1. To identify and select experts and consultants for program reviews and evaluations.

2. For use in evaluation of NHLBI special grants and contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc and file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant regular access only to authorized technical review staff and their assistants.

Physical Safeguards: Records are kept in locked file cabinets and, in some instances, in locked offices.

Procedural Safeguards: Access to files is strictly controlled by files staff. Access to computerized records is controlled by keyword codes available only to authorized users.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are kept until the individual is no longer available for consultation.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Analyst, Division of Extramural Affairs, NHLBI, Westwood Building, Room 5A–15, 5333 Westbard Avenue, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, contact: Privacy Act Coordinator, NHLBI, Building 31, Room 5A29, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-25-0105

SYSTEM NAME:

Administration: Health Records of Employees, Visiting Scientists, Fellows, Contractors and Relatives of Inpatients, HHS/NIH/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Buildings 10 and 13, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Federal Building, 7550 Wisconsin Avenue, Bethesda, MD 20205.

Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20205.

Rocky Mountain Laboratory, Hamilton, Montana 59840.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, fellows, visiting scientists, relatives of inpatients, visitors, contractors working on site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901.

PURPOSE:

1. For medical treatment;

2. Upon researcher request with individual's written permission, release of record for research purposes to medical personnel;

3. Upon request by HHS personnel offices for determination of fitness for duty, and for disability retirement and other separation actions;

4. For monitoring personnel to assure that safety standards are maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to Federal, State and local government agencies for adjudication of benefits under workman's compensation, and for disability retirement and other separation actions.

To district office of OPEC, Department of Labor with copies to the U.S. Office of Personnel Management for processing of disability retirement and other separation actions.

Upon non-HHS agency request, for examination to determine fitness for duty with copies to requesting agency and to the U.S. Office of Personnel Management.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Authorized users: Access is limited to authorized personnel (system manager and staff; Occupational Medicine Service staff; and personnel and administrative officers with need for information for fitness for duty, disability, and other similar determinations).

Physical safeguards: Files are maintained in locked cabinets.

Procedural safeguards: Access to files is strictly controlled by authorized staff.

These safeguards are developed in accordance with chapter 45-13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and suplementary chapter PHS.hf: 45-13.

RETENTION AND DISPOSAL:

Records are retained indefinitely as required by Federal Property Management Regulations Bulletin B-112.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Safety, Building 31, Room B2B47, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

Administrative Officer, Rocky Mountain Laboratory, Hamilton, Montana 59840.

NOTIFICATION PROCEDURE:

Contact System Manager at appropriate treatment location listed above, to determine if a record exists. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Records contain data resulting from clinical and preventive services provided at treatment location, and data received from individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

Clinical Research: Neural Prosthesis & Biomedical Engineering Studies, HHS/NIH/NINCDS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Building, Room 120, 7550 Wisconsin Ave., Bethesda, MD 20205, and (1) at hospitals and medical centers under contract; and (2) Federal Records Centers. Write to the system manager at the address below for the address of any Federal Records Center where records from this system are stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Patients and normal volunteers, males and females, participating in clinical

studies to determine the feasibility of neural prostheses, and in clinical studies related to the development of instrumentation for diagnosis and treatment of neurological and sensory disorders conducted under contract for the National Institute of Neurological and Communicative Disorders and Stroke (NINCDS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Clinical research data as related to studies which seek to determine the feasibility of neural prostheses and to develop instrumentation for diagnosis and treatment of neurological and sensory disorders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Establishment of Institutes" and "Functions" of the Public Health Service Act (42 U.S.C. 289a, 289c).

PURPOSE OF THE SYSTEM:

1. Clinical research on the development of neural prosthesis (artificial devices) to enhance function of individuals with various disorders of the central nervous system.

2. Research on the development of new instruments to improve diagnosis and treatment of disorders of the nervous system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to maintain Privacy Act safeguards with respect to these records.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice or other appropriate Federal agency to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as appropriate for each location and for the particular records maintained in each project. Each site implements personnel, physical and procedural safeguards such as the following:

Authorized Users: Employees who maintain records in this system are instructed to grant access only to HHS scientists or their authorized collaborators.

Physical Safeguards: Records are kept in locked cabinets during non-working hours in a location which is also locked during non-working hours.

Procedural Safeguards: Persons having access to this system are trained in Privacy Act requirements. Location is attended at all times during working hours.

Contractors, grantees and collaborators who maintain records in this system are authorized to make no further disclosure of the records except as authorized by the system manager.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Records are retained in accordance with the NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Fundamental Neurosciences Program, NINCDS, Federal Building, Room 120, 7550 Wisconsin Ave, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

Write to: Head, Administrative Management Section, NINCDS, Building 31, Room 8A47, 9000 Rockville Pike, Bethesda, MD 20205, and ask if a file with your name exists in the Neural Prosthesis or Biomedical Engineering Studies.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought, if any.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Patients, patients' families, hospital records and clinical investigators.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–25–0135

SYSTEM NAME:

Grants: PROPHET System Applicants Research Prospectuses, HHS/NIH/DRP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Bldg. 31, Rm. 6A06, NIH, 9000 Rockville Pike, Bethesda, MD 20205.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for access to the facilities and services of the PROPHET System, a unique national computer resource for the study of chemical/biological interrelationships.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Descriptions of the research objectives of the applicant individuals or groups and their plans for use of the PROPHET system in support of their research; (b) biographical sketches of all key individual associated with the prospectuses; (c) evaluation documents; (d) related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

"Research and Investigation" of the Public Health Service Act (42 U.S.C. 241a).

PURPOSE:

The system is used exclusively in support of the Chemical/Biological Information-Handling (CBIH) program management—i.e., technical merit review of prospectuses, allocation of PROHPET services, analysis and evaluation of ongoing activities, and program planning.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made of assignments of research investigators and project monitors to specific research projects to the National Technical Information Service (NTIS), Department of Commerce, to contribute to the Smithsonian Science Information Exchange, Inc.

Disclosure may be made to the cognizant audit agency for auditing.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

To qualified experts not within the definition of Department employees as prescribed in Department Regulations for opinions as a part of the application review process.

To a Federal agency, in response to its request, in connection with the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to the requesting agency's decision on the matter.

A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

To a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in a system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

To the grantee institution in connection with performance or administration under the terms and conditions of the award.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

System is indexed by name of principal individual associated with the prospectus and by program identification number.

SAFEGUARDS:

Authorized Users: Access is limited to System Manager and his/her staff, and authorized Committee members.

Physical Safeguards: Records are maintained in rooms which are locked when unattended.

Procedural Safeguards: Only authorized users are permitted access. Access is controlled by System Manager or responsible staff.

These safeguards are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, and supplementary chapter PHS.hf: 45–13.

RETENTION AND DISPOSAL:

Number of years held at NIH: 2. Disposal methods include burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Program Director, Chemical/Biological Information-Handling Program, Division of Research Resources, Bldg. 31, Rm. 6A–04, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20205.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the Program Director, Chemical/Biological Information-Handling Program at address listed above and ask if a file exists with your name in the PROPHET System Research Prospectuses.

The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request an accounting of disclosures that have been made of your record, if any.

CONTESTING RECORD PROCEDURE:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested,

the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

The information is provided by the individuals themselves and by NIH consultants who assess the scientific and technical merit of the prospectuses.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84-25246 Filed 9-24-84; 8:45 am]
BILLING CODE 4140-01-M

Centers for Disease Control

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service, Centers for Disease Control, HHS.

ACTION: Privacy Act: Annual republication of notices of systems of records.

SUMMARY: The Centers for Disease Control (CDC) is publishing this document to meet the requirements of section 3(e)(4) of the Privacy Act (5 U.S.C. 552a), as amended by the Congressional Reports Elimination Act of 1982, to republish the notices of systems of records which have been revised. .

This publication provides a table of contents which contains the numerical designations and titles of all systems of records maintained by CDC and its organizational components, including the National Institute for Occupational Safety and Health (NIOSH). In addition, the notices of systems of records which have been revised following a comprehensive review are indicated by an asterisk in the Table of Contents and are published below in their entirety. CDC's system notices were last published in the **Federal Register** Vol. 48, No. 230, pp. 53852–53882, November 29, 1983. One additional new system of records: 09–20–0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies", HHS/CDC/CEH, has been published in the **Federal Register**, Vol. 49, No. 127, pp. 26815–26818, June 29, 1984.

Three of CDC's previously published forty-four notices have been modified to clarify the descriptions and to ensure that they are complete, accurate, and timely. None of these changes requires a report of altered system to be sent to the Congress and the Office of Management and Budget. The notices are complete and accurate as of August 15, 1984.

SUPPLEMENTARY INFORMATION: The notices being republished include several changes which have been made since the 1983 annual publication, as summarized here:

A. Revision of Safeguards: The "Safeguards" category of all notices has been revised to comply with the new format requirements and to more clearly reflect the specific safeguards used for each system.

B. Clarification of System Manager: The "System Manager" category has been revised in system 09–20–0136 to reflect the designation of a policy-coordinating official who is responsible for ensuring that all reviews and administrative requirements affecting the umbrella systems of records are carried out by the system managers.

C. The "Record Access Procedures" category has been updated to state that requesters may obtain an accounting of any disclosures made of their records. Similarly, the "Contesting Record Procedures" category in the system notices has been revised to make the instructions clearer and more accurate.

D. Editorial changes have been made to several system notices to make them more accurate and easy to understand.

E. Disclosures without consent of subject individuals are permitted by the Privacy Act itself in Section 3(b), as follows:

"(1) to those officers and employees of the agency which maintains the record who have a need for the records in the performance of their duties;

"(2) required under section 552 of this title (the Freedom of Information Act);

"(3) for a routine use as defined in * * * (The Privacy Act and described in the routine use section of the specific notices of systems of records published in the **Federal Register**);

"(4) to the Bureau of the Census for purpose of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be individually identifiable;

"(6) to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) pursuant to the order of a court of competent jurisdiction; or

"(12) to a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 [31 U.S.C. 952(d)]."

F. Readers who notice any inadvertent error or omission in CDC system notices are invited to bring them to the attention of: Sara S. Owens, Privacy Act Officer, Centers for Disease Control, 1600 Clifton Road, Bldg. 1, Room B–68, Atlanta, Georgia 30333.

Dated: September 12, 1984.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

Table of Contents

Centers for Disease Control

09–20–0000 Cooperative Mycoses Study. HHS/CDC/CID.
09–20–0001 Certified Interpreting Physician File. HHS/CDC/NIOSH.
09–20–0027 Radiation Exposure Records for NIOSH Employees. HHS/CDC/NIOSH.
09–20–0055 Research/Demonstration, and Training Grants, and Cooperative Agreements Application Files. HHS/CDC/NIOSH.
09–20–0059 Division of Training Mailing List. HHS/CDC/NIOSH.
09–20–0083 Diagnostic Methods for Identification of Occupational Diseases through Biopsy and/or Autopsy Specimens. HHS/CDC/NIOSH.
09–20–0086 Surveillance of Persons on Isoniazid Preventive Treatment for Tuberculosis. HHS/CDC/CPS.

09–20–0087 Surveillance of Inadvertent Vaccination during Pregnancy. HHS/CDC/CPS.
09–20–0088 Subacute Sclerosing Panencephalitis Surveillance. HHS/CDC/CPS.
09–20–0089 Studies of Treatment of Tuberculosis and other Mycobacterioses. HHS/CDC/CPS.
09–20–0090 Studies of Testing for Tuberculosis and other Mycobacterioses. HHS/CDC/CPS.
09–20–0093 Tuberculosis Preventive Therapy Studies. HHS/CDC/CPS.
09–20–0094 Studies of Drug Resistant Tuberculosis Cases/Contacts. HHS/CDC/CPS.
09–20–0095 Varicela Zoster Immune Globulin Records on High Risk Immunosuppressed Children Exposed to Chickenpox. HHS/CDC/CPS.
09–20–0096 Records of Tuskegee Study Health Benefit Recipients. HHS/CDC/CPS.
09–20–0097 Studies of the Effects of BCG Vaccinations for Tuberculosis. HHS/CDC/CPS.
09–20–0098 Congential Rubella Registry. HHS/CDC/CPS.
09–20–0102 Alien Mental Waiver Program. HHS/CDC/CPS.
09–20–0103 Alien Tuberculosis Follow-up Program. HHS/CDC/CPS.
*09–20–0106 Specimen Handling for Testing and Related Data. HHS/CDC/CID.
09–20–0107 Dengue and Research Studies. HHS/CDC/CID.
09–20–0112 CDC Exchange Visitor and Guest Researcher Records. HHS/CDC/OPS.
09–20–0113 Epidemic Investigation Case Records. HHS/CDC/CID.
09–20–0117 Medical and Test Record Results of Individuals Involved in NIOSH Laboratory Studies. HHS/CDC/NIOSH.
09–20–0118 Study at Work-Sites where Agents Suspected of Being Occupational Hazards Exist. HHS/CDC/NIOSH.
*09–20–0136 Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.
09–20–0137 Passport File. HHS/CDC/IHPO.
09–20–0138 Epidemic Intelligence Service Officers Files. HHS/CDC/EPO.
*09–20–0147 Occupational Health Epidemiologic Studies. HHS/CDC/NIOSH.
09–20–0148 Results of Occupational Hearing Studies. HHS/CDC/NIOSH.
09–20–0149 General Industry Morbidity Studies. HHS/CDC/NIOSH.
09–20–0150 Morbidity Studies in Coal Mining Activities. HHS/CDC/NIOSH.
09–20–0151 Mortality Studies in Coal Mining Activities. HHS/CDC/N10SH.
09–20–0152 Mortality Studies in Non-Coal Mining Activities. HHS/CDC/NIOSH.
09–20–0153 General Industry Mortality Studies. HHS/CDC/NIOSH.
09–20–0154 Medical and Laboratory Studies. HHS/CDC/NIOSH.
09–20–0155 Morbidity Studies in Metal and Non-Metal Mining Activities. HHS/CDC/NIOSH.
09–20–0156 Cytotechnologists Proficiency Answer Sheets and Test Results (Medicare). HHS/CDC/LPO.
09–20–0157 Clinical Laboratory Technologists Proficiency Answer Sheets and Test Results (Medicare). HHS/CDC/LPO.
09–20–0158 Independent Laboratory Directors Proficiency Answer Sheets and Exam Results (Medicare). HHS/CDC/LPO.
09–20–0159 Records of Subjects in Certification, Testing and Safety Studies of Personal Protective Devices for Hazardous Work Environments. HHS/CDC/NIOSH.
09–20–0160 Records of Subjects in Health Promotion and Education Studies. HHS/CDC/CHPE.
09–20–0161 Records of Health Professionals in Disease Prevention and Control Training Programs. HHS/CDC/CPS.
09–20–0162 Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies. HHS/CDC/CEH.

09–20–0106

SYSTEM NAME:

Specimen Handling for Testing and Related Data. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Building 4, Room B–35, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

San Juan Laboratories, Center for Infectious Diseases, Centers for Disease Control, San Juan, Puerto Rico 00936.

Center for Prevention Services, Freeway Office Park, Room 309, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, and Federal Records Center, 1557 St. Joseph Avenue, East Point, GA 30344.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Adults and children whose specimens have been submitted to the Centers for Disease Control (CDC) for testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of diagnostic tests involving microbiology, clinical chemistry, hematology, immunology, genetics and pathology.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

For documentation of test results which are returned to submitter. Used between specialty units for research purposes; and for epidemiological investigations, for epidemic causes, prevention, family groupings of diseases, and geographical location of specific diseases; also, used by epidemiologists and researchers in determining drug resistance of specific organisms.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has requested the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

To individuals and organizations deemed qualified by the Secretary to carry out quality assessment, medical audits, and utilization review.

The Department is under contract with private firms for the purposes of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Records may be disclosed to Health Departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosures may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original Form—file folders; microfilm copies, computer tapes.

RETRIEVABILITY:

Retrieved by name or designated number furnished by the submitter, CDC identifying number, and/or microfilm number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, electronic anti-intrusion devices in operation at the Federal Records Center (FRC), fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31). FRC safeguards are in compliance with GSA Federal Property Management Regulations, Subchapter B—Achives and Records.

RETENTION AND DISPOSAL:

Number of years held at CDC: 10 years. May be transferred to Federal Records Center when no longer needed for evaluation and analysis. Destroyed by paper recycling process after 10 years, unless needed for further study.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Centers for Infectious Diseases, Building 1, Room 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Director, Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta GA 30333.

Chief, Dengue Branch, Division of Vector-Borne Viral Diseases, Center for Infectious Diseases, Center for Disease Control, GPO Box 4532, San Juan, Puerto Rico 00936, and Director, Center for Prevention Services, Freeway Office Park, Room 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Room 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the appropriate system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who request notification of or access to medical records shall at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Approved public health laboratories, Federal medical facilities, private physicians.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09-20-0136

SYSTEM NAME:

Epidemiologic Studies and Surveillance of Disease Problems. HHS/CDC/CID.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Center for Infectious Diseases, Building 1, Room 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Prevention Services, Freeway Office Park, Room 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Center for Environmental Health, Chamblee Building 29, Room 9A, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, and Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

A list of contractor sites where individually identifiable data are currently located is available upon request to the appropriate system manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Audits and children with reported diseases and other preventable conditions of pubic health significance; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case reports, line listings, hand sort cards, medical records, questionnaires, and related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241).

PURPOSE(S):

This record system enables Centers for Disease Control (CDC) officials to better understand disease patterns in the United States, develop programs for prevention and control of health problems, and communicate new knowledge to the health community.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record may be disclosed for a research purpose, when the Department:

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identified form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) Has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

Records may be disclosed to individuals and organizations deemed qualified by the Secretary to carry out quality assessment, medical audits or utilization review.

The Department is under contract with private firms for the purposes of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records are maintained by the contractors. The contractors are required to maintain Privacy Act safeguards with respect to such records.

Records may be disclosed to Health Departments and other public health or cooperating medical authorities in connection with program activities and related collaborative efforts to deal more effectively with diseases and conditions of public health significance.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes and file folders.

RETRIEVABILITY:

By name of individual and by identification number.

SAFEGUARDS:

1. *Authorized Users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening

of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, frequently changed passwords, and Vault Management System. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. When Privacy Act tapes are scratched, a special "certified" process is performed in which tapes are completely written over to avoid inadvertent data disclosure. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the CDC Project Director, contract officers and project officers oversee compliance with these requirements. All data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PHS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Record copy of study reports maintained from three to ten years in accordance with retention schedules. Source documents for computer disposed of when no longer needed by program officials. Personal identifiers may be deleted from records when no longer needed in the study as determined by the system manager, and as provided in the signed consent form, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Infectious Diseases, Building 1, Room 6013, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Prevention Services, Freeway Office Park, Room 313, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333

Director, Center for Environmental Health, Chamblee Building 29, Room 9A, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333, and Epidemiology Program Office, Building 1, Room 5009, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

Policy coordination is provided by: Director, Office of Program Support, Room 2011, Centers for Disease Control, 1600 Clifton Road, Atlanta, GA 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself or may obtain information concerning participation in epidemiological studies or surveillance activities by contacting the first system manager at the address listed above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child by means of a birth certificate or court order, as well as verify that he or she is who he or she claims to be.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the first official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Individuals, private physicians, State and local health departments, and other health care providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

09–20–0147

SYSTEM NAME:

Occupational Health Epidemiological Studies. HHS/CDC/NIOSH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

and

Federal Records Center, 3150 Bertwynn Drive, Dayton, Ohio 45439.

A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Industrial workers exposed to physical and/or chemical agents that may damage the human body in any way. Some examples are: (1) Organic carcinogens, (2) inorganic carcinogens, (3) mucosal or dermal irritants, (4) fibrogenic materials, (5) acute toxic

agents including sensitizing agents, (6) neurotoxic agents, (7) mutagenic (male and female) and teratogenic agents, (8) bio-accumulating non-carcinogen agents, and (9) chronic vascular disease-causing agents. Also included are those individuals in the general population who have been selected as control groups.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical exams, sputum cytology results, questionnaires, demographic information, smoking history, occupational histories, previous and current employment records, urine test records, X-rays, medical history, pulmonary function test records, medical disability forms, blood test records, driver's license data, hearing test results, spirometry results are examples of the records in this system. The specific types of records collected and maintained are determined by the needs of the individual study.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, "Research and Investigation" (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, "Research and Related Activities" (29 U.S.C. 669); Federal Mine Safety and Health Act of 1977, Section 501, "Studies and Research" (30 U.S.C. 951).

PURPOSE(S):

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases, to determine the cause and prevention of diseases of industrial origin, and lead toward future prevention of occupationally related diseases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Portion of records (name, Social Security number if know, date of birth, and last known address) may be disclosed to one or more of the sources selected from those listed in Appendix I, as applicable. This may be done solely for obtaining a determination as to whether or not an individual has died. The purpose of determining death is so that NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. Cause of death enables NIOSH to evaluate whether excess occupationally related mortality is occurring.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided such disclosure is compatible with the purpose for which the records were collected. For example, records may be released to the Department of Justice in defending claims against the U.S. when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of the Public Health Service in connection with such individual.

Records subject to the Privacy Act are disclosed to private firms (contractors) for data entry, computer systems analysis and computer programming services. These contractors promptly return all data entry records. Computer work may be done either on contractor-owned or Government-owned computers. The contractors are required to maintain Privacy Act safeguards.

Test data which indicates the existence of cancer may be provided to the State Cancer Registry where the State has a legally constituted cancer registry program which provides for the confidentiality of information.

Certain communicable diseases may be reported to State and/or local Health Departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice to enable the Department to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigative proceedings that NIOSH is authorized to request are (1) enforcement of a subpoena issued to an employer to provide relevant information, or (2) contempt citation against an employer for failure to comply with a warrant obtained by the Institute.

Disclosure may be made to NIOSH collaborating researchers (NIOSH contractors, grantees, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual files, computer files, card files, microfilm, microfiche, and other files as appropriate.

RETRIEVABILITY:

Name, assigned number, plant name, year tested are some of the indices used to retrieve records from these systems. Other retrieval methods are utilized as individual research dictates.

SAFEGUARDS:

1. *Authorized Users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. *Physical Safeguards:* Locked cabinets in locked rooms, 24-hour guard service in buildings, personnel screening of visitors, fire extinguishers, overhead sprinkler system and card-access control equipment in the computer room, computer terminals and automated records located in secured areas.

3. *Procedural Safeguards:* Protection for computerized records includes programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission, and frequently changed passwords. Knowledge of individual tape passwords is required to access tapes, and access to systems is limited to users obtaining prior supervisory approval. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

CDC and contractor employees who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either CDC or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in

contracts, and the CDC Project Director, contract officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. *Implementation Guidelines:* The safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary Chapter PPS.hf: 45–13; Part 6, "ADP Systems Security," of the HHS ADP Systems Manual; the National Bureau of Standards Federal Information Processing Standards (FIPS Pub. 41 FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are maintained from three to twenty years in accordance with retention schedules. Every attempt is made to strip personal identifiers from records and destroy the records when they are no longer needed. Any paper records which are disposed of are shredded or burned and computer tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Program Management Officer, Division of Surveillance, Hazard Evaluations, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

NOTIFICATION PROCEDURES:

An individual may learn if a record exists about himself or herself by contacting the system manager at the address above. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either (1) submit a notarized request to verify their identity or (2) certify that they are the individuals the claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Vital status information is obtained from Federal, State and local governments and other available sources selected from those listed in Appendix I. Information is obtained directly from the individual and employer records, whenever possible.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

Appendix I—Potential Sources for Determination of Vital Status

Military Records
Appropriate State Motor Vehicle Registration Departments
Appropriate State Driver's License Departments
Appropriate State Government Divisions of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging
Indian Affairs, Workman's Compensation, Disability Insurance
Retail Credit Association Follow up
Veterans Administration Files
Appropriate employee union or association records
Appropriate company pension or employment records
Company group insurance records
Appropriate State Vital Statistics Offices
Life Insurance Companies
Railroad Retirement Board
Area Nursing Homes
Area Indian Trading Posts
Mailing List Correction Cards (U.S. Postal Service)
Letters and telephone conversations with relatives
Letters and telephone conversations with former employees of the same establishment as cohort member
Appropriate local newspaper (obituaries)
Social Security Administration
Internal Revenue Service
National Death Index

[FR Doc. 84–25019 Filed 9–24–84; 8:45 am]
BILLING CODE 4160–18–M

Health Resoruces and Services Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS); Health Resources and Services Administration (HRSA), HHS.

ACTION: HRSA is publishing this document to meet the requirements of Pub. L. 97–375, the Congressional Reports Elimination Act. This new statute amends the Privacy Act (5 U.S.C. 552a, section 3(e)(4) to limit republication to revised system notices only.

SUMMARY: HRSA has completed a comprehensive review of each of its system notices which last appeared in the 1983 republication (48 FR 53882–53918, dated November 29, 1983), and has determined that no significant changes have occurred to warrant republication of its system notices at this time.

SUPPLEMENTARY INFORMATION: The routine uses set forth in each system notice describe permissible disclosures outside the Department of records in that system, which may be made without the consent of individuals who are the subject of those records. Additional disclosures without the consent of subject individuals are permitted by the Privacy Act itself in Section 3(b), as follows:

"(1) To those officers and employees of the agency which maintains the records who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use (as described in the routine use section of each specific system notice);

"(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used soley as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for

evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specificying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

"(11) To an authorized individual pursuant to an order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with Section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 3711(f))."

Dated: August 17, 1984.

James A. Walsh,

Associate Administrator for Operations and Management.

Table of Contents

09–15–0001 Division of Federal Employee Occupational Health, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0002 Record of Patients' Personal Valuables and Mones, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0003 Contract Physicians and Consultants, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0004 Federal Employee Occupational Health Data System, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0008 Emergency Non-PHS Treatment Authorization File, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0018 Unofficial Vital Records System, HHS/HRSA/Indian Health Service.

09–15–0019 Health and Medical Records Systems, HHS/HRSA/Indian Health Service.

09–15–0022 Accounts Receivable, HHS/HRSA/Office of the Administrator.

09–15–0026 Medical Fellowships and Educational Loans, HHS/HRSA/Office of the Administrator.

09–15–0027 National Health Service Corps (NHSC) and Indian Health Service (IHS) Pre-Application Recruitment and Provider File, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0029 PHS Beneficiary-Contract Medical/Health Care Records, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0036 Health Professions Preparatory Scholarship Program for Indians and Health Professions Scholarship Program Record System, HHS/HRSA/Indian Health Service.

09–15–0037 Public Health Service Scholarship and National Health Service Corps Scholarship Program, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/Bureau of Health Professions.

09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/Bureau of Health Professions.

09–15–0040 Health Professions Student Loan Repayment Program, HHS/HRSA/Bureau of Health Professions.

09–15–0041 Health Professions Student Loan Cancellation, HHS/HRSA/Bureau of Health Professions.

09–15–0042 Physician Shortage Area Scholarship Program, HHS/HRSA/Bureau of Health Care Delivery and Assistance.

09–15–0043 Cuban Loan Program, HHS/HRSA/Office of the Administrator.

09–15–0044 Health Education Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/Bureau of Health Professions.

09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/Office of the Administrator.

09–15–0047 Cycle II Dentist Survey, HHS/HRSA/Bureau of Health Professions.

09–15–0048 Chattanooga Incremental Care Program, HHS/HRSA/Bureau of Health Professions.

09–15–0049 Indo-China Refugee Physicians and Medical Students, HHS/HRSA/Bureau of Health Professions.

09–15–0050 National Research Service Awards, HHS/HRSA/Bureau of Health Professions.

09–15–0051 Professional Nurse Traineeships, HHS/HRSA/Bureau of Health Professions.

09–15–0052 Nurse Practitioner Traineeships, HHS/HRSA/Bureau of Health Professions.

09–15–0053 Consultants for Division of Disadvantaged Assistance, HHS/HRSA/Bureau of Health Professions.

[FR Doc. 84–25243 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–15–M

Food and Drug Administration

Privacy Act of 1974; Annual Publication of Systems of Records

AGENCY: Public Health Service (PHS); Food and Drug Administration (FDA), HHS.

ACTION: FDA is publishing this document to meet the requirements of Pub. L. 97–375, the Congressional Reports Elimination Act. This statute amends the Privacy Act (5 U.S.C. 552(a), section 3(e)(4)) to limit republication to revised system notices only.

SUMMARY: FDA has revised each of its system notices and has revised some this year to enhance specificity and clarify the effects of reorganization. These revisions are minor and have no affect on the public's need-to-know. Therefore, FDA is not republishing any of its system notices at this time.

FDA has added no new systems of records since the 1982 annual publication. One system has been deleted.

FDA is republishing the table of contents of all of its systems of records. A copy of FDA's system notices is available from the FDA Privacy Act Coordinator, HFW–30, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION:

A. General Information:

1. The routine uses set forth in each notice describe permissible disclosures outside the Department of records in that system which may be made without the consent of individuals who are the subjects of those records. Additional disclosures without consent of subject individuals are permitted by the Privacy Act in section 3(b) as follows:

"(1) To those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

"(2) Required under section 552 of this title (the Freedom of Information Act);

"(3) For a routine use as (described in the routine use section of each specific system notice);

"(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13;

"(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

"(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation of the Administrator of General Services or his designee to determine whether the record has such value;

"(7) To another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

"(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

"(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

"(10) To the Comptroller General, or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

"(11) Pursuant to the order of a court of competent jurisdiction; or

"(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (31 U.S.C. 952(d))." (This "Special Disclosure" statement does not apply to any FDA system of records.)

B. Specific Information:

1. Changes to the data base which do not necessitate republication:

a. The organization designation in the title of the following systems has been changed from HHS/FDA/BRH to HHS/FDA/CDRH:

09–10–0008—Radiation Protection Personnel Monitoring System, HHS/FDA/CDRH.

09–10–0017—Epidemiological Research Studies of the Center for Devices and Radiological Health, HHS/FDA/CDRH.

b. The organizational designation in the title of the following system has been changed from HHS/FDA/BF to HHS/FDA/CFSAN:

09–10–0011—Certified Retort Operators, HHS/FDA/CFSAN.

c. Addition to the Record Access Procedures Category of all system notices that subject individuals may also request an accounting of disclosures that have been made of their records, if any.

2. Deleted System: System 09–10–0012—Association of Official Analytical Chemists (AOAC) Member File, HHS/FDA/AOAC has been deleted because it is no longer necessary for FDA to maintain the records which were contained in this system. This system notice was last published in the **Federal Register**, Vol. 47, No. 198, October 13, 1982, pp. 45421–45422..

Dated: September 5, 1984.

Robert C. Wetherell, Jr.,

Associate Commissioner for Legislation and Information.

Table of Contents

The following table of contents lists all currently active systems of records.

09–10–0002 Regulated Industry Employee Enforcement Records. HHS/FDA/ACMO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45412–45414.

09–10–0003 FDA Credential Holder File. HHS/FDA/EDRO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45415.

09–10–0004 Communications (Oral and Written) With the Public. HHS/FDA/ACMO, FR. Vol. 47, No. 198, Oct. 13, 1982, p. 45415–45416.

09–10–0005 State Food and Drug Official File. HHS/FDA/EDRO, FR. Vol. 476, No. 198, Oct. 13, 1982, p. 45416–45417.

09–10–0007 Science Advisor Research Associate Program (SARAP). HHS/FDA/EDRO. FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45417–45418.

09–10–0008 Radiation Protection Program Personnel Monitoring System. HHS/FDA/CDRH, FR, Vol. 47, No. 237, Dec. 9, 1982, p. 55425–55426.

09–10–0009 Special Studies and Surveys on FDA-Regulated Products. HHS/FDA/ACMO, FR, Vol. 47, No. 237, Dec. 9, 1982, p. 55426–55427.

09–10–0010 Bioresearch Monitoring Information System. HHS/FDA, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45419–45420.

09–10–0011 Certified Retort Operators. HHS/FDA/CFSAN, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45420–45421.

09–10–0013 Employee Conduct Investigative Records. HHS/FDA/ACMO, FR. Vol. 47, No. 198, Oct. 13, 1982, p. 45422–45423.

09–10–0015 Blood Donors for Tissue Typing Sera and Cell Analysis and Related Research. HHS/FDA/CDB/OB, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45423.

09–10–0017 Epidemiological Research Studies of the Center for Devices and Radiological Health. HHS/FDA/CDRH, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45423–45425.

09–10–0018 Employee Identification Card Information Record. HHS/FDA/ACMO, FR, Vol. 47, No. 198, Oct. 13, 1982, p. 45425.

[FR Doc. 84–25244 Filed 9–24–84; 8:45 am]

BILLING CODE 4160–01–M

Reader Aids

Federal Register

Vol. 49, No. 187

Tuesday, September 25, 1984

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PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

34799-35000....4
35001-35070....5
35071-35330....6
35331-35482....7
35483-35608....10
35609-35740....11
35741-35926....12
35927-36064....13
36065-36358....14
36359-36490....17
36491-36622....18
36623-36812....19
36813-37054....20
37055-37368....21
37369-37554....24
37555-37724....25

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Memorandums:

August 30, 1984....35001
September 6, 1984....35609, 36491
September 11, 1984....35927
September 18, 1984....36813

Presidential Determinations:

No. 84-13 of September 8, 1984....36065

Proclamations:

5232....35741
5233....37555
5234....37557
5235....37559
5236....37561
5237....37563
5238....37565

Executive Orders:

12456 (Amended by EO 12487....36493
12487....36493
September 5, 1914 Revoked in part by PLO 6566....36856
October 23, 1914 Revoked in part by PLO 6566....36856
May 11, 1915 Revoked in part by PLO 6566....36856
April 28, 1917 Revoked in part by PLO 6566....36856

4 CFR

Proposed Rules:

21....36386

5 CFR

532....37055
1200....35331
1201....35331, 36495
1203....35331
1204....35331
1205....35331
1206....35331

Proposed Rules:

Ch. XIV....35096

7 CFR

1....35929
301....35332, 36623, 36815
400....35071
781....35072
800....36067, 37055
810....35339, 35743, 37369
910....34799, 35340, 36072, 37056
915....36359
917....36360
918....35341
929....36626
944....36359
993....35929
1006....34799, 37567
1007....34799, 35078
1011....34799, 35078
1012....34799, 37567
1013....34799
1030....35078
1032....35078
1033....36072
1046....35078, 35930
1049....35078
1050....35078
1062....35078
1064....35078
1065....35078, 37369
1068....35078
1076....35078
1079....35078
1093....34799
1094....34799, 35078
1096....34799, 35078
1097....35078
1098....34799, 35078
1099....34799, 35078
1102....34799, 35078
1106....35078
1108....34799, 35078
1120....35078
1126....35078
1131....35078
1132....35078
1138....35078
1421....35745
1942....36627
2200....34804

Proposed Rules:

Ch. IX....37599
250....36390
301....36391
319....36391
910....36862
920....35022
927....35096
981....35382
989....37424
1004....35100
1007....34832, 36392
1033....35101
1065....37102
1079....35383, 37103
1093....34832
1094....34832
1097....35119
1139....37599
1421....34833
1736....35781

8 CFR

100....37370

103.....37370

9 CFR

81.....34804, 36630
91.....36077
94.....36078
201.....37371
203.....35746
318.....35746
327.....36817
381.....35746, 36817

Proposed Rules:

112.....35022
113.....35022
307.....35782
308.....35507
310.....35782
317.....37103
318.....35507
320.....35507
327.....35507
381.....35507, 37103

10 CFR

2.....35747, 36631
40.....35611
50.....35747, 36631
205.....35302
590.....35302

Proposed Rules:

20.....36653
420.....36397
430.....36472

12 CFR

4.....35755
207.....35756
220.....35756
221.....35756
338.....35758
543.....35003
545.....36631
552.....34806
563.....35003
564.....36632
572.....34806

Proposed Rules:

3.....34838
8.....35784
11.....37246
611.....36655
701.....35957

13 CFR

Proposed Rules:

118.....37614
119.....37614
120.....37614
122.....37614
130.....37614

14 CFR

21.....36361
39.....35079-35083, 35612-35622, 36365, 36634, 36819-36824, 37568
71.....34813, 34814, 35623, 35624, 35764-35766, 36825, 37375
75.....34815
97.....35932
125.....34815

Proposed Rules:

Ch. I.....35120, 37109
17.....35384
21.....35121, 35123
23.....37111
39.....35126-35128, 35640-35651, 36862-36867, 37110
65.....35652
71.....34846, 35653-35655, 35786-35788, 36869
93.....35026
101.....35789
198.....35130
255.....35507
399.....37639

15 CFR

4.....35084
385.....36079
399.....36079
2301.....36600

Proposed Rules:

30.....37425
373.....35790, 36655
376.....35790, 36655

16 CFR

13.....34816-34818, 35007, 35008, 35342, 36366
1030.....35483

17 CFR

33.....35010
145.....34818
150.....36825
230.....35342, 37569
239.....35342
241.....37569
270.....36080

Proposed Rules:

230.....35798
240.....35798

18 CFR

3.....35348
157.....35357
271.....37375, 37378
274.....35357
284.....35357
371.....37056
375.....35348, 35357, 36829
381.....35348, 35357
385.....35348, 35357
389.....35348

Proposed Rules:

2.....35135
37.....35960
157.....35135
270.....36399
271.....35143, 35384, 36399, 36655
272.....36399
273.....36399
274.....36399
284.....35135
385.....35961

19 CFR

4.....35483
101.....37057
141.....35485

Proposed Rules:

Ch. I.....35656
10.....35509
18.....35658
24.....35658
101.....35026
112.....35658
141.....35658
144.....35658
146.....35658
191.....35658

20 CFR

629.....36495
630.....36495

Proposed Rules:

656.....36111

21 CFR

175.....36496
177.....36086, 36635
182.....35366
184.....35366
299.....37574
446.....37058
520.....36829
522.....36829
524.....37058
546.....37058
555.....37059
558.....34820, 35486, 35625, 36366
561.....35767
600.....36326, 36644
803.....36326, 36644
1002.....36326, 36644
1003.....36326, 36644
1020.....37380
1240.....36644
1304.....37059

Proposed Rules:

101.....36405
102.....36111
155.....36870, 36871
158.....36871
299.....37640

23 CFR

Proposed Rules:

667.....36657

24 CFR

571.....35367
904.....37575
905.....37575
913.....37575
960.....37575
965.....37575
1710.....35934
3280.....36086

Proposed Rules:

207.....36871
220.....36871
221.....36871
231.....36871
232.....36871

25 CFR

39.....34820, 36367
700.....35379

26 CFR

1.....35086, 36645, 36830
5f.....35086
5h.....35486
18.....35486
31.....36830
35a.....36645
301.....36830
601.....36497, 37060

Proposed Rules:

1.....35144, 35145, 35511, 36510, 36659
51.....35517, 36510
301.....35145, 35511

27 CFR

4.....35768
5.....35768
7.....35768
19.....37576
72.....37061
240.....37510, 37576
245.....37576
250.....37576
251.....37576
270.....37576
275.....37576
285.....37576

Proposed Rules:

4.....34847, 37527
9.....35027
240.....37527

28 CFR

0.....35934
39.....35724

29 CFR

1601.....36086

Proposed Rules:

20.....36612-36619
70a.....35800
1910.....36659

30 CFR

210.....37336
212.....37336
217.....37336
218.....37336
219.....37336
228.....37336
229.....37336
241.....37336
243.....37336
250.....36500
917.....37585
935.....37587
943.....37062
948.....36837
950.....37063

Proposed Rules:

55.....37640
56.....37640
57.....37640
816.....35714, 37641
817.....35714, 37641
855.....35714, 37641
906.....37426
935.....35522, 35961
943.....37641

31 CFR

500.....35927
505.....35927
515.....35927
520.....35927

32 CFR

199.....35934, 36087
706.....35493-35495, 35625, 35626

Proposed Rules:

90.....35148

199 35961

33 CFR

100 ..... 34821, 34822, 35010, 35495
110 36840
117 ..... 35497, 35627, 35935, 36840, 37381
165 ..... 35498, 36841, 37382

Proposed Rules

110 ..... 35523, 36876, 37427
117 35963
162 35523

34 CFR

75 35318
76 35318
98 35318
628 37325

Proposed Rules:

32 35658
75 36808
76 36808
200 36877
204 36877
298 36877
304 36808

36 CFR

Proposed Rules:

254 36405
281 36112

37 CFR

1 36096

Proposed Rules

2 35527

38 CFR

21 ..... 35629, 37383

Proposed Rules:

36 34847

39 CFR

10 37383
601 36500

Proposed Rules:

111 36510

40 CFR

30 35010
52 ..... 35500, 35501, 35631, 36096, 36501, 36645, 36842, 37064, 37590–37592
60 ..... 35936, 36368, 37064, 37328, 37384
61 ..... 35768, 35936, 36368, 37064
62 ..... 35502, 35771
81 ..... 35631, 36370, 36646
122 37007
133 36986
147 ..... 37065, 37593
261 37066
300 37070
413 34823
415 37594
433 34823
469 34823
710 36844
747 36846
721 35011
761 36648

Proposed Rules:

50 35029
51 37542
52 ..... 34851, 34866, 35155, 35662, 36407–36409, 36511, 36661–36663, 37427, 37429, 37642–37645
53 35029
57 34870
58 35029
60 ..... 35156, 36410, 37548
61 36877
65 ..... 36879, 37646–37648
81 ..... 35029, 35964, 37431
133 37010
162 35804
180 ..... 35030, 35805
271 ..... 35608, 35966, 37432
406 37046
407 37046
408 37046
409 37046
411 37046
422 37046
424 37046
426 37046
430 37046
431 37046
432 37046
439 37046
721 36880

41 CFR

101–11 36502
101–47 37091

Proposed Rules:

Ch. 201 ..... 35385, 36665

42 CFR

405 36097

Proposed Rules:

57 ..... 35324, 35328
405 35386

43 CFR

1820 35296
1860 35296
3160 37356

Public Land Orders:

6565 35773
6566 36856

44 CFR

2 36502
9 35580
64 ..... 36648, 36650
65 ..... 35774, 35775
67 35776

Proposed Rules:

11 36411
67 35806–35809
205 34874

45 CFR

205 35586
206 35586
232 35586
233 35586
234 35586
238 35586
239 35586
240 35586
302 ..... 35604, 36764
303 36773
304 36764
610 37594
611 37594
612 37594
613 37594
640 37594
650 37594
670 37594
801 ..... 35937, 37092

Proposed Rules:

301 36780
302 36780
303 36780
304 36780
305 36780
307 36780

46 CFR

61 36503
63 36503
170 37384
510 36296
515 36303
520 36303
525 36303
530 36303
540 36303
572 ..... 36103, 36371
582 36856

Proposed Rules:

67 35967

47 CFR

1 ..... 36373, 36503, 37384
2 35633
15 35634
61 34824
63 34824
73 ..... 35637, 36378–36382, 36503, 36651, 37093
83 ..... 36104, 36105
87 35091
90 ..... 36105, 36373
94 36373
97 36107

Proposed Rules:

Ch. I 37434
2 36512
43 35809
67 37434
73 ..... 35664, 36112, 36415, 36523, 37125, 37437
74 35664
90 ..... 36113, 36526
97 36113

48 CFR

Ch. 3 36109
Ch. 3, Appendix A 36236
Ch. 5 ..... 35637, 35938, 36505

Proposed Rules:

Ch. 5 36114
Ch. 19 37020
230 35160
507 35161
819 36529
852 36529
1845 36531

49 CFR

172 35950
173 35950
195 ..... 36383, 36859
571 ..... 35380, 35503, 36507
1011 36384
1140 37385

Proposed Rules:

171 37438
172 37438
173 37438
175 37438
192 36415
575 35814

50 CFR

17 35951
20 ..... 36272, 37387
32 ..... 35505, 36736, 37093
33 ..... 35505, 37093
267 37423
652 ..... 35021, 37598
663 35955
671 ..... 35779, 36860
672 ..... 35095, 35505, 35955

Proposed Rules:

13 35389
14 35389
17 ..... 34878, 34879, 35031, 35665, 36418, 36665, 36667, 36886, 37649
20 36290
23 ..... 35390, 35528
32 35530
661 35815

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List September 5, 1984.

Regulations
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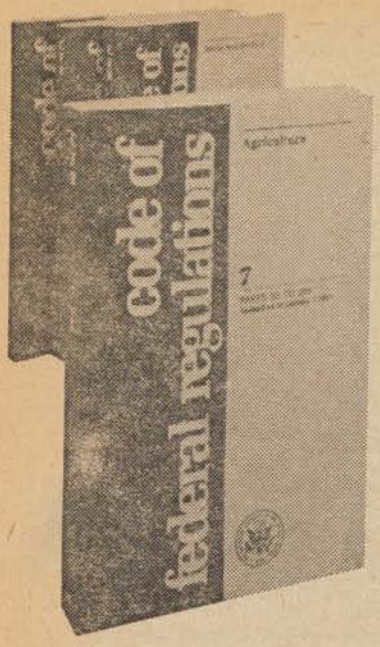

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